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Overview of forest tenure reforms in Indonesia

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List of abbreviations

AMAN	*Aliansi Masyarakat Adat Nusantara*/National Alliance of Indigenous Peoples of the Archipelago
APL	*Areal Penggunaan Lain*/Area for Other Land Uses
BAL	Basic Agrarian Law
BPDAS	*Balai Pengelolaan Daerah Aliran Sungai*/Watershed Management Agency
BPKH	*Balai Pemantapan Kawasan Hutan*/Forest Gazettement Agency
BPN	*Badan Pertanahan Nasional*/National Land Agency
BRN	*Badan Rekontruksi Nasional*/National Reconstruction Bureau
CBFD	*Program Pembangunan Kehutanan Berbasis Masyarakat*/ Community-Based Forestry Development Program
CRP6 program	CGIAR Research Program on Forests Trees and Agroforestry
EU	European Commission
FKKM	*Forum Komunikasi Kehutanan Masyarakat*/Community Forestry Communication Forum
GEF	the Global Environment Facility
HD	*Hutan Desa*/Village Forest
HKm	*Hutan Kemasyarakatan*/Community Forest
HTR	*Hutan Tanaman Rakyat*/Community Plantation Forest
ICRAF	World Agroforestry Centre
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
KDTI	*Kawasan Daerah dengan Tujuan Istimewa*/Decree on Special Purpose Zone
KPH	*Kesatuan Pengelolaan Hutan*/Forest Management Unit
KPK	*Komisi Pemberantasan Korupsi*/Corruption Eradication Commission
MOEF	Ministry of Environment and Forestry
MOF	Ministry of Forestry
NTFPs	Non-Timber Forest Products
PHBM	*Pengelolaan Hutan Bersama Masyarakat*/Joint Forest Management
TGHK	*Tata Guna Hutan Kesepakatan*/ Consensus-based Forest Land-Use Planning

1 Introduction[1]

All lands in Indonesia fall into one of two groups. The first group is forest zone (*kawasan hutan*), with an area of about 124 million ha, which is two-thirds of Indonesia's landmass.[2] The *kawasan hutan* falls under the administration of the Ministry of Environment and Forestry (MOEF).[3] The *kawasan hutan* is further divided based on functions such as production forests (HP/*hutan produksi*) (69 million ha), protected forests (HL/*hutan lindung*) (29.5 million ha) and conservation areas (27.5 million ha) (MOF, 2014). Fixed production forests (HPT/*hutan produksi tetap*) covers around 35 million ha and are managed by large companies. Production forests that can be converted for other purposes (HPK/*hutan produksi konversi*) are around 20 million ha. Oil palm and mining companies mostly access these areas. Local communities have inhabited a large proportion of the statutory forest zone for generations. There are 40,859 villages located within and around this forest zone (Department of Forests 2009) accounting for about 40% of total villages in Indonesia (MOF 2007, 2009). Because the MOEF made functional allocations of this forest zone to various actors and activities, from production forests managed by extractive industries to conservation forests managed by the national parks, local forest adjacent and forest dwelling communities have insecure livelihoods as they perpetually face the threat of eviction from their traditional territories.

The second group of land in Indonesia is non-forest areas also known as APL (*areal penggunaan lain/*area for other land uses), which covers an area of about 64 million ha, or about one third of the landmass of Indonesia, and is under the administration of the BPN. The area under APL includes both State lands and private lands. About 30% of the non-forest area is formally titled as privately owned lands. Similar to the forest zone, part of the State lands under the APL category is also *de facto* used by local people.

Based on Indonesia's Forestry Law No. 41/1999, the forests in Indonesia are divided into State forest (*hutan negara*) and private forest (*hutan hak* or *hutan rakyat*). This law declares that all forestlands in Indonesia that do not have private entitlements are State forestlands. Since 1970, MOF established integrated forestland use zoning to serve the production, protection and conservation functions of forests. The MOEF issues forestry concessionaire licenses for private companies and State-owned companies within the production forest zone of State forest. The national parks authorities within the MOEF manage the State forests delineated for conservation. Local governments manage State forests allocated for protection purposes. Thus the mandate for managing State forests is shared between national and local governments.

Currently, 35 million ha of the production forest (State controlled forest) is managed by 537 companies, which are mostly dominated by private companies that have different types of forestry concessions (logging, industrial timber plantations and ecosystem restoration). Less than 3% of forest is under private ownership, which consists of the forest area owned by individuals and firms

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1 This working paper is part of the global comparative study on tenure. The research program is funded by the EU (European Commission)/IFAD (International Fund for Agricultural Development), the CRP6 program (CGIAR Research Program on Forests Trees and Agroforestry) and GEF (the Global Environment Facility).

2 Referring to MOEF Statistical Data of 2014, the Extent of Forest Area, Inland Water, Coastal and Marine Ecosystem based on Forestry Ministerial Decree, the total area of landmass in Indonesia is 187,918,300 ha and the total of Forest & Water Area under the administration of the MOEF is 126,302,230 ha (see http://www.menlhk.go.id/downlot.php?file=STATISTIK_2014.pdf)

3 Towards the end of 2014, the Ministry of Forestry (MOF) was replaced by Ministry of Environment and Forestry (MOEF). In this paper, we use MOEF unless there is a specific reference for the reforms and issues that appeared before the establishment of MOEF.

and known as *hutan rakyat* or people's forest. By the end of 2014, the forest area under community management in the form of HKm and HTR permits covered less than 1.5 million ha. However, the area under community management is growing as the area of the total State forest managed by communities through licenses increased from 0.22% in 2002 to 1.05% in 2013 (RRI 2014). However, the progress of implementation of HKM, HTR and HD has been very slow. For example, within last 5 years (2010–2014) the ministry set a target of licensing 2.5 million ha of HKm area, but only 600,000 ha (less than 25% of the target) was achieved.

The change in forest area under different forest tenure regimes is presented in Table 1. It shows that almost all the forests in Indonesia are publicly owned and administered by government agencies (about 96%); and very small area under the categories of 'area designated for indigenous peoples and local communities' (about 1%) and 'areas owned by individuals and firms' (less than 3%).

Table 1. The changes in forest area under various forest tenure regimes in Indonesia.[4]

Tenure type Category		Tenure trends			
		2002		2013	
		Million ha	Percent	Million ha	Percent
Public ownership	Government administered	97.7	98.3	91.7	96.0
	Area designated for indigenous people & local communities	0.22	0.2	1.05	1.1
Private ownership	Owned by indigenous people & local communities	0.00	0.0	0	0.0
	Owned by individuals & firms	1.49	1.5	2.73	2.9

Source: RRI tenure database (http://rightsandresources.org/en/resources/tenure-data/tenure-data-tool/#.WJfx4xt95PY)

This discrepancy in coverage between the different tenure regimes is largely the result of Indonesia's legal framework, which did not recognize communal ownership over forestland until the recent Constitutional Court Ruling of May 2013[5]. However, for centuries, indigenous peoples (*masyarakat adat*) have been managing land and forest resources using their own customary tenure systems. They crafted customary rules and norms to manage the land and forest resources within their customary territories. State forestry laws have failed to acknowledge these rules and norms. Because of this, many places in rural Indonesia have overlapping claims between government defined zones and territories claimed under customary law. Conflicts and disagreement over who should control and manage forestland lie in large part in the definition and classification of the forest zone (*kawasan hutan*) within State forests (Contreras-Hermosilla and Fay 2005; Rachman and Siscawati 2013). Considering the inevitable roles of local communities for forest conservation, governments in developing countries started decentralized forestry since the 1980s and 1990s. Clearly defined rights and right holders, and tenure security over forest and tree resources have been considered a crucial incentive for investment of time and resources in forest management. Baynes et al. (2015) find that rights and benefits are two 'essential' elements for the success of community forestry projects. Approaches to devolution evolution have been characterized by the redefinition of rights of different actors, including customary communities and other local communities.

4 The total area shown in RRI data base (99.41 million ha for 2002 and 95.43 million ha for 2013) differs from what government's official database shows (136 million ha based on 70% of total land area, and 120 million as reported in MOF 2014). What this table shows is the relative area and changes over time for different tenure categories in Indonesia.

5 A number of new regulations have been released following the Constitutional Court Ruling (MK 35). They are: Minister of Home Affairs regulations number 52 of 2014 concerning guidelines for recognition and protection of indigenous peoples; Village Law number 6 of 2014; The draft Law (RUU) Protection and Recognition of Indigenous People (PPMHA) which has been initiated since the era of former president, Susilo Bambang Yudhoyono; Ministerial Regulation No. 32 of 2015 on Title Forest.

In Indonesia, the late 1990s marked a turning point, as the MOEF passed a decree in 1998 to recognize the rights of customary communities that for centuries practiced agroforestry systems – the Decree on Special Purpose Zone (KDTI) (Fay and de Foresta 1998; Michon et al. 2000). At the same time, the government revised the Basic Forestry Law No. 5 of 1967 into Forestry Law No. 41 of 1999 – the basis for social forestry schemes in Indonesia. Under these social forestry schemes, local communities obtain forest management licenses but land ownership remains with the State. The social forestry schemes include HKm (*hutan kemasyarakatan*/community forest), HTR (*hutan tanaman rakyat*/ community plantation forest) and HD (*hutan desa*/village forest) and are described in detail later in this paper. Other schemes that offer benefits to local communities for their contribution to forest development are *kemitraan* (partnership between private forestry company and local community) and PHBM (*pengelolaan hutan bersama masyarakat*/joint forest management[6]). All of these schemes offer partial rights to local communities although the exact extent of rights and security of these rights they offer vary greatly across different schemes.

The most substantial reform under Law No. 41/1999 which authorized social forestry schemes was the allocation of some State forest areas into titled forests that allow for private ownership rights. This reform has not yet been implemented on the ground and consequently forest titles have not yet been given to local people. This is mainly because the MOEF still considers the entire forest area as State forest (personal communication from Abdon Nababan, 2014). More recently, Constitutional Court Ruling No. 35/PUU-X/2012 (issued in May 2013) declared that the customary forests are no longer part of the State forest estate and should instead be categorized under private forests. The constitutional court ruling is significant and represents a potentially important turning point in recognizing community rights over forestry. It has legitimized the enduring claims of ownership by customary communities over their traditional territories. Prior to the ruling, all the traditional territories of customary communities were under the ownership of the State.

Overall, while reform implementation with partial rights (i.e. the social forestry schemes) is progressing, albeit at an extremely slow pace, customary tenure that involves full ownership rights has yet to see full implementation. In customary territories, the forest area is *de facto* collectively owned and managed by the respective customary communities, irrespective of the statutory definition of the land, i.e. State forest, private forest or area for other uses.

In this context, this working paper provides a historical overview of tenure reform in Indonesia. It presents the status of forest tenure, explores how forest tenure reforms emerged and describes the formal procedures for granting customary rights in Indonesia. It also presents an overview and analysis of Indonesia's legal and institutional framework for tenure reform.

The section that follows provides a historical analysis of forest tenure in Indonesia. Section 3 describes post Suharto forest tenure reforms. Section 4 provides a regional dimension by providing the details of actors, processes and perceptions of tenure reform at subnational level in Lampung and Maluku provinces. Section 5 analyses the key challenges and opportunities of forest tenure reform in Indonesia followed by key conclusions from the study.

6 Collaboration between State forestry companies and local communities.

2 Historical overview of forest tenure in Indonesia

This section examines the historical evolution of forest tenure in Indonesia, which is a contested field with regard to who holds the right to access, manage, own and control land and forest resources. The tenure system was different on Java Island and on the outer islands (outside Java) for most of the colonial era. The section demonstrates that the postcolonial era was typified by extended State control over forest territories throughout Indonesia into the late 1990s. This section divides the history of forest tenure in Indonesia into four periods that represent major yet distinct political formations in Indonesia: the colonial period, postcolonial Old Order, New Order era and the post New Order period.

2.1 Colonial period (17th century to 1945) and the postcolonial Old Order era (1945–1966)

The first Forestry Law was enacted in 1865 during the Dutch colonial era and was subsequently complemented by the first Agrarian Regulation (*domeinverklaring)* in 1870. These two instruments provided the legal basis for the Dutch colonial State to control land through the doctrine of *domeinverklaring* (Gunawan 2004). The regulations concentrated authority in the Dutch colonial government and enabled it to declare all land without private entitlement as the domain of the State, formally categorizing them as "state-owned land" (Peluso 1992; Simon 2001).

The Basic Agrarian Law (BAL) was legislated in 1960, cancelling the *domeinverklaring* doctrine. The BAL was inspired by the socialist ideology of the first president of Indonesia, Sukarno, who is credited with radically overhauling colonial legacies in land laws and land tenure systems. The BAL asserts that the ruling government would be benevolent and use its overwhelming authority as "a means of bringing prosperity, happiness, and justice to the State and the people, especially farmers, in the context of establishing a just and prosperous society" (General Explanation of the BAL, part 1). Sukarno's administration viewed the BAL as the ultimate reference point for land reform programs.

Although the BAL stated that it cancelled colonial regulations that were informed by *domeinverklaring*, it actually reproduced this approach in a different way. The BAL states that the State has the power to control lands and resources (known as *hak menguasai negara* or "State's right" of control over all lands and resources as stipulated in Article 2 of the 1960 BAL). The BAL allowed central government to have supreme authority to regulate and manage land and natural resources as well as to determine property relations.

While the BAL is hailed for acknowledging the existence of customary laws (*hukum adat*), the government failed to formulate and implement instruments necessary to institutionalize customary tenure systems. Instead, the BAL resulted in ambiguity due to conflicting provisions. For example, the early section of the law (Article 5) states that the law on land and agrarian affairs in Indonesia is customary law. However, in later sections, it asserts that the government can declare customary lands and resources as "State property" (Rachman and Siscawati 2013). So, on the one hand, the law recognizes the existence of customary rights and authority yet on the other, it vests full power and authority with the State. In this way, the existing customary system is subsumed under the control of the State despite the policy statement recognizing *hukum adat*. This ambiguity within the BAL became the main legal basis for the State's subsequent centralized control and its expansion in forested territories. As a result, the government declared 70% of its territory as forest zone without any reference to existing local tenure and land-use systems during the New Order regime (see the following section). The areas that were used and managed by customary people and other local

communities for generations were also declared as State land, which Fauzi (2002) calls "State-izing people's land." The BAL and subsequent institutional arrangements (e.g. regulations, government decrees and directives) transferred the rights of local people over their customary lands and natural resources to the central government (Rachman and Siscawati 2013).

2.2 Forest tenure in the New Order regime (1966–1998)

After Sukarno's regime lost power in 1966, the new regime led by General Suharto (1966–1998) froze the BAL and its land reform agendas. The Suharto regime (also known as the New Order regime) adopted an approach that viewed natural resources including forest resources as the main sources of economic growth. Similar to the Sukarno's regime, in the name of national interest of economic growth and development, the regime promulgated laws on forestry and natural resources, including Basic Forestry Law No. 5/1967.

Basic Forestry Law No. 5/1967 revitalized the *domeinverklaring* principle. Article 5 paragraph 1 of the law asserts, "all forests in the territory of the Republic of Indonesia, including the natural resources contained therein, [are] controlled by the State." State control over forest is further emphasized by the second paragraph of this article. It notes that the:

> State's right to control forest mentioned in paragraph 1 gives the authority (to the State) to: a) establish and manage the planning, designation, provision and use of forests in accordance with its function in providing benefits to the people and the State; b) regulate forest management in the broadest sense; c) determine and regulate legal relations between person or legal entity with forest and regulate legal acts related to the forest.

Article 2 of this law defines two categories of forests: State forest and privately owned forest. State forests are forest zone, which covers forestland that is not entitled for private owners. Privately owned forests are grown or planted on private lands. Basic Forestry Law No. 5/1967 does not recognize customary territories at all, which include customary forests and other customary land uses (Rachman and Siscawati 2013).

Following the enactment of the Basic Forestry Law of No. 5/1967, a forest land-use policy known as tata guna hutan kesepakatan (TGHK) was instituted under Government Regulation No. 33/1970 on Forest Planning, which was further strengthened in 1980 and 1981 through a set of ministerial decrees. Based on the TGHK, the permanent forest is categorized into: (1) production forest, aimed at extraction to support timber exports and later timber-based industries (64.3 million ha); (2) protection forests mainly for environmental protection, particularly for soil and water conservation (30.7 million ha); (3) natural conservation areas and nature preserve forests for conservation of endangered species and biodiversity conservation (18.8 million ha); and (4) convertible production forests for logging and agricultural estates (26.6 million ha). Based on Forestry Law No 5/1967, the total forest administered by the government is 140.4 million ha, however due to increased rate of deforestation during the era of Suharto, the forest area has been decreased. The Forestry Law No 41/1999 states that the total forest area is 136.94 million ha. As mentioned above, MOEF's recent data shows that the area under the *kawasan hutan* (state forest zone) including water bodies is 124 million ha (MOF 2014).

Based on this land-use policy, in particular the section on the allocation for production forests, the Indonesian Government represented by Directorate General of Forestry which was later turned into the Ministry of Forestry in 1978 licensed State forest lands to both private and State-owned logging companies as well as to industrial timber plantation companies. This was consistent with the objective of forestry and natural resources more broadly as an engine to drive economic growth.

By 1990, the government forest authorities had granted concession licenses to more than 500 companies throughout Indonesia (Yasmi et al. 2005). It is estimated that about 60 million ha was offered for logging concessions for timber extraction, while over 4 million ha was granted for industrial timber plantations (Barr et al. 2006). Currently the land and forest area under permits for concessions and other large-scale investments is about 130 million ha (Ministry of Forestry 2010 in Srinivas et al. 2015). The promotion of land based production system as the main vehicle for economic growth from the late 1960s has resulted in an overwhelming large-scale and high pace of conversion of land and forest for development purposes. This widespread suppression of community rights had far-reaching implications for the rights of local communities. By 2009, over 4000 villages were located inside the kawasan hutan in all of functional zones (i.e. in production, protection forest and conservation forests) (Department of Forests 2009). Because the mapping of kawasan hutan ignored local land uses, many areas in which the Ministry of Forestry gave licenses to forestry companies were customary territories and homelands of various communities. Logging activities, land clearing for the purpose of establishment of industrial plantations and conservation activities displaced indigenous peoples from their homelands. The communities that remained in their traditional territories suffered as their rights and access to forest resources were constrained or removed (Kartodihardjo and Supriono 2000) . These communities have been facing poverty and different forms of social injustices, especially women, vulnerable and marginal groups (Siscawati and Mahaningtyas 2012). In addition, the overlapping claims over lands and territories have caused conflicts between customary communities (masyarakat adat) and companies as well as government agencies. In handling the conflicts, government agencies and companies often used various forms of coercion including the use of military and paramilitary forces to evict the communities (Yasmi et al. 2009; Persch-Orth and Mwangi 2016). The conflicts and subsequent responses have exacerbated the plight of women and marginal groups, placing them in even more vulnerable situations (Siscawati and Mahaningtas 2012).

2.2.1 Community resistance and government response

In most part of Indonesia, throughout the New Order Regime, local people and customary communities were continuously deprived of their rights over their forestlands, in some cases they were evicted from their land. In response to dispossession, loss of access and rights and government force, customary (*masyarakat adat*) and other local communities in various places in Indonesia organized resistance movements. Most of the resistance movements had male leaders but in some areas, women started to take leadership roles in these movements. One of the successful woman leaders that has emerged is Nai Sinta from Sugapa village, Silaen, North Sumatra, who led the women's resistance movement during the 1980s in defending their lands and territory that were seized by a giant pulp and paper company that obtained a concession from the Ministry of Forestry to establish a timber plantation (Simbolon 1998).

In May 1993, some leaders of *masyarakat adat* who led the struggle of *masyarakat adat* and environmental movement activists defined *masyarakat adat* as "a group of people with origins (hereditary) in certain geographical areas have their own political, economic, and socio-cultural institutions and value system, and possess their own geographical territory" (Moniaga 2007; Sangaji 2007). They also decided to establish a network of supporters of the rights of *masyarakat adat* (JAPHAMA). JAPHAMA later worked with *masyarakat adat* in different places in Indonesia's archipelago to advocate policy changes toward recognition and protection of the rights of *masyarakat adat*. The work of JAPHAMA across Indonesia culminated with a conference of representatives of *masyarakat adat* from all over Indonesia in 1999, and is considered instrumental in establishing the alliance of *masyarakat adat* of the archipelago (*Aliansi Masyarakat Adat Nusantara* or AMAN) as a formal organization to represent *masyarakat adat* from all over Indonesia.

Along with the development of *masyarakat adat* movement, other NGOs, academia and experts formed an alliance aimed at pressing for forest tenure reforms and the revision of the Basic Forestry

Law. These groups worked together under the Community Forestry Communication Forum (FKKM)[7] and produced an alternative academic draft[8] of the new forestry law, which was submitted to the Indonesian parliament a few months before the New Order regime lost its power. In this alternative academic draft, which was prepared in 1998, the FKKM recommended that the State recognize the rights of indigenous peoples over their traditional territories and grant them the authority of managing forest resources within their territories. The draft also recommended that customary forest (*hutan adat*) be excluded from the State forest. The alternative academic draft suggested that the two categories of forest status prescribed by the Basic Forestry Law No. 5/1967 be expanded to three categories of forest status: (1) *hutan negara* (State forest): (2) *hutan adat* (customary forest); and (3) *hutan milik* (privately-owned forest).

In response to civil society pressure, certain sections within government agencies initiated changes that can be considered as precursors to subsequent legal reforms. The first regulatory framework considered as the milestone for formally recognizing the rights of customary communities over forest resources was the ministerial decree enacted in 1998 in order to recognize the rights of the customary communities over *damar* agroforests of Krui, Lampung (southern Sumatra Island). This ministerial decree is known as Zone with Special Purpose for Repong Damar Krui (SK Menhut No. 47/1998 *tentang Kawasan Daerah dengan Tujuan Istimewa* (KDTI) *Repong Damar Krui*). The decree is considered as a historic one as it legitimizes the agroforests in the region that have been managed by customary communities for generations but have been designated under State forestland (Fay and de Foresta 1998).

Prior to the enactment of above ministerial decree, the Indonesian Government had developed and implemented a number of policies that offered some benefits to local communities in order to curb their opposition to and gain their support for forest development activities. For example, in 1982, Perhutani (a State forestry company that undertakes manages forest plantations on Java Island) began to carry out a program called *pembangunan masyarakat desa hutan* (PMDH) or forest village community development. This program encouraged the participation of local communities in the management of State forests through the establishment of forest farmers groups. The Ford Foundation provided support to this program through the Java Social Forestry Program in 1986, followed by the Outer Islands Social Forestry Program in 1989 (Peluso 1992). The program achieved its objective and resulted in increased local support for forest development activities. Perhutani's social forestry program continues to operate up to today. The program is now called *Pengelolaan Hutan bersama Masyarakat* (PHBM) or managing forests with the community. In return for their contribution to forest development, the company offers local farmers some share in their forest income.

Since Perhutani was considered successful in developing the PMDH program in Java, the Ministry of Forestry adopted this approach in the forest concessionaries system (Hak Pengusahaan Hutan/HPH) in the outer islands of Indonesia. In 1991, the Ministry of Forestry enacted a ministerial decree on HPH Bina Desa (Village Development of Forest Concessionaires), which later evolved as a ministerial decree on PMDH that obliged forest concessionaries to provide support for local communities in the development of forest villages (Siscawati and Zakaria 2010). However, many companies who hold HPH/forest concession licenses did not comply with the new legal provisions, contending that village development was not their business. At the same time, many communities, particularly customary communities who lived in villages located inside or adjacent to the forest concession areas and had been opposing logging activities conducted by the companies, felt that the program did not address the main causes of conflict between communities and the logging companies.

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7 The member can be from community, government, local government, academia, private companies (PT RAPP, Sinar Mas, Assosiation of Forestry Enterpreuners and PT Sukajaya Makmur (a concession forest company). They meet annually and discuss about promoting community forestry in Indonesia.

8 A draft law prepared by the experts and stakeholder groups with or without the involvement of government officials. In Indonesia, the draft law prepared by the experts for the discussion by the legislative bodies is known as academic draft law. The academic draft actually provides the scientific rationale for a proposed law or regulatory instrument. It is applicable to all of the regulatory instruments. For example, the draft regulation or decree prepared for further deliberation and endorsement are also called as academic draft regulation or decree, respectively.

3 Forest tenure in post New Order era (post May 1998–present)

Most of the forest tenure reforms that grant rights to local communities over forests in Indonesia were instituted after the collapse of the authoritarian political regime of Suharto in 1998, which is popularly known as the post New Order era. Not long after the New Order regime lost its power in May 1998, the Indonesian parliament enacted the New Forestry Law No. 41/1999. Similarly, a number of other laws, regulations, decrees and agreements were passed including the the Government Regulation (PP) No 6/2007 (revised in 2008, and in 2013) and Constitutional Court Ruling No. 35/2013. These are discussed in detail in the next section. The history of forest tenure reforms is characterized by continuity between the Dutch policy and successive Old Order and New Order regimes. Although the Old Order era recognized customary systems, it did not imbue them with any formal authority or control, which was retained by the government's land agency. The New Order regime focused authority and control in the forestry agency and, unlike the Old Order, promoted the use of natural resources for economic growth and development often curtailing the antecedent rights of local people. The regulatory instruments promulgated during the early period of the New Order regime aimed to retain full control or ownership of forest with the State and allowed private interests to prevail. It thus demonstrates similarity and continuity with the Dutch colonial administration.

In later years, the government allowed some experimentation within and outside the concession areas to engage local people in forest development activities. Local people's participation in forestry activities and token benefits from these activities eventually won some support for forest development and helped to resolve conflicts. However, the decrees issued for granting some benefits from forest management were *ad hoc* and unsystematic. The communities' rights continued to be subordinated to private interests and the space for local people in forest governance was restricted to the service of private concessionaires. In other words, engaging the communities and sharing some of the rights and benefits was done largely to appease communities in order to reduce their opposition to concessions. Nonetheless, the *ad hoc* decree issued towards the end of the Suharto regime in Krui area of Lampung province was key in recognizing local rights over forests and eventually became the basis for subsequent social forestry policies formulated in post New Order Indonesia. The key legal frameworks and instruments related to forest sector developed during the post New Order Indonesia are presented in Table 2 below.

Table 2. Key forest sector regulations that animate community tenure rights.

When	What	Implications on forest tenure
1999	Law No. 22 on Regional Governance	• Provinces and district received authority to prepare their own rules including forest management
1999	Forestry Law No. 41	• Cancelled the Basic Forestry Law No. 5/1967 • Recentralized the briefly decentralized forest authority to districts Through this law, the central government retains the rights to: • Organize and regulate everything associated with forests, the forest estate, and forest products • Define the forest estate and/or change the status of the forest estate • Define and regulate legal relationships between people and forests • Legal basis for social forestry schemes: the forest management and utilizations permits can be granted to individuals and cooperatives

continued on next page

Table 2. Continued

When	What	Implications on forest tenure
2007	Government Regulation 6/2007 on Forest Use and Forestry Management and Utilization Plan	• Elaborates the procedure for community plantation forests (HTR)
2007	Forestry Minister Regulation Number P.23/Menhut-II/2007	• On HTR
2011	The Constitutional Court decision No. 45 / PUU-IX / 2011	• Gazettement of the forest estate/zone (*kawasan hutan*) is mandatory • Challenged the existing claims of the MOEF on *kawasan hutan* covering the 70% of the land area of Indonesia
2012	The Constitutional Court decision No. 35/ PUU-X/2012	• Defines that indigenous forests are private forests and not State forests
2014	The Village Law No. 6	Recognizes indigenous villages
2014	Forestry Minister Regulation Number P.88/Menhut-II/2014 on Community Forestry	• Revised HKm establishment processes including the zoning of HKm area, social mobilization and facilitation by the government; it also sets the obligations to the communities
2014	Forestry Minister Regulation Number P.89/Menhut-II/2014 on Village Forest	Establishment and obligations of village forest zone, government facilitation, license granting, forest utilization and logging permits
2014	Joint regulation No. 79 on 'Procedures for the Resolution of Land Control in the Forest Zone	• The regulation was jointly issued by the Minister of Forestry, the Minister of Home Affairs, the Minister of Public Works and the Head of the National Land Agency • The regulation grants land rights to the people who have been managing the land for over twenty years
2014	Law no 23 on Regional Governance	• Shifts the power from district to the provinces in relation to issuing permits for mining and logging
2015	The National Medium Term Development Plan (2015-2019)	• Allocates an area of 12.7 million ha for the local people including customary communities
2015	Ministerial Regulation No. 32 on title forest	• Title forest includes customary forests, and on title land of an individual/entity • Defines procedure to obtain a license of title forest: can apply if has title from the National Land Agency, the local governments recognize the indigenous peoples and their ancestral land, or the Minister of Environment and Forestry recognizes the existence of title forest

The contemporary land and forest tenure reforms in Indonesia and their current statuses are discussed further in the following section.

4 Key forest tenure reforms in post New Order Indonesia

This section provides an outlook of forest tenure reforms in Indonesia that emerged after the reformation program *(reformasi)* following the ousting of the New Order regime. It discusses the policies and legal reforms of post New Order Indonesia. The economic crisis in 1997/1998 followed by other social unrests ended the decades long authoritarian New Order era. The political change was also accompanied by a change in the form of government, from a centralized to a decentralized one that bestowed greater autonomy on provincial and district governments. This change was one result of the *reformasi* and is often referred to as the development of regional autonomy (Resosudarmo et al. 2012). Immediately after the New Order regime lost its power, customary and local communities in many provinces started to reclaim their rights over land and forest resources in the areas that had formally been declared as State forests. These communities adopted a number of strategies for regaining their traditional rights over land and forest resources including allying with civil society networks and social movements and lobbying with their representatives for tenure reform.

The change in the political regime was followed by a growing awareness by local communities of their rights. The new demand from the citizens for more rights at local level and claims of their traditional rights over their land and forest territories became the impetus for discarding New Order era forest laws. Consequently, a year after the New Order regime lost its power, the government of post New Order era enacted Forestry Law No. 41 in 1999. A series of revisions of this law and various other policy developments were important for forest tenure reform implementation in Indonesia. This section explores the key forest tenure reforms in post New Order Indonesia after the promulgation of the Forestry Law No. 41/1999. In addition, it analyses developments after the constitutional court ruling on customary forest that was enacted in May 2013.

4.1 Forestry Law No. 41 of 1999

Article 1 of Forestry Law No. 41/1999 defines a forest zone (*kawasan hutan*) as "any particular area determined or designated by the government to be permanent forest." In defining the ownership status of the forest, this new forestry law draws heavily from the predecessor law (Basic Forestry Law No. 5 of 1967) and asserts two forest tenure categories (Article 5): State forest (*hutan negara*) and private forest (*hutan hak*). State forest refers to any forest on a land without a private land title. In other words, State forest is the forest on public land. The other category, (known as *hutan hak*) refers to any forest situated on land with title. This category was defined as privately owned forest by the previous forestry law (Rachman and Siscawati 2013).

Forestry Law No. 41/1999 recognizes the existence of customary forest (*hutan adat*) but it categorizes customary forest as State forest. Article 1 of this law mentions that "customary forest is a State forest that is located in the territory of *masyarakat hukum adat (*customary law communities*)*." Paragraph 2 of Article 5 of this law mentions that "State forest as referred to in the paragraph 1 can be in terms of customary forest". Paragraph 3 of the same Article states that "the government shall stipulate status of forest as referred to paragraph (1) and (2) of the Article 5"; and "customary forest shall be stipulated if any and its existence acknowledged". Point 4 of Article 5 concludes that "in case in its development the *masyarakat hukum adat* in question no longer exists, the management right of customary forest shall be returned to the government." From these legal provisions, it is clear that the Forestry Law No. 41/1999 disregards the very core of customary tenure systems, which existed long before the modern State of Indonesia was established. Essentially, the law does not recognize the rights of customary communities over land and forest resources (Rachman and Siscawati 2013).

Nonetheless, Forestry Law No. 41/1999 is the legal basis for existing social forestry schemes in Indonesia. Subsequent regulations further defined the schemes and their implementation. Government Regulation (PP) No 6/2007 on Forest Allocation, Forest Management Plan and Land Utilization, later revised and replaced by Government Regulation – PP No. 3/2008 elaborates the mechanism for issuing permits for social forestry schemes such as village forest (*hutan desa*), community-based forestry (*hutan kemasyarakatan* or HKm), community-based timber plantation (*hutan tanaman rakyat* of HTR) and partnership (*kemitraan*). This regulation also states provisions for managing conservation forest, protected forest and production forest through the integrated forest management system known as *kesatuan pengelolaan hutan* (KPH or forest management unit).

4.2 Social forestry policies

Social forestry policies in Indonesia provide space for communities to access forest resources. Based on social forestry policies developed by government agencies (including the State-owned forest company, Perhutani), there are at least eight government-sponsored or formal social forestry schemes (Royo 2006), each with its own aims and managing institution(s). This section provides detailed information of each form of social forestry in Indonesia.

Some stakeholders are critical of the formal community forestry schemes. For example, AMAN, an alliance of indigenous communities in Indonesia, holds the view that community forestry policies in Indonesia continue to maintain the State's authority over land territories. In addition, community forestry policies are considered to be gender blind as they do not address gender relations in application or implementation of any of the social forestry schemes. Each of the community forestry policies does not have affirmative action for female-headed households, particularly those who are poor or landless, to actively participate as members of community groups (forest farmer's groups etc.) that could (or did already) apply for community forestry schemes (Siscawati and Mahaningtas 2012).

Specific tenure arrangements in each of the community forestry schemes are explained below.

4.2.1 Community forest (Hutan Kemasyarakatan or HKm)

Under Forestry Law No. 41/1999, the operational procedures for HKm are elaborated by Forest Regulation PP No. 6/2007 which was revised as PP No. 3/2008. Based on the existing regulations, HKm permits can only be given within production and protection forest zones of the State forest. The main stated purposes of HKm are: rehabilitation of State forestland; and State-sponsored community empowerment through community groups. The Director General of Social Forestry and Environmental Partnerships (Ditjen PSKL)[9] within the Ministry of Environment and Forestry is in charge of the HKm scheme including issuing the HKm decree and overseeing the implementation of HKm on behalf of the central government. The duration of the HKm permit is 35 years.

The process of releasing HKm permit is complicated and consists of the following steps:

1. The allocation of a forest area for the HKm program should be carried out by the Watershed Management Unit/BPDAS (*Balai Pengelolaan Daerah Aliran Sungai*), the technical unit of Ministry of Forestry that deals with watershed areas through close coordination with the Forest Planning Division of MOEF and local government.
2. With support from BPDAS, a forest user group (i.e. a forest farmer group) can lodge an application for a HKm permit with the head of the district (reagent).
3. Based on the application for a HKm permit submitted by the forest user group, the reagent requests the Minister of Environment and Forestry to release a Decree of HKm Working Area Designation.

9 Direktorat Jenderal Perhutanan Sosial dan Kemitraan Lingkungan (Ditjen PSKL). Before the restructuring in July 2015, the name of the department was Land Rehabilitation and Social Forestry.

4. Based on the reagent's proposal, the MOEF commissions a team to verify the location.
5. While the verification process is ongoing, the district forestry office and the provincial forestry office provide facilitation support to strengthen the forest user group. In practice, this includes forming a farmer's group, raising awareness about the benefits of HKm, the rights and responsibilities of a HKm group and the permit obtaining process, providing training for group mobilization and institutional development and helping the group to apply for a HKm permit. The central government and the provincial and district forest agencies should allocate the budget for providing the facilitation support.
6. After completing the verification process for the applied location for HKm, the verification team reports the result of the verification process to the MOEF.
7. Based on the result of the verification process, the MOEF releases the Decree of HKm Working Area Designation.
8. The reagent releases the HKm license on the designated area of HKm to the forest user group. The central government together with the provincial and district forestry agencies conduct monitoring to check if the HKm groups have undertaken the activities as stated in the HKm plan. There is no strict regulation regarding the frequency of monitoring. In practice, it is variable based on the available budget.

In practice, the BPDAS and the forestry agency disseminates information on the HKM program to the communities. The district forestry agency facilitates the community to make a HKM proposal in their territory and submit it to the district government. The reagent then requests for the required technical inputs and recommendations from the district forestry agency (to assess the feasibility the proposal) for approval. Finally, in order to obtain the permit, the reagent submits the proposal to the MOEF. In the process of HKm licensing, the regent can propose an area to the central government (MOEF) based on the technical recommendation from the district forestry agency.

There are two types of permit for HKm depending on the land-use zone. The first one is a IUP-HKM or HKm management permit. This permit is normally given for the protection of forest zones where communities are not allowed to extract timber from the HKm area and are only permitted to harvest non-timber forest products (NTFPs). The second one is *Ijin Usaha Pemanfaatan Hasil Hutan Kayu*

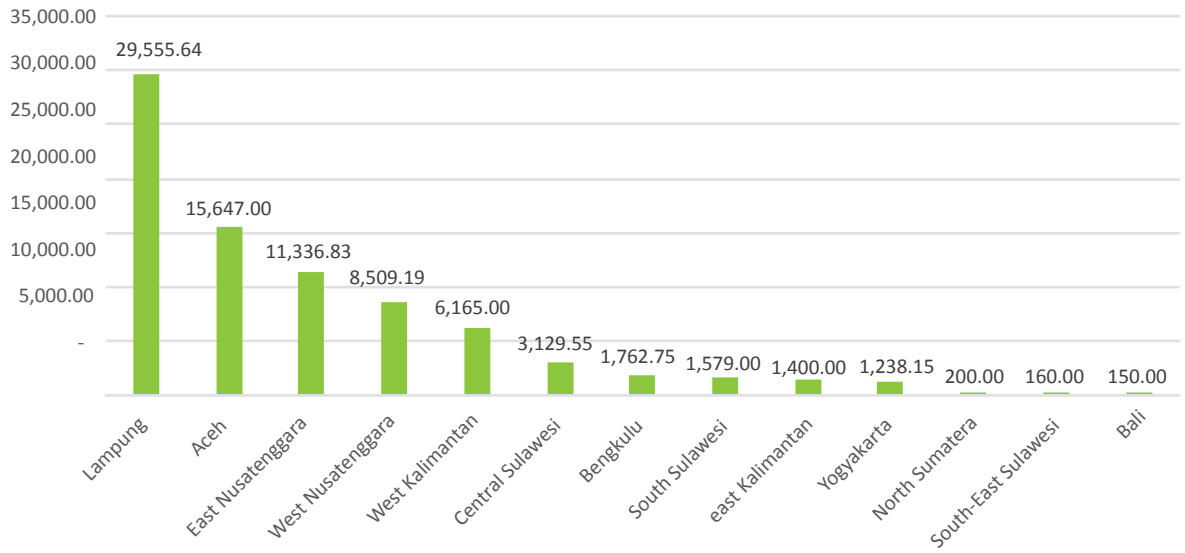

Figure 1. Distribution of HKm area by province.

Source: Ministry of Forestry (2013)

HKm or a Permit for Timber Business in a HKm area. This HKm permit is given for the production forest zones and the group can extract both timber and NTFPs from these areas. Based on the data released by the Ministry of Forestry in 2013, the total area licensed for IUP HKM permits was 80,833.11 ha. To date, only 13 out of the total of 34 provinces in Indonesia have issued HKm permits. Figure 1 shows the areas covered by HKM permits as well as the distribution of HKm permits at the provincial level.

To date, HKm implementation has been slow, mainly due to the burdensome process for securing a permit by a community. As a result, just 600,000 ha have been granted to local communities in the last 5 years (2010–2014), which is less than 25% of the target set by the MOF for the same period. We could not find any study that looked at the outcomes of the HKm program in general, but actors interviewed at national and subnational level during this scoping study signaled mixed results. The HKm group in Sumber Jaya, Lampung Barat district, for example was reported as a successful group in terms of securing additional benefits from HKm area management as well as in contributing to conservation (Suyanto et al. 2005).

4.2.2 Village forest

The legal basis for the village forest (*hutan desa*) is the same as for HKm – Forestry Law No. 41/1999 and Forest Regulation PP No. 6/2007, which was revised by PP No. 3/2008. The two main purposes of the village forest stated in the regulations are: (1) management and protection of State forestlands which have not been managed by logging companies (in terms of production forests) or government agencies (in terms of protection forest); and (2) State-sponsored community empowerment through village-based institutions. Village forest permits can be issued for State forests functionally categorized as production forest and protected forest. Similar to the HKm scheme, the government agency that is in charge of village forest is the Director General of Social Forestry and Environmental Partnerships within the Ministry of Environment and Forestry. The duration of the permit for the village forest is 35 years. Once a permit is granted, only NTFPs and environmental services can be appropriated from the village forest.

Those who can apply for a village forest permit are village government or other village-based institutions including customary institution.

To date, 9 out of the 34 provinces in Indonesia have been granted *hutan desa* permits. The following figure shows the area under *hutan desa* permits across the provinces that have already granted *hutan desa* permits.

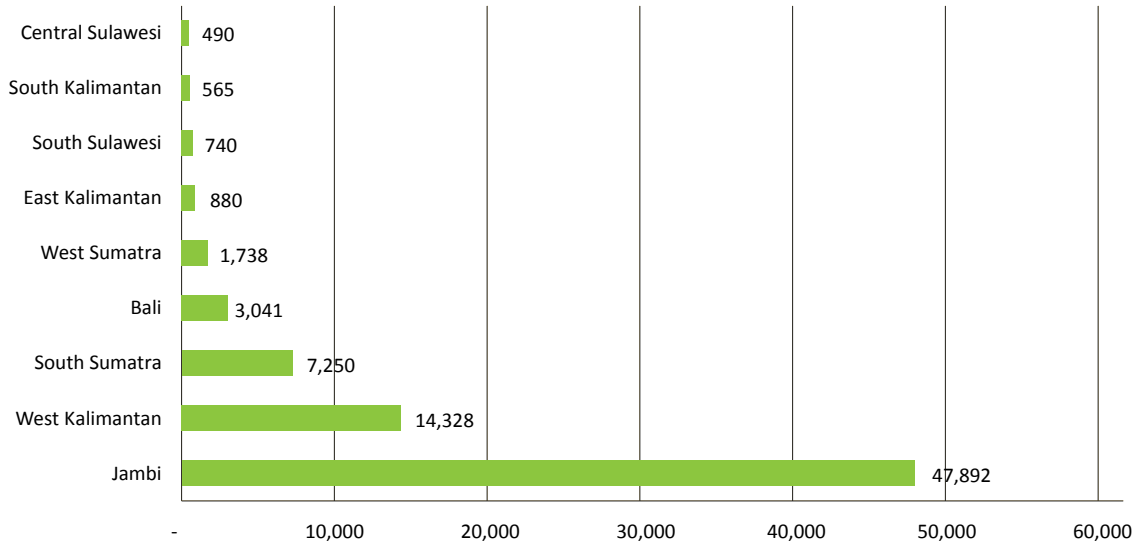

Figure 2. Total area of *hutan desa* in each province.

Source: Ministry of Forestry (2013)

The official licensing process of HKm and *hutan desa* is disempowering to the local communities because it is very demanding (in terms of the time and resources required). According to a study conducted by the Ministry of Forestry's Working Group on Community Empowerment in 2010, there are at least 26 tables (pre-verification and post-verification stages) that are required in order to obtain a license. The tables for the pre-verification stage consist of an official review of documents submitted to support the application of HKMs and *hutan desa's* permits (five tables) and steps in the establishment of a verification team (six tables). During the post-verification stage, the preparation of the map and related documents include eight tables while the process of enacting the permit (in a form of a ministerial decree) takes seven tables. These tables are located in various agencies at district, provincial and national level. Once the communities send an application to the district forestry agency, the application passes through the reagent and other agencies such as Ditjen PSKL, Planologi and Sekjen of Biro Hukum at the MOEF. Moreover, underlying ownership of the forest area remains with the state, with communities only exercising uses authorized by the permit.

The study conducted by the Working Group on Community Empowerment (2010) also states the following key bottlenecks that slow down the licensing process of HKm and *hutan desa,* the: (1) number of processing 'tables'; (2) review process of the documents submitted with the application; (3) coordination among various sections or departments within the Ministry of Forestry; (4) limited resources; (5) limited knowledge of HKm and *hutan desa* among the key actors at provincial and district levels; (6) limited government budget; and (7) limited availability of digital basic maps.

4.2.3 Community-based timber plantation (Hutan Tanaman Rakyat/HTR)

The aims of HTR are: (1) the establishment of community-based forest estate/timber plantation in order to provide materials for timber-based industries (including pulp and paper industries); and (2) the development of welfare for community groups. The procedures for HTR are also outlined in Forest Regulation PP No. 6/2007, which was revised in 2008 as PP No. 3/2008. The HTR scheme is only available in production forest zones within the State forest. The government agency in charge of HTR is the Directorate General of Sustainable Production Forest Management (*Direktorat Jenderal Pengelolaan Hutan Produksi Lestari*)[10] within the MOEF.

Similar to HKm and *hutan desa* schemes, a permit for HTR lasts for 35 years. The community groups can apply for a HTR license but they must follow the same processes as those used for the HKm schemes. As the purpose of HTR is to promote timber production, the groups can develop forest plantations for timber and can harvest timber.

The total area granted the permit for HTR is far below the target set for the last 5 years (2009–2014). Only about 14% of the 5.4 million ha allocated for HTR licensing was realized during 2014.[11] According to the data released by the Directorate General of Forestry Business at the Ministry of Forestry, the progress of the development of HTR up to April 2014 is as follows:

1. Land allocation for HTR : 719,184.73 ha
2. HTR license : 189,857.60 ha (26.49%)
3. Planting activity : 7,986.44 ha (1.11%)

The exceptionally long and complicated bureaucratic steps in the licensing process may explain the extremely low number of HTR permits that were given to local communities.

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10 Previously, it was known as Directorate General of Forestry Business Development (Dirjen Bina Usaha Kehutanan). The name has recently been changed to Directorate General of Sustainable Production Forest Management (*Dirjen Pengelolaan Hutan Produksi Lestari*), based on Presidential Decree No. 16/2015 on Structure of Ministry of Environmental and Forestry of Indonesia.

11 Based on the data from the Ministry of Environment and Forestry (MoEF), Indonesia (updated in August 2014).

4.2.4 *Kemitraan* (partnership)

This program is a partnership between a company (State-owned or private) and a local community. The purposes of the *kemitraan* scheme are: (1) to facilitate collaboration between forest-based companies and community groups in the management of forest resources; and (2) State-sponsored community empowerment in State forest areas in which government has issued licenses for companies to carry out logging or to establish timber plantations. In line with Forestry Law No. 41/1999, the Forest Regulations PP No. 6/2007 (revised as PP No. 3/2008) dictates the arrangements for *kemitraan*. The regulation was revised again in 2013. The *kemitraan* is also applicable in the State forest but only in the production forest zones. The government agency in charge of *kemitraan* is the Directorate General of Sustainable Production Forest Management within the MOEF. While the companies receive the benefits from timber, the local communities get the use rights for NTFPs. State-owned and private companies are now obliged to implement this program. District and provincial level forestry agencies and the MOEF are also responsible for resolving any conflict arising between the communities and the respective company.

4.3 Constitutional Court Ruling No. 35/2013

Actors such as AMAN, HUMA, Epistema Institute, Samdana Institute, university scholars and international advocacy groups such as RRI have been persistently lobbying for the recognition of the customary tenure systems in forest ownership and use in modern Indonesia. However, more effective opposition was observed post New Order era when a democratic political system opened up space for people to organize themselves and raise their grievances and views on topics of collective concern. The actors promoted public debate through demonstrations, media outreach, participating in forums and litigation in the courts. The National Alliance of Indigenous Peoples of the Archipelago (AMAN), which was established in 1999, consistently contended that Forestry Law No. 41/1999 did not recognize the independent land rights of Indonesian indigenous peoples', pointing to the fact that designated customary forested lands remained under State ownership. AMAN and its allies argued that the law legitimized the government's expansionist approaches to indigenous territories (AMAN 2014). AMAN decided to challenge the forestry law in Indonesia's constitutional court by submitting an official request for a judicial review of the law on 19 March 2012 on the grounds that the law contradicted with the Constitution of Indonesia. The 2002 Amendment to the Indonesian Constitution recognizes the cultural identity and traditional rights of indigenous peoples as a basic human right. Other laws such as the 2007 Law on the Management of Coastal Regions and Small Islands and the 2009 Environment Law also recognize customary (*adat*) rights.

AMAN demonstrated to the constitutional court that the existing forest law did not recognize the traditional rights of *masyarakat adat* and presented a series of cases showing how their rights had been violated. They also presented the testimonies of six community leaders who served as witnesses. Those witnesses represent the following cases which illustrated the way the existence of *masyarakat adat* were denied and how their rights were violated with severe negative consequences for local livelihoods and self-governance: (i) Bentian case, Kutai Barat district, East Kalimantan province; (ii) Manggarai case, East Manggarai district, East Nusa Tenggara province; (iii) Talang Mamak case, Indragiri Hulu district, Riau province; (iv) Semunying case, Bengkayang district, West Kalimantan; (v) Sekatak case, Bulungan district, East Kalimantan province; and (vi) Pagaruyung case of Bukit Dua Belas National Part, Jambi province.

Responding to AMAN's judicial review, on 16 May 2013, the constitutional court of the Republic of Indonesia ruled that customary forests (*hutan adat*) were no longer part of State forests (*hutan negara*). The Court ruled to delete the word "State" from Article 1.6 of Forestry Law No. 41/1999. Now, the article reads "customary forests are forests located in the territory of customary law communities (*masyarakat hukum adat*)." The court ruling redefined the status of customary forest, and moved customary forest from State forest category to *hutan hak* (title or private forest) (see Table 3 for the key changes dictated by the constitutional court ruling on Law 41/1999).

Table 3. Key points of Constitutional Court Ruling No. 35, 2013.[12]

What was changed	**Original Indonesian wording in Law 41/1999**	**English translation** (unofficial translation)	**Indonesian revision by constitutional court**	**English revision** (unofficial translation)
Article 1.6	*Hutan adat adalah hutan negara yang berada dalam wilayah masyarakat hukum adat.*	*Adat* forest means State forests located in *masyarakat adat*'s territories.	*Hutan adat adalah hutan yang berada dalam wilayah masyarakat hukum adat.*	*Adat* forest means forests located in *masyarakat hukum adat*'s territories.
Article 4.3	*Penguasaan hutan oleh Negara tetap memperhatikan hak masyarakat hukum adat, sepanjang kenyataannya masih ada dan diakui keberadaannya, serta tidak bertentangan dengan kepentingan nasional.*	Forest control by the State shall respect the rights of *masyarakat hukum adat*, as long as they exist and their existence is recognized, and does not contradict national interests.	*Penguasaan hutan oleh Negara tetap memperhatikan hak masyarakat hukum adat, sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia yang diatur dalam undang-undang.*	Forest control by the State shall respect the rights of *masyarakat hukum adat*, as long as they remain in existence and are compatible with societal development, and with the principle of the Unitary State of the Republic of Indonesia as regulated by law.
Article 5.1	*Hutan berdasarkan statusnya terdiri dari:* *a. hutan negara, dan* *b. hutan hak.*	Forest status consists of two types: a. State forest, and b. forest subject to rights (title forest)	*Hutan negara sebagaimana dimaksud pada ayat (1) huruf a, tidak termasuk hutan adat*	State forest as referred to in paragraph (1) point a, does not include *adat* forest.
Article 5.2	Hutan negara sebagaimana dimaksud pada ayat (1) huruf a, dapat berupa hutan adat.	State forest as referred to in paragraph (1) Point a, can be in the form of *adat* forest.	--	--
Article 5.3	*Pemerintah menetapkan status hutan sebagaiman* *a dimaksud pada ayat (1) dan ayat (2); dan hutan adat ditetapkan sepanjang menurut kenyataannya masyarakat hukum adat yang bersangkutan masih ada dan diakui keberadaannya.*	The government shall determine the status of forest as referred to in paragraph (1) and paragraph (2); and *adat* forest shall be determined as long as the indigenous peoples concerned remain in existence and their existence is recognized.	*Pemerintah menetapkan status hutan sebagaimana dimaksud pada ayat (1); dan hutan adat ditetapkan sepanjang menurut kenyataannya masyarakat hukum adat yang bersangkutan masih ada dan diakui keberadaannya.*	The government shall determine the status of forest as referred to in paragraph (1); and *adat* forest shall be determined as long as the *masyarakat hukum adat* concerned remain in existence and their existence is recognized.

Source: Rachman and Siscawati (2013)

Although the outgoing president of Indonesia, Susilo Bambang Yudhoyone, expressed his personal commitment to initiate "a process that registers and recognizes the collective ownership of *adat* territories in Indonesia," these words were not realized on the ground. The Ministry of Forestry then revised its laws and regulations in order to comply with the constitutional court ruling but stipulated conditions that added to the complexity in recognizing customary territories and granting their rights over these territories. For example, the customary communities are required to prove that their customary institutions for forest use and management existed and that they have sufficient evidence to claim their traditional territory.

12 Constitutional Court Ruling, Case Number 35/PUU-X/2012, 16 May 2013 (Judicial Review of articles in Forestry Law 41/1999)

Overall, the post New Order period was key in devolving power to local level but oscillation of power from districts to provincial level remained a key concern as this created confusion and uncertainty among the stakeholders who wanted implementation reform. Overall, Forestry Law No. 41/1999 expanded the rights to local communities and entrenched them in national law. However, the rights granted to communities were partial focused on withdrawal of NTFPs that was conditional on the communities fulfilling their management responsibilities. Although rights for timber extraction were present, these were granted over minimal forest areas. The State continued to retain control and ownership over forest resources. Moreover conditions for securing permits and subsequent implementation of the social forestry schemes was substantially dependent on multiple actors outside of the forestry sector and required extensive coordination among them. The procedures mandated for obtaining social forestry schemes are very bureaucratic, technical and time-consuming, and require skills that are often beyond the capacity of local communities. Consequently, the targets set for 5 years (2010–2014) were not met by a large margin.

However, Constitutional Court Ruling No. 35/2013 is a landmark achievement in relation to community rights to forest resources in Indonesia. It radically expanded the rights of customary communities as the ruling obligated the government to give collective ownership of territories that were traditionally managed by customary communities. The Ministerial Regulation No. 32/2015 revised earlier regulations and clarified that forest zones or permanent forest areas are not only State forests but can contain title forests. Title forests include customary forests and forest under private ownership of other individuals/legal entities (Safitri 2015) . The joint regulation on granting titles to local people who lived in an area for more than 20 years, new targets of 12.7 million ha for the next 5 years for social forestry schemes and a task force for simplifying the procedures for obtaining permits, all work to further entrench community rights and are positive shifts in forest tenure reforms in Indonesia. There are however concerns of realizing them on the ground, i.e. implementation of renewed tenure reforms are under scrutiny, in light of the recent history of realizing less than 15% of targets set by the MOEF for issuing social forestry permits. AMAN has developed the draft law on Recognition and Protection of Indigenous Peoples since 2011 and still under process of legality in the legislative body until recently. In addition, AMAN has also been involved heavily in the process of mapping indigenous territories, which is a crucial element for showing the distribution of indigenous peoples and their territories in Indonesia. Four years after the court ruling, in December 2016, the government issued customary forest permits for 9 customary territories across Indonesia.

4.4 Other key developments with regard to forest tenure

The recent tenure reforms discussed in previous subsections do not mark the end point of the reform process. Different efforts are underway to address outstanding key issues that are not fully covered under the described reforms. These include efforts at further expanding indigenous rights initiatives aimed at improving coordination among government agencies. Table 4 below provides a summary of the main additional efforts, their proponents and the specific aspect of tenure rights that they were concerned with. The draft bill on the recognition and protection of indigenous people's rights, for example, aims to provide expansive rights to indigenous groups that not only recognize their ownership of the land but also recognizes their traditional knowledge and institutions for land and forest management. It was put forward by AMAN, a coalition of indigenous groups. On the other side is a joint commitment by up to 12 government agencies under the auspices of the National Corruption Eradication Commission (KPK) to facilitate the resolution of conflict, to address overlapping jurisdictions and to coordinate their activities. The one-map policy involves both government agencies and CSOs and is aimed at synchronizing State agency mapping initiatives to ensure that there is no overlap or confusion among the resource maps produced by different agencies. CSOs involved in this initiative are actively developing participatory mapping processes to ensure that local knowledge and perspectives are taken into account in the harmonization process. Thus reforms do not end with the allocation of rights but rather additional processes are underway, which aim to streamline institutions and processes related to tenure rights, which if successfully completed, will expand and clarify rights allocated, improve coordination, conflict resolution mechanisms and provide a firmer basis for the exercise of rights by communities and for the securitization of those rights. These initiatives cut across government and civil society and in certain instances involve both actor groups.

Table 4. Implications of other key initiatives by different actors for tenure rights.

Tenure initiative	Main actor(s)	Implications for tenure rights	Current status
Draft Bill on the Recognition and Protection of Indigenous Peoples (RUU PPMHA)	AMAN	• Legal recognition for indigenous peoples and their rights to land, natural resources, and traditional knowledge. • Rights to accept or reject proposals coming from private sector and government through entrenchment of free, prior and informed consent (FPIC). • Limited participation of indigenous women in formulating this draft bill and lack of coverage of gender-related issues. • Perempuan AMAN, women's wing of AMAN is lobbying for inclusive policy formulation process	Draft of new law on the Recognition and Protection of Indigenous Peoples' Rights submitted to the Indonesian President in April 2013,
Forest Management and Governance Reform Pact (*Nota Kesepahaman Bersama/ NKB*)	Hosted by the National Corruption Eradication Commission (KPK). The pact/memorandum of joint action signed by 12 ministers/ government agencies: the Ministry of Internal Affairs, Ministry of Justice and Human Rights, Ministry of Finance, the Ministry of Energy and Mineral Resources, Ministry of Agriculture, Ministry of Forestry, Ministry of Public Works, Ministry of Environment, Ministry of National Development and Planning/ National Development Planning Agency, the National Land Agency, the National Geospatial Information Agency (BIG) and the National Human Rights Commission.	• overlapping jurisdictions among various government agencies • coordination among various State institutions • facilitating conflict resolution at lower governance levels	
One-Map Policy (2010)	Presidential Delivery Unit for Development Monitoring and Oversight (UKP4)	• resolve the overlap and confusion over resource maps developed by different State agencies • create one base map for use by all the national institutions and other stakeholders.	
(Multi-stakeholder) Working Group on Forest Land Tenure (WG-Tenure), 2001	CSOs and Ministry of Forestry	road map towards tenure reforms and tenure related justices: (1) accelerating the process of gazetting of the forest zone (2) addressing forest conflicts (3) expanding community-managed areas.	
Village Law No. 6 of 2014		• recognizes the customary village (*desa adat*) • customary villages can develop their own institutions for local resource governance including forests	

5 Forest tenure reforms in a regional setting

This section provides a window into the interaction between national policies, regulations, actors and institutions with subnational level actors and institutions and interactions in relation to forest tenure reform implementation. We use the examples of Lampung and Maluku provinces, which represent two contrasting contexts in which current tenure reforms are applicable. First is a region where customary communities have been using and managing forest resources but have wanted to have formal rights over their traditional territories for a long time. Here we have considered Maluku province in order to understand the context and existing customary tenure systems and how formal rights can be implemented in this setting. Second is a region where formal tenure reform has been implemented and where forest communities are formally engaged in social forestry schemes under the auspices of the Forest Law of 1999. Lampung is a pioneer and is the most advanced province in Indonesia in terms of social forestry implementation. This section starts with the formal tenure reform in Lampung province followed by the customary tenure system in Maluku province.

5.1 Lampung province

5.1.1 Background of land and forest tenure in Lampung

Located in the southeast of Sumatra Island, Lampung province was officially formed in 1964 based on Law No. 14 of 1964. It has an area of 3,301,545 ha. Based on the Decree of the Minister of Forestry and Plantations No. 256/Kpts-II/2000, the forest area in Lampung province is 1,004,735 ha or 30.43% of the total area. Table 5 shows the forest area in Lampung province based on functional forest categories.

Table 5. Forest area in Lampung province as defined by forest function.

No	Forest area	Total (ha)
1.	Nature reserve and nature preservation forest	462.030
2.	Protection forest	317.615
3.	Limited production forest	33.358
4.	Production forest	191.732
5.	**Total**	**1.004.735**

About 85% of the people in Lampung province are immigrants from neighboring provinces while some indigenous people also live in the area. Immigrants include indigenous people from nearby areas, those who came in the government's resettlement programs (transmigration) and others who migrated voluntarily.

The transmigration program was launched in 1951 by the government, in coordination with the army to help the settlement of the heroes from the independence war (i.e. the ex-army personnel, especially Sundanese) (Kusworo 2000). In 1952, President Soekarno inaugurated the region as a new settlement area, which is still known as Sumber Jaya sub-district. People who arrived through the transmigration program started managing forests in Register[13] 45B in order to meet their family needs. These transmigrants have been members of the HKm program in Sumberjaya since 2000.

13 Register is a terminology that used in Lampung forest area, which refers to the location of the forest area. This terminology has been used since the Dutch colonial period.

5.1.2 Historical overview of forest tenure reform in Lampung province

The legacy of the Dutch colonial administration was perpetuated in forestry in Lampung province during the postcolonial era. Many people from Java Island were brought to the Lampung area to work in logging and to grow cash crops such as coffee, cocoa and nutmeg. When the Dutch left Indonesia, not all the government forest reserves were defined or their boundaries measured. As a result, conflicts over State forest vs. privately owned forests or land management conflicts between HTI (industrial plantation forest) and communities were frequent in almost all the districts of Lampung (personal communication from Watala PSDHBM team, 2004). In these areas, the communities were using land and forest resources for several decades and have often established agroforestry system.

The conflict over tenure and forest management between the government and communities has a long history in Lampung. After independence, the community became more interested in opening the forest because they assumed that these forests were nobody's land as the Dutch had abandoned them. In 1950–1960, widespread 'illegal' land clearing for agriculture or agroforestry was observed in Lampung, often with the backing of political parties. Many of the attempts by forestry agencies to vacate those encroached areas were met with resistance from local communities and sometimes resulted in violent conflict.

During 1960–1975, the forestry service of Lampung province allowed *tumpangsari* (intercropping) within the forestland for a period of 1–2 years. This program was intended to support tree plantation establishment at low cost through community involvement. The intercropping permit program was later considered to be a failure as local communities misused it and established permanent agricultural fields in forestland. Therefore, the local government revoked the policy by introducing the Decree of Head of Lampung Forestry Service No. 1691/I/3/75 on 25 November 1975. However, field observations showed that the forest destruction in Lampung in that period was not only due to the misuse of the intercropping permit but was largely due to the effects of the increased number of permits granted to forest concession companies or HPH (*hak pengusahan hutan*), i.e. timber extraction companies by the government. Most of these permits were given to companies to use thousands of hectares of forests (personal communication from Watala PSDHBM team, 2004).

At the end of 1964, the government granted permits for land expansion through the slash-and-burn (or shifting cultivation) method. In 1965, they granted permits for a land area of 127 ha (Forestry and Estate Office of Lampung Province 2000). The slash-and-burn permit was subsequently repelled in 1974, but during the period 1975–1981, the community continued to cultivate the land, albeit 'illegally'.

Furthermore, during 1982–1991 the government launched a reforestation program, which was unsuccessful due to a lack of community involvement in the program. During 1992–1994 the government carried out programs of eviction from the encroached forest areas as community activities were against the law and were responsible for forest loss. Consequently, the local economy collapsed and local people experienced severe threats to their livelihoods. The local people approached the political leaders and the reagent and demanded to retain their rights over the land. The reagent of Lampung Barat district allowed, albeit verbally, the community to continue their practices on the land they had managed before they were evicted. In the meantime in 1998, the then Minister of Forestry issued Decree No. 677 on *hutan kemasyarakatan* (HKm) or community forestry for granting right for the community to manage the State forest area. This decree became the legal basis for recognizing the rights of the communities based on the existing practice of the communities within the State forest area.

The HKm program in Tri Budi Sukur of West Lampung district is considered as a pioneer HKm group in Lampung province. The group has made good progress in HKm implementation in terms of increased livelihoods benefits and improved conservation outcomes such as halting illegal logging and planting tree species. In general, Lampung is considered to be an advanced province with regard to progress in implementing the HKm program and other community-based forestry programs (see Section 5.1.3 below for details).

Despite the positive developments, a number of issues are still commonly found in official statements of the government agencies, ranging from encroachment of forest areas by local people, delineation of forest boundaries or ambiguous forest boundaries, settlements within the 'State forests', and overlapping claims over forestland. In 2015 alone, the Spatial Plan and Land Use Team (TRTGL) of West Lampung district recorded issues of squatters and settlements inside *kawasan hutan* in 12 places (records obtained from Lampung Provincial Forestry Office 2015).

One of the most severe problems identified by the forestry agency was encroachment. The record showed that in Bukit Rigis village of Lampung Barat, a total of 2076 households have inhabited an area of 8295 ha within the protected forest zone. Based on the legal provision, the communities were treated by the government as encroachers. However, the communities denied it and argued that they migrated to the area in 1951 with permission from a government agency called the National Reconstruction Bureau (BRN). At that time the region was not categorized as a State forest area; it was categorized only in 1991 through the forest land-use policy (TGHK) of Lampung.

In the past, Lampung Province Forestry Agency made some efforts to resolve these problems by enclaving the already occupied forest area by the people. This means that the community settlement areas were excluded from the status of State forest. It didn't work largely because of the mandatory legal provision that each State should ensure at least 30% of its land territory is forest. Another option taken to resolve the issue was by implementing community-based forest management.

5.1.3 Community-based forest development program in Lampung province

The community-based forest development (CBFM) program was implemented as a conflict resolution solution for the communities in State forest areas. Lampung province is considered to be a pioneer in recognizing community rights over forest resources. The CBFM policy in Lampung province has being implemented since 1998 through a Decree of Ministry of Forestry and Plantation No. 677/Kpts-II/1998 on Community Forests. Moreover, Decree No. 865/Kpts-II/1999 emphasizes the granting of utilization permits of State forests to the communities. This decree specifically mentions an area under the HKm social forestry scheme located within different types of forest areas. The total area reserved for HKm by the decree is 291,727 ha, which included 198,470 ha of protected forests, 59,627 ha of nature reserves and national parks and 33,630 ha of production forest. The forests in Pahawang village in Pasasar district is the only area that is considered to be customary territory in Lampung, which is defined and allocated as a potential HTR area. However, after the constitutional court ruling, local people were unwilling to apply for a HTR permit as they knew that HTR offers only usufruct right while they were lobbying for full ownership rights over their ancestral territory.

The decrees that allowed HKm schemes within the conservation areas (i.e. nature reserve and national park) contradicted the existing practices of exclusionary activities related to biodiversity conservation or conservation of specific species or localities. The government led these practices with strong support from international organizations. Therefore, giving rights to local people over the territory in the form of HKm was a move that face resistance by powerful actors. For instance, powerful environmental conservation activists who saw the intensive human activities as a threat to conservation opposed it. In addition, some government authorities were also against the new policy as they thought that by granting a HKm permit, the communities could use it to clear the forestland for coffee plantations or other agricultural production purposes. There was also conflict between the communities and the government forestry service about the terms and conditions of forest management and use. For example, in the period 1999–2001 during the negotiation of the HKm management agreement, members of Gunung Betung village requested to replace existing tree species with more profitable species but the forestry officials insisted that the tree species already planted in the HKm area should not be changed.

West Lampung district still maintains the provision that the communities should first obtain a temporary permit before receiving a 35-year permit. The district head of the forestry agency of Lampung Barat district said, "In practice, West Lampung district still uses the system of temporary

license and definitive license. The decision was taken in anticipation of avoiding failures of the farmers groups in managing the area as the temporary period provides them time for their preparedness and capacity development" (personal communication from a staff member of Warsito [a NGO], 2015.

Despite some resistance from various sectors, some villages such as Sumber Jaya and Way Tenong in Lampung Barat district got HKm permits in the areas where they had once been allowed to cultivate (then evicted by the government and later allowed back by the reagent to continue their practices). Sumber Jaya village initially got a temporary permit in 2000 and secured a regular permit of 35 years in 2007. These villages are considered to be successful in managing the HKm area; they have generated considerable livelihoods benefits and contributed to conservation of the area (Pender et al. 2008) although the livelihood contributions were influenced by many factors including the type of new species introduced, productivity and market value. Based on discussions between project member and the leaders of Sumberjaya HKm group, in June 2014, it was explained that the group was investing part of its income in forest conservation activities such as: the establishment of a nursery for seedling production, enrichment planting, supporting the education of needy students, helping to develop leadership skills of both men and women and generating more income from the management of the HKm area.

The implementation of HKm by Bina Wana group in Tribudi Sukur village in Lampung Barat district has resulted in the development of strong community institutions i.e. strong social cohesion among members, respected group leaders and good coordination. The group has established a permanent meeting space, organized regular meetings and maintain good relationship with external actors. The leaders and local people claim that these institutions are getting more robust over time. The implementation of this scheme also helped with the empowerment of a women's group. The *kelompok wanita tani* (women farmer's group) in the village level, or KWT Melati in Tribudisyukur, West Lampung District, now manages coffee (70kg/week) and luwak cofee (4kg/week), brown sugar (70kg/week), banana chips (5kg/week), cassava chips (10kg/week) and honey processing (2 bottle/week) within the HKm area (Santoso 2013).

Some government authorities' were critical of the HKM policy as they thought it provided access to communities to clear the forestland for coffee plantations or other agricultural production purposes. But in some districts local government offered strong support for HKM implementation. The reagent of Lampung Barat issued a Regional Regulation or Peraturan Daerah No.18/2004 on Community-based Natural Resources and Environmental Management that includes forest management-related provisions. Furthermore, the local government issued Bupati Decree No.11/2004 and No. 225/2006 to cover monitoring and evaluation of HKm activities in Lampung Barat. As at 2014, the total area under the HKm scheme in West Lampung district is 26,396.09 ha and is managed by 193 groups consisting of 8863 households.

Another important factor contributing to effective HKm implementation in Lampung Barat district was the strong program component of the district forestry office in promoting HKm in the district. The HKm program in Lampung Barat was started by the district government in 1999 and the forestry agency was responsible for the program on behalf of the district government. The former head of the Lampung Barat Forestry Office offered his strong support in implementing HKm in the district.

The success of HKM implementation in Lampung Barat district is due to the support of many external actors. Two CGIAR centers, the World Agroforestry Centre (formerly ICRAF) and IFPRI have been conducting intensive research in this district since the 1990s. They provided significant input to develop the capacity of local communities in technical aspect of silviculture as well as institutional aspects. A number of local NGOs are also involved in supporting the community development program in West Lampung; the most notable ones include Watala (a local NGO in Lampung), ITTO project for supporting HTR program (executed by Ministry of Forestry on 2011–2013) and SCBFWM (Strengthening Community Based Forest and Watershed Management) Project from Ministry of Forestry (2009–2014).

In general, the CBFM program in Lampung province is a way of achieving conflict resolution between a forest dependent community and a forestry agency. The implementation of HKM in Lampung program is seen as progressive compared to other provinces in Indonesia. As in Lampung province, the MOEF has already allocated 110,139.61 ha forest for HKm implementation and half of that area has been licensed by HKm permit. Apart from the HKm program, other CBFM schemes that have been implemented in Lampung province are village forest and HTR schemes. Village forest schemes have been implemented since 2014. Currently, 22 community groups, consisting of 60 villages are managing 2197 ha of village forest in Lampung Selatan district. In other districts such as West Lampung the village forest scheme is still in its infancy as the community is in the process of obtaining the permit. HTR schemes are being implemented in Pesisir Barat district, with a total area of 15,384 ha for eight farmers groups.

5.2 Maluku province

5.2.1 Background

Maluku province covers an area of 712,480 km^2 that includes land (54,148.48 km^2 or 7.6%) and ocean (658,331.52 km^2 or 92.4%). Maluku consists of 1412 islands and includes four major islands, known as Seram, Buru, Yamdena and Wetar Island. Most of the land in Maluku traditionally belongs to the indigenous people. Many migrants have been living on this island for more than 50 years.[14]

The majority of the islands in Maluku are forested and mountainous. Rain forest covers most of Northern and Central Maluku. The plantations established by local communities have replaced previous natural forests on the smaller islands and on bigger islands concession companies have established plantations. These plantations include the region's endemic species such as cloves and nutmeg as well as other plants such as cocoa, coffee, coconut and different fruit trees. Two national parks are established in this province. The first one is the Manusela National Park (1890 km^2), the habitat of endemic bird species such as *Cacatua moluccensis*; it was established in 1997 through the Decree of the Minister of Forestry, SK. MOF No.281/Kpts-VI/1997. The second one is the Aketajawe-Lolobata National Park, covering 1673 km^2, established through the Decree of the Minister of Forestry SK MOF No. 397/Menhut-II/2004.

Seram Island, the largest island in Maluku, covers about 18,625 km^2 and has three districts (Central Maluku, West Seram and East Seram) with a total population of about 625.387[15]. Seram Island is renowned for its rich biodiversity. There are 117 species of birds on the island, 14 of which are endemic, including the eclectus parrot, purple-naped lory, salmon-crested cockatoo (*Cacatua moluccensis*), lazuli kingfisher, sacred kingfisher, grey-necked friarbird and Moluccan king parrot. The mammals found in Seram include a number of Asian species (murid rodents) as well as Australasian marsupials (BirdLife International 2003 *in* Liswanti et al. 2013). The mountainous areas of Seram support the greatest number of endemic mammals of any island in the region. It harbors 38 mammal species, which include nine species that are endemic. These include the Seram bandicoot, Moluccan flying fox, Seram flying fox, Manusela mosaic-tailed rat, spiny Ceram rat and the Ceram rat, all of whom are considered to be threatened (World Wide Fund for Nature Report *in* Liswanti et al. 2013). Saltwater crocodiles are found in many of the island's rivers.

In addition to forest resources, Maluku has abundant and diverse natural resources, ranging from marine and fisheries (including marine tourism), mining, spice plantations, and various endemic plant and animal species, which characterize the distinctiveness of Maluku province.

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14 Interviews with senior officials at the provincial level in Bappeda in April 2014.

15 The data is obtained from Wikipedia (https://en.wikipedia.org/wiki/). The total population of Seram Island is distributed over three districts: Central Maluku (361,698), West Seram (164,656) and East Seram (99,033), based on the population census of 2010.

The kings are the heads of most of the customary villages (*negeri*) in Maluku. Most or all of the communities in this region traditionally owned the forestland *(petuanan*) in their village territory (*de facto*).[16] However, the increased demand of forestland for development of infrastructure, large-scale investment, agriculture expansion and settlements including city expansion (*pemekaran*) has posed considerable threats to their customary tenure system. As the existing State laws didn't recognize the customary territory and clustered all the land without a title as *kawasan hutan* (or State forest), the government and private companies have started to show an interest in the area. Any change in forest and land use or land allocation requires the revision of district spatial planning by the forestry agency if it is located in State forest. This includes where the forest area that has been officially delineated as *kawasan hutan* overlaps with the existing settlement as well as agricultural land and areas under customary authority. The lack of accuracy of the delineation process has also created problems in defining and exercising land rights and in managing the resources.[17] Thus the implementation of forest tenure is adversely implicated[18] because of the overlapping claims that resulted from the forest boundary delineation process of BPKH (Forest Gazettement Agency). The BPKH is responsible for preparing the map that demarcates forest and non-forest areas, which in turn becomes the basis for local government's spatial planning. In theory, the delineation process should be carried out in close coordination with district level government and the forestry agency. However, BPKH does it without consultation with district forestry agency or the local communities and the local people and district government are either not aware of or are not satisfied with the maps prepared by the BPKH. Consequently, the land-use plan of the district contradicts the maps prepared by the BPKH and this creates conflict among the actors.

5.2.2 The forest tenure system in Maluku

Based on MoF Decree No. 871/Menhut-II/2013 issued on 6 December 2013, the forest areas in Maluku covering 3,919,701 ha has been divided into several functions as follows:

Table 6. The total area of forest function in Maluku province.

No	Forest function	Total area (ha)	Criteria
1.	Conservation forest	429.543 (10.96%)	Preservation of biological diversity
2.	Protection forest	627.503 (16.00%)	Score:[1] > 175 above, Slope > 40%, Elevation: high > 2000 masl
3.	Limited production forest	894.153 (22.81%)	Score: 125–174
4.	Production forest	641.603 (16.37%)	Score: < 125
5.	Conversion production forest	1.326.899 (33.86%)	Score: < 125

Source: Maluku Forestry Agency (Presented during the inception workshop Ambon, August 2014)

Out of the total conversion production forest category, only 364,149 ha (less than a third) was allocated for other land uses (APL). The area under APL was considered too small to accommodate the communities' interests and their infrastructural development needs.

16 Leirissa RZ, Ohorella GA and Latuconsina D. 1999. Sejarah Kebudayaan Maluku. Departemen Pendidikan dan Kebudayaan, Jakarta and Titahelu R. 2005. Hukum Adat Maluku dalam Konteks Prularisme Hukum, Universitas Pattimura Ambon.

17 Interview with the Head of the forestry agency, Maluku in 2014

18 Based on a conversation with an officer from Bappeda province during the inception workshop in Ambon, 2014.

In Maluku, the customary communities claimed most of the forest areas as indigenous forests territories (*petuanan*) but it has not yet been officially recognized. The communities perceive that official recognition is crucial in order to secure better access to and harness benefits from the forests. In addition, there is an intrinsic value attached to the recognition i.e. traditional communities will feel a sense of justice if their customary institutions and cultural practices are recognized by the State.[19]

Each traditional community knows its village boundary well. This was done by the *kewang* who are responsible for the village territory under the traditional village institution locally known as *saniri*. Land tenure of the traditional community is defined as individual, clan and collective. The collective tenure rests with the entire *adat* community within a territory.[20] Communities however do not have a clear understanding of the formal categorization of the forests based on their function, i.e. production forest, protection forest and conservation forest.[21]

In Maluku, there are two types of land territory including land territory that has been registered since the colonial era (known as *tanah dati*) and unregistered land territory or customary land (known as *tanah adat*). The landowner of a *dati* has authority to sell her/his land without giving any compensation to the village, but if the owner passed away without a legitimate claimant, the land reverts to the village. When selling customary land, the landowner needs to obtain permission from the customary leader. The cadastral survey of the *tanah dati* in Maluku has not been conducted yet, except in Central Maluku district.[22]

At present, the land agency (program *larasati*) has been proactively conducting individual land certification for land categorized as APL. The authority of the district level National Land Agency (BPN) for certification of agriculture land is only for areas up to 2 ha, larger areas are under the authority of the provincial level BPN. However, the land agency can give land certification for forest gardens of up to 20 ha. Up to now, the BPN has provided land certificate to 14,000 parcels of land in urban and non-urban areas in Maluku province and the data on cadastral survey and certification is kept with the provincial level BPN.

5.2.3 Historical overview of forest tenure in Maluku province

The history of forest use, management and control in Maluku province dates back to the Dutch colonial era, when forest and land tenure were subjected to colonial interests especially associated with spices such as cloves and nutmeg. In West Seram district, for example, during the Dutch colonial era, it was estimated that 75% of the total land area was used by the Dutch Government for planting cash crops (*tanah eprah/opstar*). Since the area was changed to intensive agroforestry practices (from plantations of commercially valuable cash crops), the district level BPN claimed that the area should fall under their responsibility. The communities claimed the remaining 25% of land area and they planted cash crops such as clove, nutmeg and coconut on it. Based on the MOEF functional categories, these areas fall under the category of protection or production forests. However, the BPN at the district level and local communities do not agree with the MOEF categorization. Moreover, local governments have even initiated the process of releasing the previously exploited land from *kawasan hutan* so that they could use the land for more 'productive' uses. For example, the forestry agency of West Seram district during the district spatial planning process proposed that 75% of the land commercially exploited during the colonial era should be excluded from the *kawasan hutan* but the MOF did not approve this. In many places such as Eti village of West Seram district, the *kawasan hutan* overlaps with the settlements.

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19 Personal communication from an officer of BPKH in Ambon, 2014.

20 Lokollo, 2005 . . . . Norma-Norma Adat dan Hak Masyarakat Adat atas Sumberdaya Alam di Maluku…

21 Personal communication with an officer of BPN in West Seram district, Maluku, April 2014.

22 Interview with a senior official of BPN, West Seram district.

During the New Order regime in 1970, logging companies started extensive timber extraction in Maluku, which is considered to be the main cause of forest degradation. After the 1999 reform, when the license of those logging concessions expired, no new permits for concession (IUPHHK) have been granted in the district to date. Mining concessions were also operated during that period but the local government has stopped their permits after the 1999 reform.[23] According to the regent of West Seram district, the decision to discontinue concessions in the district was taken in order to reduce forest destruction. In addition, the logging or mining companies usually did not seek permission from local communities to work in their territory and did not respect the communities' rights during their operation. In many cases, they did not consider local people's main sources of livelihoods while conducting their logging or mining operations. For example, the companies extracted damar trees[24] from the area, which are an important source of livelihoods for the communities in the mountainous areas.

While the companies provided employment opportunities and to some extent supported village infrastructure development, the communities were not satisfied with the returns they received from the companies.[25] During the New Order regime, the logging activity in Maluku caused considerable environmental impact such as floods, landslides and increased water sedimentation. Some informants explained that only certain groups (e.g. village or clan leaders) received the compensation benefits from the logging company.

The customary governance system in Maluku province that has perpetuated for generations started to deteriorate rapidly when Law No. 5/1979 on Village Government was issued. Based on this law, the authority for managing a village territory was given to the head of the village, who was officially elected by the local people. After the implementation of this law, the customary institutions were replaced by village institutions without due recognition of customary institutions and practices. Before the enactment of this law, the authority over land management and allocation was vested in the king. The king was chosen by customary rules or by descent.[26] He usually had a rather longer tenure (most often for his whole life) and could plan and act for a longer time horizon than the village head who was usually elected for 4 years. Therefore, the kings exhibited a higher moral responsibility and legitimacy than village heads in ensuring the integrity of and sustainability of supply from the customary forest territory.

The declaration of Forestry Law No. 41 of 1999 (replacing UU No 5 of 1967) had a significant impact on the customary communities in Maluku as most of their traditional lands fall within the category of 'State forest' as defined by law. This condition has caused conflicts over land between the customary communities and government, communities and company, traditional community and migrants and among the traditional communities due to the overlapping claims over, or unclear land boundaries.

In 2005, the Government of Maluku province issued a local regulation (Government Regulation No. 14/2005) on recognizing the existing customary systems and territory of the customary village (known as *negeri*). This regulation aimed at restoring the previous system where forest management and allocation was controlled by the king. This is an example of local government effort in supporting traditional communities. This law has reinvigorated customary systems of local governance.[27]

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23 Interview with the head of forestry agency in West Seram district

24 Local people extracted resin from damar trees every 2 months, which contributed a major part of their household income.

25 Result of group discussion with men's group in Kamariang village, West Seram district.

26 Nirahua SEM. 2002. Desa Dalam Undang-Undang No. 22. Tahun 1999. Lembaga Pengabdian Masyarakat. Universitas Pattimura, Ambon.

27 Anonim. 2007. Hak Ulayat dan Masyarakat Hukum Adat di Kabupaten Seram Bagin Barat, Laporan Penelitian Kerjasama antara Fakultas Pertanian-Kehutanan UNPATTI dengan Pemerintah Daerah Kabupaten Seram Bagian Barat.

After 1999's legal reform, all business companies that worked in Maluku were required to seek permission from local communities prior to obtaining recommendation and permits from the local government at district level.[28] This is an effort from the local government to reduce the problems between the companies and the local communities in terms of forestland tenure and to reduce the negative environmental impact from logging activities. The companies were strongly advised to consider the communities' interests.

In 2013, the traditional community was recognized by the enactment of the Constitutional Court Ruling on Customary Forest but the forestry law still does not acknowledge the land tenure systems of traditional communities. New regulations on the issuance of customary forests are expected to recognize the customary territory but people in Maluku are not aware of the constitutional court ruling and the procedures for obtaining a customary forest permit. The role of local service providers such as the local government, the forestry and land agencies and NGOs is therefore important in implementing regulation related to formalizing customary forests, as mandated by the Constitutional Court Ruling 35/2013.

At present, the land tenure system in Maluku is not only an exclusive domain of the indigenous peoples in Maluku but is also required to accommodate the needs of the migrant communities who have lived there for more than 30 years. These migrants even claim themselves to be a traditional community who own hereditary customary territory and follow some of the customary rules. When they arrived in West Seram, the customary leader gave them land to manage and use. As there was no land allocation by the government at that time, the migrants got the land from customary leaders who had usufruct rights over the land, which could be inherited by the new generation of migrant communities (*de facto*). No dispute of land ownership prevailed previously. However, with the formal land tenure system being introduced in some of the communities, the migrant communities pursued land ownership title of the land they were using. The customary communities opposed the idea of giving up their territory permanently to migrants and conflict ensued. Migrant communities claim that they have been using the territory for a long time with due permission from the customary authorities. In some places where the population of migrants is larger than the customary communities, they have started challenging the customary authority. This has threatened the indigenous community who now expect that Constitutional Court Ruling No. 35/2013 will secure their customary territory. However the implementation of this court decision is still not as expected as they have difficulty in providing evidence (e.g. customary boundaries) of their customary rights over the forest and land resources.

In Maluku, the local government has recognized the indigenous community[29] but the local regulation (PERDA) for recognition indigenous territory has not been developed to date. As in many parts of Indonesia, the indigenous communities on Seram Island are experiencing difficulties in proving their customary territory[30] if they want their customary territory to be recognized by the government. The history of land tenure has never been documented and granting rights to migrants was also not clear, hence, overlapping land claims between indigenous and immigrant communities persist.

In addition to the recognition of the customary rights debate, the region is experiencing some initiatives to respond to the formal regulatory frameworks such as the HKm program. In Maluku, particularly in West Seram district, the implementation of HKm refers to SK Menhut No. 677/1998, which was later replaced by Forestry Law No. 41 of 1999. In 1999–2001, as part of the regular MOF programs, the HKm program was established in Waesamu village in Kairatu sub-district, which covered a forest area of 500 ha. The forestry agency in Maluku coordinated the implementation of the program and collaborated with a number of institutions including the University of Pattimura, a local NGO (Arman) for community mobilization and support and PT Wahana (a private company) contractor for physical development.

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28 Refers to the Local Regulation Maluku Province No. 3 of 2008 concerning *petuanan* territory. This regulation accommodates indigenous people's rights who inhabit their traditional forest territory (*petuanan*)

29 Refers to Local Regulation Maluku Province No. 14 of 2005 concerning the community of customary law and Local regulation Maluku Province No. 3 of 2008 concerning *petuanan* territory.

30 Refers to Letter of MoF No. 1/2013

Through the HKm program, the community was encouraged to plant native timber tree species such as lenggua (*Pterocarpus indicus*), sengon (*Albizia* sp.) and candlenut (*Aleurites moluccana*) as well as fruit trees such as cashew, durian (*Durio zibethinus*) and jackfruit. This program was implemented only for 2 years (1999–2001) and there was no follow-up to continue the HKm program in West Seram.

- Reflecting on the previous attempts of implementing statutory tenure reform (HKm) in Maluku and in other part of Indonesia, different stakeholders in Maluku explained some constraints during the implementation of HKm, including a lack of support from local government and local NGOs;
- There was little understanding by participants of the HKm program and the HKm program's choice of commodity was not easily managed by participating communities.

During the CIFOR research project's inception workshop in Ambon (August 2014) and the reconnaissance field visit to Maluku in April–May 2014, stakeholders at provincial, district and village level indicated that the key activities for the success of the implementation of forest tenure reform schemes in Maluku such as local capacity building and awareness raising were critical for the success of tenure reform implementation.[31] Capacity building activities supporting communities during the implementation of HKm included: training, mentoring support, extension and technical guidance. The extension related program included messaging and mechanisms to provide clear information about HKm.

Stakeholders also highlighted the slow progress of the HKm program in Maluku province, which included the time required to complete the process and the difficulty in obtaining the licenses. In addition, MOEF authorities still consider the entire territories, despite being inhabited by people since generations, to be State forest (in line with the outdated Forestry Law No. 5/1967), which is in conflict with well-established customary rights.

The head of the forestry agency in West Seram district[32] highlighted the constraints of the HKm program in Maluku which is compounded by various technical and institutional matters that include: mismatches between the duration of HKm permits (35 years) and local district development planning (20 years); forest allocation that ignores on-the-ground conditions where agricultural land and settlements are located in State forest; and the insistence by the local government that long-standing community use areas (such as forest gardens) be excluded from designated forest areas.

Under the provisions of the regional autonomy law, local governments are permitted to formulate and implement regional policies and regulations. The head of the regency (i.e. the reagent) in Maluku has issued local regulations and a letter of decree that recognize, support and strengthen customary authorities and local level governance at village and district levels. The laws are described below:

a. Local Regulation Maluku Province No. 14 of 2005 concerning the community of customary law. Under this regulation, the local government has revived traditional village (*negeri*) to be implemented in Maluku.

b. Local Regulation Maluku Province No. 3 of 2008 concerning *petuanan* territory. This regulation aims to accommodate the rights of indigenous people who inhabit their traditional forest territory (*petuanan*).

c. The regent in Central Maluku district established District Regulation No. 1 of 2006 on customary village (*negeri adat*). Unfortunately, this regulation did not mention the boundaries of the existing villages on Seram Island.

d. District Regulation No. 03 and No. 11 of 2006 covers the community of customary law in Central Maluku district such as nominating procedures, election and inauguration of village government (District Regulation No. 3 of 2006) and general guidelines on cooperation between villages in Central Maluku district (District Regulation No. 11 of 2006).

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31 Stakeholders from the province, district and village level at inception workshops, April–May and August 2014.

32 Personal interview during the reconnaissance visit to West Seram district in April 2014.

e. Central Maluku District Regulation No. 11 of 2006 on general guidelines for cooperation between the State and Central Maluku district.

f. Ambon City Regulation No. 3 of 2008 concerning customary village in Ambon City. In principle, this is similar to Maluku Province Regulation No. 14 of 2005, but focuses only on Ambon City.

g. District Regulation No. 3 of 2009, which consist of *ratshap*[33] and *ohoi* (*negeri adat*)[34] in southeast Maluku.

In interviews and workshops in the period April–May 2014, almost all the stakeholders in Maluku including government officials, universities, NGOs and the indigenous community leaders invariably showed their full support in reviving and promoting the traditional rights of indigenous peoples over land and forest resources. Land and forest tenure reforms were considered to be key in reviving the customary rights. NGOs were more involved in empowering and strengthening the capacity of indigenous peoples; universities have been contributing through research and development on the rights of indigenous peoples and the local government is currently developing the necessary policies and institutional arrangements for tenure reform implementation.

The local government at district level in collaboration with the University of Pattimura has conducted a study on the rights of the indigenous community in Maluku.[35] The results of this study are being used as a reference by provincial and district parliaments to develop draft rules and regulations. NGOs, in cooperation with relevant agencies and universities have also carried out various programs related to the rights of indigenous communities.

There is thus a clear commitment by the local government in Maluku to indigenous community's rights despite the shortcomings in tenure reform implementation. In addition, several government agencies at provincial level play a significant role in the process of developing forest tenure reforms in Maluku. For example, the Watershed Management Agency (BPDAS) has proposed areas for social forestry (HKm). Currently the status of HKm in Maluku has not started yet and the process of submission to the regent has been completed (Central Maluku district). The forestry agency supervises, monitors and mentors the district forestry agency, and is being responsible to the governor and the Ministry of Forestry. However, the budget for the district comes from the district's income from forest management in protected areas; they have to coordinate with the Natural Resources Conservation Agency working under the MOEF. According to the head of the forestry agency in Ambon, the two main constraints at the district level are financial and human resources.

The Forest Gazzettement Agency (BPKH), is facing problems in the designation of forest gazetting in Maluku mainly due to the lack of coordination among government agencies at district, provincial and central level. As the BPKH is directly accountable to the MOEF while the provincial forestry agency is accountable to the governor, a lack of coordination between them often results in the allocation of permits by the MOEF (e.g. mining and agriculture) without the knowledge of provincial forestry.

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33 *Ratshap* is the term used in Maluku Tenggara to denote the customary communities based on their history and origins. These communities perpetuate their customary law up to now. *Ratshap* serves to regulate and decide matters of customary law in its environment and part of it is recognized in the administration system of the Republic of Indonesia

34 *Ohoi* represents customary territory, which is also recognized and respected in the administration system of the Republic of Indonesia.

35 Anonim 2006. Hak Ulayat Masyarakat Adat dalam Pengelolaan Sumber daya Hutan di Kabupaten Maluku Tengah, Laporan Penelitian Kerjasama antara Lembaga Penelitian Universitas Pattimura dengan Dinas Kehutanan Kabupaten Maluku Tengah, Tahun 2005 -2006; Anonim 2007 Hak Ulayat dan Masyarakat Hukum Adat di Kabupaten Seram Bagin Barat, Laporan Penelitian Kerjasama antara Fakultas Pertanian-Kehutanan UNPATTI dengan Pemerintah Daerah Kabupaten Seram Bagian Barat; Anonim 2008 Hak Ulayat dan Masyarakat Hukum Adat di Kabupaten Maluku Tenggara, Laporan Penelitian Kerjasama antara Fakultas Pertanian-Kehutanan UNPATTI dengan Pemerintah Daerah Kabupaten Maluku Tenggara

Overall, the review of the provinces of Lampung and Maluku aims to illustrate the diverse local trajectories of forest tenure reforms in Indonesia. While Lampung province pioneered and advanced the implementation of social forestry programs that were authorized by the Forest Law of 1999, Maluku province is currently at a nascent phase in the implementation of social forestry schemes. The difference between these two provinces is largely driven by the relative strength of customary institutions in controlling and managing forest resources. Maluku's system is primarily customary, based on a long-established institution of social acceptance of the authority of the kings. Customary institutions have been recognized and given further legitimacy by district authorities. Here, the role of local level administrative systems (e.g. the village heads) in forest management is currently overshadowed by the customary. However, before *reformasi* the national laws of forest sector largely played out pretty similarly in both provinces, i.e. promoting extraction by commercial entities though various permits. In terms of regulating the 'forest zones' (*kawasan hutan*), MOF was the only authority to control forestland and issued concessions to State owned and private companies.

Some tokenistic participation of local people was sought on an *ad hoc* basis but without recognizing community rights. After the *reformasi*, which ushered in political decentralization and a measure of local autonomy, national laws have played out differently as some of the authority for natural resource management was shifted to local government (provincial, district and village level). Since authority also was given to local governments in preparing local rules of resource management, there is a diversity of tenure systems in different provinces and districts. For example, Lampung province has prioritized and is expediting social forestry schemes. Maluku province has taken the opportunity to prioritize customary rights and to revitalize their role in resource management and decision-making. In many provinces and districts, the diversities are the result of constant negotiation among the subnational authorities, laws and institutions. It is unclear how the constitutional court ruling will play out in local settings but in provinces such as Maluku where customary rights and authority are privileged and broadly accepted and social forestry schemes are not widely implemented (and the only one case of attempted implementation failed) there is an opportunity to leapfrog the social forestry schemes and to implement community management with full rights for customary communities.

6 Key challenges and opportunities of tenure reform implementation in Indonesia

Land and forest tenure reforms in Indonesia have a relatively long history yet it is only ut over the past one and half decades, that these reforms have offered greater rights to local communities as compared to earlier colonial and New Order periods. A number of policy and regulatory shifts have granted incremental rights to local people and greater space has been offered to civil society in the public domain. As a consequence, more forest area has been brought under community management and new targets have been set for 2015–2019. Importantly, the recent Constitutional Court Ruling No. 35/2013 has set in motion legal revision processes and the consolidation of multi-stakeholders aimed at not only recognizing customary tenure systems but offering collective ownership of customary communities over their traditional territories.

Incrementalism can be used to characterize the process of rights granted to local communities through forest tenure reform in Indonesia in the recent past. Partial usufruct rights (and management responsibilities) were offered to local communities through social forestry schemes although local people wanted full ownership rights to the parcels of land they had been using for decades. Despite limited rights over forestland, local communities felt reasonably secure with the permits they obtained under social forestry schemes. For them, the permit reduces the risk of claim by neighboring communities over their territory or encroachment by the private companies that have been given concessions by government. The latter is a widespread practice throughout Indonesia; central or subnational governments continue to grant concession permits to companies without proper verification of actual land-use practices on the ground.

Land and forest tenure reforms in Indonesia are beset with numerous challenges related to implementation. The devolution of rights to communities has been incremental and cumulative, beginning with the legal allocation of management rights (and responsibilities) and culminating (after close to two decades) with the recent government decision to allocate full ownership rights to customary communities. Thus, a continuum of rights for communities is evident which corresponds to the land-use status of the forest estate. There are various challenges in terms of implementation.

First, conflicting or confusing authority among various sectoral and vertical agencies has influenced who defines and enforces reforms. For instance, the MOEF and BPN (*Badan Pertanahan Nasional*/ National Land Agency) do not agree about who controls the land territory of Indonesia, which complicates the process of defining rights and instituting these rights on paper. As over 40,000 villages claim to be within the territory of *kawasan hutan* (MOF 2007, 2009) and are waiting for formal ownership certificates, which is the responsibility of the BPN, the MOEF have the *de jure* administrative control over *kawasan hutan*. Often, unclear and overlapping authority between different line agencies such as the forest agency, local government, land agency and planning agency as well vertical scales such as district, provincial and national have created conflict and confusion among these actors. This confusion often delays the license obtaining process and sometimes provides excuses or a lack of accountability for poor implementation on the ground. The roles and authority of various government agencies at different governance levels in the process of reform implementation needs to be clarified and presented in simple, easy to understand ways, especially to communities.

Second, for MOEF, tenure reform always meant the granting of usufruct rights to local people while retaining ownership of forestland with the State. This is at odds with local communities and non-State actors argue that in many parts of Indonesia, local people are actually using and managing the land and forest resources. Thus the central theme of forest tenure reform should be the recognition of on-the-ground practice rather than a mere rearrangement of rights that retains full ownership with the State. The BPN authorities are of the opinion that land that has been used *de facto* by individuals for

settlement and intensive agriculture for several decades and been continuously used by them should be kept outside of the 'state ownership category, and hence people who are using the land for their living should get land title instead' (personal communication from Bill Collier, 2015). As land falling under *kawasan hutan* is formally under state control, people who are managing them are considered as illegal settlers and therefore are subject to the risk of eviction. In this condition, local people would like to obtain social forestry permits as they perceive that once they obtain a permit, their territory is legally recognized even though land ownership remained with the State. In addition, by securing a permit, they could also exclude others such as people from other communities or private companies from claiming the rights over forestland.

Third, there is an unclear forest and land tenure system in Indonesia. For example, overlapping claims for State forests vs customary forest has been a point of contestation for long time. Often the forest tenure is equated with land titling, i.e. who holds the forestland ownership. In this situation, overlapping claims of land between the government and local communities are obvious. In many cases, the overlapping claims result in often violent conflicts between private companies (logging, mining and large-scale oil palm plantations) and local communities. These conflicts emanate because the government issues licenses to these companies on the same forestlands that have traditionally been owned and managed by local people. Government authorities at national, provincial and district level are constrained by a lack of credible evidence that would enable them make policy choices that are more directly in line with devolving substantial rights to communities. In particular, the issuance of community ownership of forest resources raises fears of increased rates of destruction.

Fourth, the process of obtaining permit of a social forestry scheme is too onerous and technically difficult for local communities, with up to 26 necessary steps that involve agencies/actors at village, district, provincial and national levels. It sometimes takes up to 3 years to complete. The application process starts from the community and passes through district, provincial and national level authorities before district government chief grants the permit. This process also requires coordination between the MOEF and provincial and district level local governments as well as technical work such as mapping, developing management plans and socioeconomic analysis. Sometimes, even if the central government approves the forestland allocation for HKm groups, district and provincial governments may take time to approve the permits. So the challenges are multifaceted and arise at multiple governance levels. Therefore, MOEF needs to work more closely with the forestry agency at the provincial and district level to speed up the process.

Fifth, actors engaged in or affected by land and forest tenure reform in Indonesia have a dearth of information and knowledge on how to simplify the process of issuing social forestry permits.[36] While different actors agree that the permit process is cumbersome with high transactions costs and that there is need to reduce the time and difficulties that communities face in order to obtain a license, there is a lack of evidence to guide the generation of options that can simplify licensing procedures while maintaining institutional and ecological safeguards. These safeguards include preparing and enforcing a management plan and agreeing on specific plans for increasing timber stock and conserving ecologically fragile areas. Furthermore, the problems of onerous bureaucratic process within the MOEF is not the only concern as only 20–30% of permit applications approved by the MOEF receive final approval from the regents (at the district level) and governors (at the provincial level).[37] Even if the Minister of Environment and Forestry had allocated some forest area for HKm permits, local communities are obliged to go through additional processes at provincial and district level before getting final approval from the governor. This problem at subnational level is largely related to limited human and budgetary resources as well as weak institutional capacity.

36 All government officials from national, province and district level invariably raised this issue during the interviews.

37 Based on an interview with a senior government official from MOEF in November 2014.

Sixth, defining the concept of tenure in Indonesia is a challenge as forest tenure is intricately linked to land tenure. Currently, the ambiguity of land tenure and rights is considered to be one of Indonesia's biggest development and conservation challenges (Darus and Sabandar 2015). Similarly, in global tenure discourse, while granting individual property titles can offer secured forest tenure to indigenous peoples and local communities, there are equally strong concerns about how these communities can be shielded against threats to tenure security caused by the expanding, large-scale investments and conversion of forests for other land uses.

Seventh, capacity of the local communities for claiming, enforcing or defending their traditional rights has also been a big challenge for limited progress in reform implementation in Indonesia. They have limited awareness of the existing formal regulations impacting their access and rights over land and forest resources. Similarly, they are not adequately equipped with the technical know-how or have limited access to the external resources to prepare maps, management plans, who to contact, the service providers at district and provincial level that can support them and how to comply with the conditions attached to some rights offered by such schemes once the permit is secured.

Finally, land and forest tenure reform in Indonesia has met with significant information gaps. The information needs can be broadly categorized into: knowledge and capacity of delineating forest boundaries; more nuanced understanding of the dynamics of actors and institutions around tenure reform; clarity and methodological innovation for understanding tenure and tenure security; unfolding the differences and similarities of customary and formal tenure systems; developing capacity of tenure reform implementation; and developing mechanisms for linking policies and practices for informed policy decisions.

7 Conclusion

While much of the focus in this paper has been on the analysis of contemporary land and forest tenure reform in Indonesia and the subnational level reform implementation processes, it also gives an insight on colonial forestry and to what extent the modern Indonesian forestry sector inherited the colonial legacy. The historical analysis have shown that rich Indonesian forests attracted the Dutch company in the 16th century while the subsequent Dutch colony exploited the commercially lucrative forests of the Archipelago.

The modern era of the Indonesian forest sector has entrenched the government control of land and forest resources and developed policies and regulations that have favored the interests of large companies and the government forestry service often at the cost of the customary and other local communities whose livelihoods and culture are intricately linked with the forests. Like many developing countries, Indonesia also observed land and forest tenure reform in the last couple of decades because of the joint pressure exerted through social movements, international discourses, reflection within the government forest service and failure of the government agencies in forest conservation and sustainable management of the forests. While regulatory reforms are considered to be a positive development in the forest sector in terms of granting rights to local people over land and forest resources, forest tenure is still a contested issue in Indonesia in terms of who retains control over land and forest resources. Although the constitutional court ruling of 2013 has mandated that the government should make appropriate arrangements to recognize the rights of the customary communities over their territories, there are issues of defining what constitutes a customary institution and how it is verified on the ground.

Addressing the land tenure issue with the customary communities is a radical dimension of forest tenure reform, the issues are complex in statutory tenure systems such as HKm and HTR where the government claims land ownership and local communities are granted usufruct rights. Nonetheless, with legal recognition in the form of a social forestry scheme, customary forest, or partnership agreement with the respective concession company, local people perceive increased tenure security.

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This working paper presents the status of forest tenure in contemporary Indonesia; it explores how forest tenure reforms emerge and the options for formal approaches to securing customary rights in Indonesia. It also presents an overview and analysis of Indonesia's legal and institutional framework for tenure reform.

Forest tenure reforms in Indonesia have evolved through dynamic, interactive, collaborative processes that have involved both State and non-State institutions. Both the processes and the products (such as policies and programs) of forest tenure reforms in Indonesia, such as the 1999 reforms that resulted in social forestry schemes, have not been effectively implemented in Indonesia due to the: onerous process of obtaining a permit; lack of direction and motivation of staff within implementing agencies in supporting social forestry; limited capacity and resources among both communities and implementing agencies to comply with the technical requirements to process the permit; and macro-level economic prioritization of extractive activities that concentrate benefits in the corporate sector. Moreover, women and marginal members of indigenous peoples and local communities have been largely left out.

However, recent developments such as Constitutional Court Ruling No. 35/2012 defined land and forests within customary territories as private entities, and not State land and forests. Furthermore, recent government initiatives for recognizing existing agroforestry practices within kawasan hutan by granting land title or bringing them under social forestry schemes are important developments that can help to resolve conflicts. Finally, the government's ambitious target of bringing 12.7 million ha of State forest area under community management, deregulation of some of the steps for obtaining a social forestry permit and the involvement of non-State actors in tenure reform processes have the potential to further strengthen local people's rights and security over land and forests, if properly supported and implemented.

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