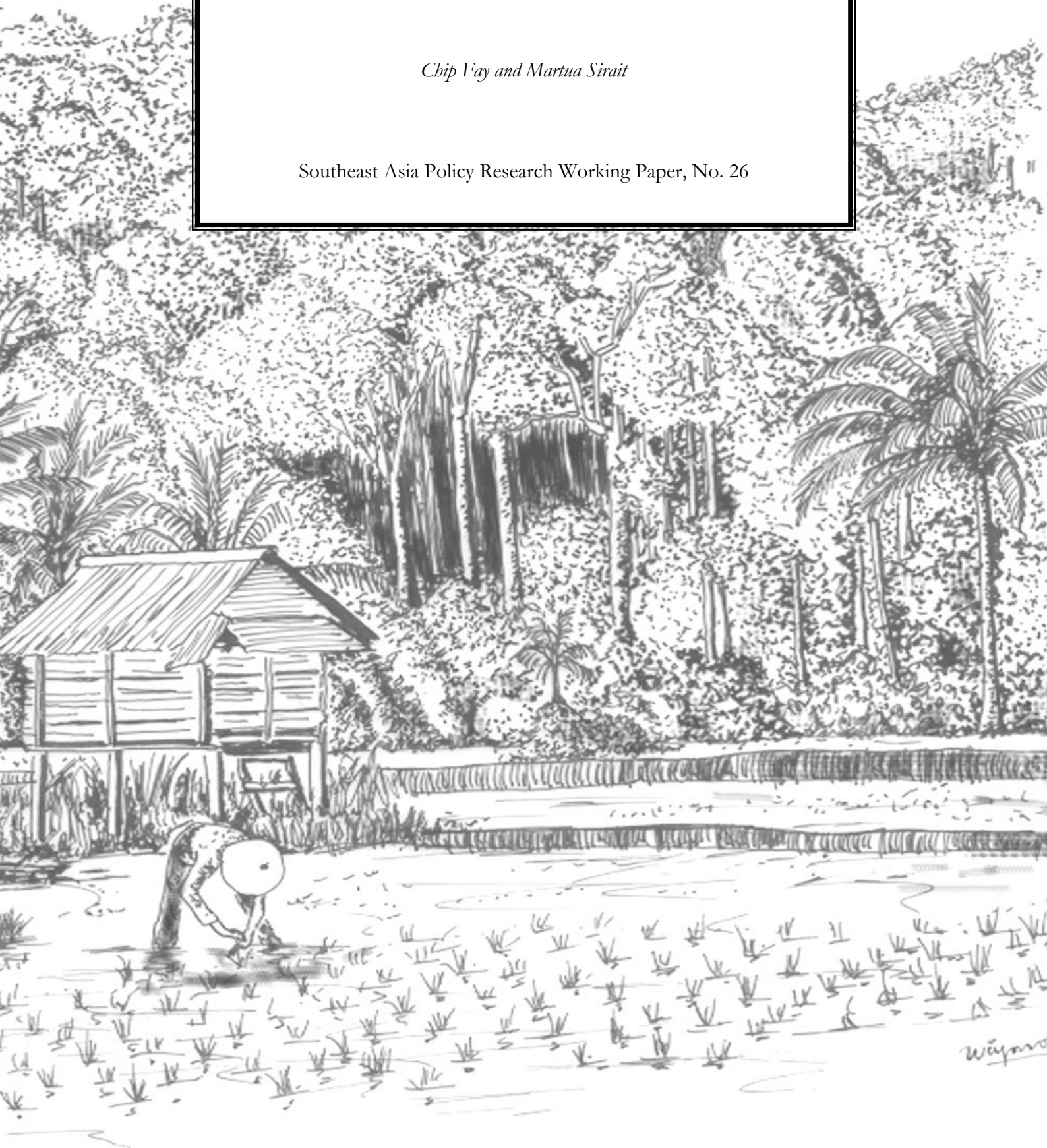


**Chapter 13: Reforming the Reformists:
Challenges to Government Forestry Reform
in Post-Suharto Indonesia**

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Chapter 13: Reforming the Reformists: Challenges to Government Forestry Reform in Post-Suharto Indonesia¹ (Chip Fay² and Martua Sirait³)

Abstract

This paper presents an overview of government and non-government efforts to reform forest management policies and practices in Indonesia. Particular attention is given to the question of local property rights within the state forest zone and emerging opportunities for local people to gain security of tenure.

The past year has been a remarkable period of transition for Indonesia. Indonesians are currently nurturing a recovery from an economic collapse that, last year, brought a 17 % contraction of the economy. It is estimated that more than 8 million people lost their jobs. At the same time, the country is emerging from a 32-year period of political darkness. A democratic, multi-party system is slowly taking shape and, as recent elections indicate, the clear majority of Indonesians wants a clean break with the corrupt and politically repressive practices of the past.

*One area where the reform process is particularly charged is forestry. During the later half of the Suharto period, legal rights to extract large volumes of high value tropical timber were awarded to a tight network of Suharto associates and family members. Timber concessions and plantation rights were routinely given out in areas where local communities have lived, managed and depended upon forest resources for generations. Conflicts brought about by the government's refusal to respect local property rights have increased significantly since Suharto's resignation in May 1998, as has the ability of local people to project their problems and demands. As a result, moves towards securing local people's rights are being taken more seriously by the Department of Forestry and Estate Crops. Local people's organizations and NGOs however, say these moves are insufficient in that they focus on granting management rights to areas claimed by local people rather than recognizing customary community-based rights or *hak ulayat*.*

*This paper reviews emerging options for local people to gain rights granted by government, as in the case of the Department of Forest's nascent community forestry program, or to have customary (*adat*) rights fully recognized and secured.*

A background of the Indonesian setting is followed by a section on civil society demands for changes in forest management. This is followed by a brief summary of actual government forest sector reforms during year one of the post Suharto period. The remaining sections focus on property rights issues.

I. Background

Stretching across the equator for more than five thousand kilometers Indonesia is second only to Brazil as the world's most important reservoir of biological resources. With only 1.3% of the world's land surface, Indonesia has 12% of the world's mammals, 7.3% of the reptiles and amphibians, and 17% of the world's birds.⁴ This great diversity of natural resources continues to bring international attention to Indonesia and widespread criticism of its natural resource management policies and practices, particularly in forestry. While Indonesia had about 152 million hectares of healthy forests in 1950, today less than 100 million remain, making annual deforestation rates, of between 1 to 1.5 million hectares,

¹Paper Presented at the American Association of Rural Sociology, Chicago, Illinois August 6, 1999

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⁴Megadiversity: Earth's Biologically Wealthiest Nations, R. Mittermeier *et.al.* 1999.

among the highest in the world. According to a 1995 World Bank report, should existing annual deforestation rates continue, Indonesia will cease to be major supplier of wood products early in the 21st century. Illegal timber extraction and conversion of forested lands to agriculture continue to be major causes of deforestation. Research has revealed a continuing imbalance of approximately 30 million cubic meters per year between authorized extraction of logs and natural timber being sourced by the wood industry.⁵

In the early 1980s, in what could be considered one of the largest land grabs in history, the government implemented a forest zonation system that classified most of the Outer Islands as forestlands. Seventy-eight percent of Indonesia, or more than 140 million hectares were placed under the responsibility of the Department of Forestry and Estate Crops. This included over 90% of the outer islands. Estimates place as many as 65 million people living within these areas⁶. According to the Department of Forestry, the creation of the State forest zone nullified local *adat* rights, making thousands of communities invisible to the forest management planning process and squatters on their ancestral lands.⁷ As a result, logging concessions, timber plantations, protected areas, and government-sponsored migration schemes have been directly overlaid on millions of hectares of community lands, causing widespread conflict. Yet, in fact for many local people, traditional law, or *hukum adat*, still governs natural resource management practices.

Indonesian law governing the environment and natural resources is a combination of overlapping and conflicting regulations. While the Constitution of 1945 recognizes the traditional land rights of local people, Article 33 clearly states that all natural resources, including land, are controlled by the State. The 1960 Basic Agrarian Law also recognizes *hukum adat* and specifies what other rights can be attached to land. The Constitution, however, has the final say, making it clear that even private rights of ownership (*hak milik*) are not private in the western sense. All rights are still controlled by the State. This allows various customary property rights regimes to continue to develop, but only as long as they do not interfere with the interests of the State. When, for example, the State decides that a golf course is to be developed just near Jakarta, the rights of local farming families are not respected, regardless of whether they have tilled those lands for generations or have bought them outright and have official deeds of sale certified by local government. The appropriation of the land for the golf course is ostensibly done in the national interest and this reasoning is seen to justify the arbitrary usurpation of local property rights.⁸

⁵ ITFMP: A draft position paper on threats to sustainable forest management in Indonesia: Roundwood supply and demand and illegal logging. Report PFM/EC/1999, as cited in CGIF discussion paper June 10, 1999

⁶ There is no accurate figure for the number of people living within, or the number of people indigenous to, areas classified by the state as forest zone. This figure is based on a rough analysis of government figures done by Lynch in 1992 and may well be a low estimate today. Owen Lynch -- Securing Community-Based Tenurial Rights in Tropical Forests of Asia: World Resources Institute, Washington D.C.

⁷ *Tata Guna Hutan Kesepakatan* (Forest Boundary Setting Process by Consensus), The legality of how this process was carried out is currently being questioned by legal experts. The 1992 Spatial Planning Law has also led to negotiations between local government and the Department of Forestry over which areas are to remain as permanent forest. Most provinces have developed new maps with the Department through a *paduserasi* process, or compromise through "integration" of provincial planning and Department maps. Following the *paduserasi* process, 108.8 million ha. is listed as permanent forest and 3.7 hectares as Conversion Forest. Eight main provinces which have large areas of natural forest still use the TGHK data since the Department of Forestry has yet to reach an agreement with local government. There remains much confusion at both local and national levels as to where the compromise boundaries actually are on the ground. As a result the Department tends to continue to use the original TGHK classifications.

The World Bank and local NGOs are calling for a complete redrawing of the permanent forest estate to reflect current realities. A draft Department policy on new boundary setting procedures is discussed later in this paper.

⁸ Some compensation is nearly without exception paid, but levels are well below market value. Local communities in the Jakarta-Bogor area who have actively resisted losing their land have been

In another example, an agroforestry farmer in Sumatra was told by a forestry official that the forest gardens he and his family had created and managed over the past 80 years were State forests. The farmer replied “but even the Dutch recognized my family’s rights over the area.” The official responded in earnest, informing the farmer that while that may be true, he must understand that was “before we had our freedom.”⁹

At the local level, it is also important to recognize that natural forests have often been replaced by a variety of agroforestry systems, which, for local communities, are more productive and profitable than the original ecosystems. In fact, agroforestry products such as clove, nutmeg, mace, pepper, and cinnamon, were what placed the archipelago on the international trade maps hundreds of years before Indonesia became a nation. The forest gardens in Krui, Lampung (Sumatra) are examples of such systems. Over the past hundred years, Krui communities have created many thousands of hectares of highly productive forest gardens and agroforests. Numerous other such are still found throughout Indonesia.¹⁰

Rapid withdrawal of foreign capital from Indonesia and other Asian countries, during the first quarter of 1998, triggered the Asian economic crisis. Yet, agroforestry communities with trading links to export markets, such as rubber, resins, and coffee, enjoyed a boon while other agricultural communities suffered losses due to increases in production costs that were not offset by domestic price increases.

II. Civil Society Demands for Forestry Reform and the Recognition of *Adat* Rights

The May 1998 Suharto resignation led to a flurry of political maneuvering by local and national opposition activists. Numerous meetings were held where discussions centered on redefining the state. Aceh and West Papua tended to be viewed as prepared for nationhood, while the remaining provinces were poised for federalism. The Habibie government was viewed as illegitimate. Demands centered on the creation of a caretaker government that would oversee free and fair elections. Yet, soon it became apparent that a caretaker government was unrealistic and those who had controlled political and economic decision making during the Suharto period were still making the decisions. Unlike the “People Power Revolution” in the Philippines, there had not been a transfer of power to the opposition. As a result, the NGO movement began a more focused period of political advocacy [a route suggested in Chapter 3]. Efforts centered on legal change in specific areas such as agrarian reform and forestry. There are three important coalitions that have emerged to address forestry issues.

A. *Kudeta*

The Coalition for the Democratization of Natural Resources (KUDETA) is a network of 82 Indonesian NGOs and student organizations. KUDETA came together immediately after the Suharto resignation. The coalition demands that the transitional government assure the management of natural resources and benefits derived be returned to local communities.

intimidated by the military and in some cases arrested. One golf course in the Java highlands has been re-taken by local farmers. It is now not uncommon to see security forces guarding the perimeters of golf courses during peak playing times.

⁹ Field visit to the Krui agroforests by senior Department of Forestry officials, April, 1997

¹⁰ For a detailed treatment of traditional agroforestry systems in Indonesia see Michon *et al.* Book forthcoming from ICRAF Bogor. For an excellent analysis of a specific system in Kalimantan see: Salafsky N. (1993). The Forest Garden Project: An Ecological and Economic Study of a Locally Developed Land-Use System in West Kalimantan, Indonesia. PhD Thesis, Duke University, Durham, North Carolina, USA.

The student movement set the early tone of this coalition, organizing several demonstrations at the Parliament and the first demonstration ever at the Department of Forestry. This June 1998 protest saw banners flying and microphones blaring in the lobby of the Department. There were three main demands:

1. Redefining the boundaries of the state forest, the identification of *adat* communities and the full recognition of their rights;
2. Restructuring of State institutions responsible for environmental and natural resources management;
3. Redirecting all development efforts towards community-based resource management.

The Minister, together with some of his senior staff, met the protestors and briefly discussed these issues. He then invited them to nominate a representative to sit on the forestry reform committee that was taking shape at that time. The protesters declined the offer on the grounds that the government was illegitimate.

A second KUDETA protest took place in December 1998. Protesters hung a large banner on the 14th floor that covered the Ministry sign. It called on the Department to “Stop Converting Forest to Oil Palm Plantation”. This action followed a research report that several corporations were given licenses to convert large areas of forests to oil palm plantations. The participants expressed their demands and left without a dialog with the forestry officials.

KUDETA’s most recent demonstration took place in June 1999. The group of several hundred demanded that the Ministry take back the Draft Forestry Law which it had submitted to the Parliament in April 1999. They also demanded that the Ministry restart the process of drafting the Forestry Law and assure transparent and open consultations. The group then demonstrated at the heavily guarded Parliament. They were allowed to enter and held a dialogue with members of the Parliament’s commission on natural resources.

B. FKKM

The Communication Forum on Community Forestry, (FKKM) was established on September 23, 1997, eight months before Suharto’s resignation. Founders included several Indonesian NGOs, university professors and students and reform-minded forestry officials. Over the past year the FKKM has become an increasingly effective voice of local communities located within the state forest areas and an important counterbalance to the traditional foresters within the Department of Forestry.

The forum has a more broad base than KUDETA and its work centers more on developing detailed critiques of forestry policy and advocating a new paradigm for natural resource management. Strategies focus more on the use of media, meetings with high level forestry officials, including the Minister and lobbying in Parliament. The Forum received initial support from the Ford Foundation and was intended to include all groups and individuals concerned about forestry issues in Indonesia. Throughout its early days, FKKM included several high level Department of Forestry officials and some from the private sector. By mid-1998, FKKM took the lead in defining a new vision for forestry under the new government.

FKKM has taken the position that genuine reform can only happen after the government recognizes the failure of previous forest management practices. They call for a new paradigm which is politically, socially, economically and environmentally sustainable. Proceedings from FKKM’s first assembly after the Suharto resignation were published as “The Right Starting Points towards the New Era of Indonesian Forestry”. The document presents a vision that is democratic, just and with forest management based on existing natural resources and ecosystems. It calls on government to abandon its focus on timber management and adopt a strategy the centers on forest ecosystem management. To accomplish this, they say there is a need to have a complete shift in approach to one that is: Pro-people, location specific, decentralized, and publicly accountable. Specifically, they call

for a broad reorganization of the Department of Forestry and revision of the Basic Forestry Law.

To accomplish this, FKKM continues to carry out collaborative research, organize workshops and cross-visits among participants. FKKM also regularly sends comments on emerging policies directly to the Forestry Ministry, often in the form of open letters to the Minister.

FKKM is the coalition taking the lead on the development of new forestry legislation, a process that has been marked by disappointment. After initial consultations on the new law were organized by the Department's Reform Committee, the Committee's draft was, in a process that was not transparent, superseded by a draft that emerged from within the Ministry. It is this draft that was approved by parliament passed into law in September 1999 [See Chapter 11]. In response, FKKM members organized an intensive, inclusive and transparent effort to draft a natural resource management law that includes forestry.

FKKM representatives have presented this bill to the natural resource management committee in the Parliament and a lobbying effort is underway. Emphasis is currently placed on stopping the Department of Forestry's version from being considered. The debate over the draft law is being increasingly heated. In June 1999, Ir. Djameludin and Emil Salim, the recently retired Ministers of Forestry and Environment, respectively, held a press conference and called on the Parliament not to act on the draft law submitted by the Ministry. Their main criticism is that the Department draft does not represent enough of a break with the past since the *adat* rights question is avoided and the emphasis is still on timber exploitation rather on forest management. The former Ministers joined the calls from numerous NGOs that a new forestry law wait until the new government and Parliament is formed.

C. *Emergence of an Indigenous People's Movement*

At a meeting in Tanah Toraja, Sulawesi in 1993, indigenous leaders and support NGOs established JAPHAMA, the Indigenous People Rights Advocate Network. An important outcome of the meeting was a consensus among participants to use and promote the term "*Masyarakat Adat*". The term refers to a community that has maintained its traditional community-based property rights, customs, and institutions. This was decided in direct response to government terms "Isolated Communities", or "Communities not yet Modern", that were viewed as pejorative. It is important to note that the equivalent word for indigenous in Bahasa Indonesian is not used by *adat* leaders since most Indonesians can rightfully claim to be indigenous. The primary distinction is that *adat* communities have maintained a level of customary law and other practices, distinct from the homogeneous political structure imposed by the central government.

JAPHAMA set out to bring attention to the many human right abuses being suffered by *adat* communities. Network members addressed national policies that worked against the interests of *adat* communities and helped link their efforts to gain recognition of *adat* rights to the international arena. International Labour Organization Convention 169 on Indigenous Peoples was translated into Indonesian and the network continues to lobby the national government to ratify it. Overall, during its first few years, JAPHAMA was successful in consolidating the network and raising public awareness, particularly in the Indonesian media, of the problems *adat* communities face in Indonesia.

In early 1999, JAPHAMA and associated NGOs organized a nationwide consultation of *adat* communities. The National Congress of *adat* Communities, held in Jakarta, in March 1999 followed numerous regional meetings. The meeting was a high profile gathering of *adat* leaders, men and women, and a colorful show of political force. More than two hundred representatives from 121 ethnic groups attended, each wearing and at times sharing their culture through formal and spontaneous performance. The national media helped give the Congress a high profile prior to and during the weeklong gathering. Sessions were divided by sectoral and legal issues, and government Ministers were invited to hear the concerns of the participants and share what they, as members of the Reform Cabinet, were doing to address the problems presented. Representatives from several of the newly formed political parties

were also invited to share their platforms and to explain how they would deal with State/*adat* tensions.

The theme of the meeting was “Improving the bargaining position of *adat* Communities” and in nearly all sessions land rights was the central issue, with the government transmigration and forestry policies receiving the most attention. A full day was given to the discussion of problems related to forestry and the State-defined forest zone. Approximately 160 people, with 160 stories of how State-sanctioned forest industries had taken their lands, attended this session. Problems included logging and reforestation schemes but the greatest encroachments were reported to be from tree plantations (HTI). Although invited, no representative from the Department of Forestry attended this session.¹¹

On the final day of the Congress, participants formed the Alliance of *adat* Communities of the Archipelago (Aman).¹² Forty-seven people were elected to form an Assembly of the Alliance. An executive Committee and a five point, three-year program of work were created.¹³

III. Forestry Reform in the Post-Suharto Era: Year One

President Suharto’s resignation marked the beginning of political change that is referred to in Indonesia as *Reformasi*, or reform. Suharto’s Vice President, Jusuf Habibie became president, formed a “Reform Cabinet” and promised to hold elections within a year. Elections were held in June 1999 and while opposition parties took the clear majority of the votes, it is still unclear whether, given the formula for electing the president, there will or will not be a change of government leadership. [Editor’s note: Abdurrahman Wahid took office as President in November 1999.]

When President Jusuf Habibie appointed his Reform Cabinet in June 1998, he chose Dr. Muslimin Nasution to be his Minister of Forestry. During the later years of the Suharto government, Minister Nasution had been a senior official in Indonesia’s powerful planning agency (Bappanas). Prior to that he had been a high level administrator in the Ministry of Cooperatives.

The call “Forests for the People” featured prominently in Minister Nasution’s early speeches as he laid the groundwork for developing a populist image. The center of his reformist approach has been a strategy of redistribution of benefits derived from forest resources. The Minister challenged the close partnership between government and the forest industry that during the Suharto period resulted in widespread corruption and mismanagement of forest resources. Allowing cooperatives to manage forestlands, reductions in the area forest concessions can manage, and a requirement that a portion of all forestry companies that have government-awarded concessions be owned by a cooperative are the initial actions taken by the Ministers to promote his redistribution strategy. Other actions taken were in line with requirements set forth in Indonesia’s January 1998 agreement with the International Monetary Fund. These included, among others, the auctioning of forest concessions, the fixing of performance bonds, extending the period of timber concessions from 20 years to 70, the implementation of a resource rent tax, and the reduction of taxes on sawn timber and rattan to 10% *ad valorem*.

Another important initiative Minister Nasution took in June 1998 was in the creation of the Forestry and Estate Crops Reform Committee (FECRC), an independent body tasked to make recommendations on the forestry reform process. Those invited to join this committee came from universities, non governmental organizations, and forest industry as well as

¹¹ An advisor to the Minister of Forestry and a Department lawyer did attend the final session of the Congress.

¹² *Aman* in Bahasa Indonesian means Peaceful.

¹³ For a full report on Congress see, Notes of Outputs from the Congress of Adat Communities of the Archipelago, an Alliance Publication available from the Alliance Secretariat: AMAN, komp. Bumi Indah Khatulistiwa Blok A No. 5 Pontianak, Kalbar, Indonesia.

reform-minded staff from the forestry ministry. The creation of this committee generated an interesting debate within the NGO community. During the early months of the Habibie government many NGOs and Indonesians were reluctant to recognize its legitimacy. They viewed the transition as unconstitutional and called for the creation of a caretaker government that would oversee elections. This position became problematic when some of these NGOs were formally asked to advise the new government. In the end, two out of the three NGO people asked to sit on the FECRC agreed to participate.

From July through September 1998 the main work of the committee centered on four tasks that were submitted directly to Minister Nasution:

1. An overall vision document that details new directions for forest management;
2. Recommendations for a restructuring of the Department of Forestry and Estate Crops;
3. A draft regulation governing all production forests (focus on the management approach and beneficiaries);
4. A draft forestry law.

During the last quarter of 1998 and through the early months of 1999, the committee spent much time conducting field visits and consulting local NGOs and local government. In Jakarta, committee members monitored policy developments, struggling at times to understand the status of their recommendations. It soon became apparent that an internal Department group was also drafting new policies, particularly the regulation on production forests and a draft forestry law.

On January 29, 1999, President Habibie signed Government Regulation 6 (PP6), the new production forests regulation. PP6 replaced PP21, the government regulation that defined who could (and implicitly who could not) harvest timber from natural forests. PP21 had enabled a few corporations with close ties to the Suharto family to monopolize timber extraction from the 65 million hectares of production forests. The only significant change in the new regulation is that cooperatives, in addition to state and private corporations, can now manage these forests.

The new regulation bore little resemblance to the draft submitted by the FECRC. Forest policy advocacy NGO groups such as FKMM, the FECRC, and even the World Bank were caught by surprise by the content the new regulation. Only the Bank, at the 11th hour, was able to comment on its contents. The main criticism of PP6 is that it does not address the overlapping rights problem in the state-defined forest zone, it offers little opportunity to local communities, and it still treats timber as the only product to be managed in the forest ecosystem. In short, most civil society observers believe PP6 falls far short of Government rhetoric and the spirit of *Reformasi*.

The lack of transparency in the process of developing the final version of PP6 led many NGOs, as well as those sitting on the Reform Committee, to complain. In his efforts to project a populist image, the new forestry Minister promised to hold broad consultations during the development of important new policies. The Reform Committee, seeing this as their mandate, held many such consultations on their draft and invited written comments as well. While this was happening, a separate group from within the Department, developed the draft that was eventually signed. This caused some NGOs to view the reform committee as little more than a ruse, designed to deflect efforts to promote changes that threaten the *status quo*.

IV. Community Forestry and Customary (Adat) Rights in State Forest Areas

A. The Government Community Forestry Program

On October 7, 1998 Minister Nasution signed ministerial decree 677. It sets out the framework for the second generation of the Hutan Kemasyarakatan (HKM), or community forestry program. This program is the government's most advanced efforts to increase

participation of communities living inside the state-defined forest zone in the management of forest resources. On balance, the new framework represents a significant improvement over the earlier regulations.

There are four main areas of improvement:

1. The process of developing the policy was, at least through most stages, open, transparent, and participative. Several non-governmental organizations and university staff were deeply involved in the conceptualization of the new framework as well as in the actual drafting of the SK (the weaknesses/limitations of this process discussed below);
2. The program allows the harvesting of both natural and planted timber, unlike the original framework that allowed only for the harvesting of non-timber products;
3. The time limit of the contract awarded to participants was increased from 20 to 35 years and made renewable;
4. The program is defined by a set of internationally recognized community forestry principles. The two most important are that local communities are the primary actors and the forest management system for project areas can be based upon existing community-based forest management practices.

Regrettably, the further the process evolved the further the Department moved away from many of the basic principles. Clear contradictions appeared in the final SK. The most blatant was that all community organizations must take the form of cooperatives, ignoring a central principle stated earlier in the SK that the community must define its own organizations. Other contradictions have emerged in the drafting of the implementing and technical guidelines. The tendency has been that Department staffs, when tasked to draft such guidelines, revert back to familiar, prescriptive approaches that run counter to the objectives stated in the community forestry policy framework.

Overall, the greatest weakness of the new framework is its scope. Given the prescriptive and still heavily regulated approach, it is likely that the program will only be implementable in a few, very limited areas (appropriate for a small cross-section of circumstances in the state forest zone). These would be areas where communities are, as the program requires, prepared and capable of forming a cooperative and fulfilling the program reporting requirements. There is also the important consideration of land rights. Many if not most communities inside the state forest zone believe, and can often demonstrate that they have rights over areas that precede state delineation of their lands as national forest. It is likely that these communities will not be satisfied with being awarded conditional rights over areas they claim as their *adat* lands.

B. Dialogue on the Recognition of Indigenous (Adat) Rights

In November 1998, a group of reform minded individuals from inside and outside the Department of Forestry, recognizing that the new community forestry regulation 677 does little to recognize *adat* rights and traditional agroforestry systems, approached the Minister of Forestry to consider developing an additional community forestry policy that focuses specifically on traditional agroforestry systems and *adat* communities. Policy specialists from the International Center for Research in Agroforestry (ICRAF) and the Center for International Research in Forestry (CIFOR) joined hands with Djameludin Suryohadikusumo, a former Minister of Forestry, and over a period of several months, assisted Department of Forestry staff to develop a draft policy that would secure the rights of *adat* communities inside the state-defined forest zone.

The draft is based largely on experience gained in the Krui agroforests when Mr. Djameludin was Minister. In January 1998, he signed a groundbreaking decree that placed 29,000 ha of state forest zone under the management of the Krui agroforestry farmers. He did this because he was convinced that procedures needed to be developed to protect and promote

community-based agroforestry (the Krui indigenous agroforestry systems were threatened by a palm oil company). He was also convinced by many years of research and his own visits to the area that the Krui agroforests are a sustainable form of forest management. The Minister's action came in response to several years of demands by the Krui people and local NGOs that the Krui agroforests be taken out of the state forest zone since they were created long before the state forest was gazetted. The new classification, which the Minister termed "Zone with Distinct Purpose," was a compromise. While the status of the forest area as state forests did not change, the Minister, for the first time created a classification of forest management that was based on an already existing community agroforestry systems. Equally important, the Minister placed the management responsibility of the area in the hands of *adat* institutions, in this case the *margas* or clans.

The Krui classification is unprecedented in that it:

1. sanctions a community-based natural resource management system as the official management regime within the State Forest Zone;
2. allowed non-governmental organizations working with local people to be directly involved in the drafting of a forestry decree;
3. allows the harvesting of timber from within the State Forest Zone by local people;
4. allows the limited harvesting of timber from within a watershed, provided the watershed functions are still met;
5. devolves the management responsibility of State Forest Lands to a traditional community governing structure (*Masyarakat Hukum Adat*).
6. is a right provided without a time limit.

The Minister's decision was viewed at the time as an important breakthrough in the struggle of *Adat* communities to gain tenurial security over their areas that the state had classified as forestlands. While Krui community leaders were not completely satisfied, early indications were that most saw the classification as a significant improvement. Prior to the issuance of the decree, most of the area covered by the Krui agroforests was under the jurisdiction of a para-statal logging company. When the resignation of President Suharto opened the way for broad political reform, or *Reformasi*, Krui community leaders returned to their original position, demanding that their agroforests be excised from the state forests. They are currently working with NGOs to explore options to accomplish this. These options are discussed in the next sections of this paper.

The Krui classification served to significantly broaden the perimeters of discussions within the Department of what is possible. The draft regulation on recognizing *adat* areas inside the forest zone can be described as taking what was determined to be possible in Krui and applying it throughout the forest zone.

In December 1998, former Minister Djamaludin met the current Minister and shared ideas on how *adat* lands and agroforestry systems could be recognized. Staff from ICRAF and CIFOR joined this meeting. Djamaludin outlined a two track approach to dealing with community forestry, the first centering on the existing HKM or community forestry program that he, during his time as Minister had helped initiate. The second and complementary approach, centers on a Krui type arrangement for *adat* communities with proven forest management capacities. Minister Muslimin accepted the two-track approach and requested that his senior staff work with Djamaludin, ICRAF, CIFOR and interested NGOs to develop what, six months later is known as the "draft *adat* decree".

The process of developing the draft *adat* decree is ongoing. A first draft was written by a small team that included government and non-government members. The head of the association of timber concessionaires (APHI) was an active member of this team. His said his participation was prompted by the need for logging companies to know exactly who are the communities within and around their concessions that have *adat* rights. Following the change of government in May 1998, and Minister Muslimin's pronouncements of "Forests for the People," numerous logging companies have been besieged by communities demanding the removal of concessions from their lands and compensation for resources taken and destroyed. It is not uncommon for one group to demand compensation for a given area one day, and another to demand compensation for the same area the following day. This has led to a

situation in many concessions and tree plantations that industry people are referring to as anarchy.

The first draft of the *adat* policy, or “draft zero” as it is referred to in Indonesian to emphasize that there has yet to be any public comment on its contents, was distributed in May 1999. Its completion marked the beginning of a complicated process of having the draft concept work its way through the forestry bureaucracy while at the same time being open for public scrutiny. Minister Muslimin himself, having been criticized for a lack of transparency in policy development, insisted that discussion on this policy be open for broad public participation. Meanwhile, the drafting team was asked to prepare an accompanying “academic draft” that details the technical and legal justifications for such a new policy. This draft was completed in June 1999.

“Draft Zero” attempts to deal with the most difficult questions that arise when a government makes a good faith effort to recognize the property rights of communities who have claims that predate the existence of the state. The first is just exactly what is an *adat* community? The second is what are the procedures for the government to recognize an *adat* community? Third, what are the rights that such communities have that can be recognized by government and how can these rights be delineated? And fourth, how does the government deal with conflicts that arise from overlapping rights, particularly in areas where the government has already awarded rights, such as logging concessions and timber plantations?

The drafting team studied carefully how other countries have dealt with the government recognition of indigenous rights, particularly to land. Of the countries looked at, the Philippines offered experience that most closely resembled Indonesian conditions. In 1993, the Philippine Department of Environment and Natural Resources, the agency that manages areas classified as public forest lands, developed the Certificate of Ancestral Domain Claim (CADC). The CADC is a special certificate that is issued to *adat* (ancestral) communities who have reasonably demonstrated their claims over classified forestlands. While the classification does not go as far as legally recognizing community-based property rights, the CADC does provide the *adat* community exclusive and open ended rights over areas they claim as ancestral. Between 1994 and 1998, 2.5 million hectares or close to 20% of the Philippine forest zone was classified as ancestral areas.

The Philippine CADC experience offers Indonesia an excellent point of reference. Similar to the CADC, the initial concept of the Indonesian *adat* policy outlines a process by which the difficult questions and problems would be answered and addressed. The draft definition of an *adat* community is taken from the government regulation on Krui, mainly because it is highly inclusive and had already been accepted by the Department of Forestry. It simply states that an *adat* community is “a traditional community still bound together in association, having *adat* institutions, customary law that is still adhered to, a territory defined by customary law, and whose existence is affirmed by the community itself together with government”.

The draft also calls for the creation of a permanent commission at the national level and a commission at the district level (*Kabupaten*, or District, a layer of government one step below the province). Both would be made up of government and non-government individuals. The national commission, based at the Department of Forestry would develop criteria for how a community would gain government recognition as an *adat* community. The commission at the district level would be formed by the *Bupati* or district head and provide a recommendation as to whether a community that requested recognition met the criteria determined by the national commission.

When a community defines itself as an *adat* community in the state forest zone and gains recognition from the government, the next question is how to shape and secure their property rights in the forestry context. At this time the Department of Forestry still has legal jurisdiction to determine whether such a community is managing the natural resources within their area in a way that meets Department approval. Therefore, any right given to an officially recognized *adat* community is conditional. Expecting a community to demonstrate they are managing their resources sustainably may be unreasonable. Many of those developing the *adat* policy hope that, at minimum, local *adat* communities must merely demonstrate they are

not harming their environment. The burden of proof that they are should be in the hands of government. Criteria for sustainable management are not clear, as they are not clear in most forest management situations throughout the world, making this condition one of the more difficult in the *adat* recognition process.

The weaknesses of the process outlined in the draft policy are obvious. The most important is that the initiative is still within the boundaries of the State forest zone. It therefore accepts the deeply flawed process by which the State forestlands were demarcated and determined. Following the open dissemination of the draft for comment, much debate has taken place over this question. Proponents of the policy say that it is essential that *adat* communities articulate where their territories are within the forest zone and gain security of tenure so no other rights can be awarded over their areas and existing forest industry rights can be cancelled or at minimum not extended. Critics tend to agree that developing procedures by which *adat* communities inside the forest zone can be formally recognized is important, but the process should explicitly include steps by which *adat* lands that should never have been classified as State forests can be declassified and *Hak Ulayat* or communal rights recognized. Such processes arguably already exist. The Department of Forestry has long had a procedure of creating enclaves inside the forest zone. These are areas where, according to the Department, it is clear other rights exist and there is no clear ecological justification that the land in question serves a forest function.

C. *Redefining the Boundaries of the State Forest*

Based on the Government Act no. 62/ 1998 on Devolving Specific Tasks to the Local Government, responsibility for forest delineation is devolved to local governments. The final gazettelement, however, remains in the hands of the Minister of Forestry in Jakarta. This devolution requires a revision of the Ministerial Decree on Forest Delineation and the Enclave policy (SK Men 634/1996).

In September 1998, the Department invited non-governmental participation in a working group tasked to improve Departmental procedures for redrawing the boundaries of the forest zone. NGOs promoted greater participation of local people in determining the boundaries and for the creation of community enclaves within the forest zone. *Adat* rights proponents joined the working group viewing it as an important opportunity to get large areas of *adat* lands excised from the forest zone.

Community Enclaves within State Forests

The policy debate on creating enclaves centered on what types of prior rights would be recognized by the Department and just how far should an enclave extend. Conservative forestry legal staff have take the position that only lands that have *Sertifikat*₁, or the highest form of land title, should qualify and this should only be for immediate settlement areas and fixed agriculture in close proximity of settlements. *Adat* rights proponents on the working group argued that *Hak Ulayat*, and not just land *sertifikat*₂ should be recognized as prior existing rights and that all *adat* areas, including agroforestry areas and natural forest be included within an enclave. This working group is still meeting and a compromise draft is emerging. Currently the definition of prior rights is more flexible but the “enclavable” areas do not yet include agroforestry lands, arguably the most important component in most *adat* land use management approaches. Yet, just as the working group appeared to be making some progress, the Department’s legal bureau sent its own draft enclave policy to the Minister. This draft shows little improvement in the original enclave process and, according to *adat* proponents, would do little to address conflicts on the ground. Like other forest policy development processes in the *Reformasi* era, the new enclave policy is clouded in uncertainty and confusion.

Participatory State Forest Boundary Setting

The issues taken up in the working group's discussions on procedures for redrawing the boundaries of the State forest are more complicated. As of February 1999, government figures reveal that only 68 % of the areas the Department of Forestry claims as being State forest zone were actually formally delineated and gazetted¹⁴. As a result, 32% of the forest zone is not yet under the legal jurisdiction of the Department of Forestry. Information as to which areas have completed the formal process of gazettelement is unavailable to local communities. In some areas, local communities claim that the process by which their areas were gazetted (part of the 68%) was illegal. Forest boundary delineation and gazettelement procedure require that all local communities be informed of the creation of State forest in their areas and community leaders must sign documents saying they were informed. *Adat* rights proponents estimate that Department delineation of much of the 68% of the area completed, violated this requirement. This may be accurate considering how unlikely it would be for a forestry staff to organize a village meeting to inform the community that the government has classified their village, rice fields and agroforests as State forests under the control of the Department of Forestry, that their occupation of the area is illegal, and a timber plantation might soon clear the entire area in order to plant eucalyptus.

While the major issues were all discussed in the working group, Department staff were resistant to most of the suggestions that would lead to a significantly smaller area of State forest. Still the current draft policy (July 1999) is an improvement on the 1996 policy. The following are some examples of why:

The role of local government in the process of forest delineation has increased significantly leading, many hope, to greater participation by local people;

1. The methods to determine State forest are no longer based on a scoring system (consideration of rain fall, slope and type of soil) that was heavily biased towards justifying most anywhere as State forest;
2. Local communities can participate from the early stages of the delineation process;
3. The procedure of delineation will no longer be determined by the length of the border but will be measured by blocks in hectares;
4. Communities who live or have claims inside State forest will be treated the same as a community outside the forest, by being involved in the delineation process.
5. There will be a process of participation and notification that will determine the State forest area is free from third party (community) claims. This will precede the placing of permanent markers, making it more difficult for Forestry staff to bypass the participation of local communities in the process.

Another policy initiative that stands above and will govern those just described, is a draft PP, or government regulation (*Peraturan Pemerintah*) on Forest Solidification (*Pengukuhan Hutan*). This will be the umbrella law that will allow for new policies on forest deliniation and the creation of community enclaves. Consistent with the development of other new forestry policies, the Department has not made an effort to assure the coordination between drafting groups. The draft PP, being developed by an internal Department team, does not yet reflect the progress made in the working group on forest delineation and the enclave policies, leaving those involved in this process confused as to how or even whether to proceed.

¹⁴ Estimates on the progress in the delineation and gazettelement of the State forest zone are based on numbers of notification units (BATB) signed by the Minister of Forestry as February 1999. From total 2531 units identified during the TGHK process that began in 1984, only 1719 units have been signed, leaving 812 units still unfinished (INTAG, 1999 unpublished).

V. A Potentially Groundbreaking Policy Initiative from the Bureau of Lands

On March 25, 1999, the Minister of Agrarian Affairs attended the Congress of *adat* Communities. He listened to the numerous land conflicts that result from *adat* rights being invisible to the government developing planning process. He stated at the time that, he was committed to addressing this problem. Over the next two months the Bureau of Lands (BPN) within his Ministry, with some assistance from *adat* land specialists, developed Ministerial decree No. 5/1999, or Guidelines to Resolve *Adat* Communal Rights Conflicts.

This decree sets into motion a process that, similar to the Ministry of Forest policy initiative on *adat*, will determine criteria for the recognition of *Hak Ulayat*. The main difference is that the BPN will accept the registration of *adat* lands and treat them as a communal and non-transferable right, unlike the forestry classification that would provide only a management right.¹⁵ In addition the policy allows *adat* communities to lease their lands to government and the government can in turn transfer these rights to the private sector.

The decree turns over complete responsibility for this process to provincial and district governments. This has led some critics to say the national government has done little more than to pass the problem onto local government. Critics also question why local government should play such a pivotal role in determining whether *adat* communities exist or not.

While not completely satisfied with the new policy, some *adat* leaders and NGOs have nonetheless decided to test the BPN process and determine what form of recognition can be gained. The foremost question is what happens in the overlapping areas? The State has already given out 65 million hectares to the timber industry; 15 million to plantations and 48 million hectares are set aside as protected forests including national parks. Added to this list are 482 mining concessions and transmigration areas.

VI. Conclusions

Progress is being made in Indonesia toward developing policies that will secure the rights of *adat* communities. Certainly the *adat* policy initiative in forestry and the *Hak Ulayat* policy from the Bureau of Lands were only distant hopes during the Suharto period. Yet enormous challenges lay ahead for *adat* communities, NGOs and government. Much effort is still needed as Indonesia tries to create a national policy framework that provides guidance and enables local communities and local government to sort out the many overlapping rights on the ground.

Perhaps the largest challenge at the national level is to assure that relevant government agencies work together to sort out their own overlapping jurisdictions concerning the regulation of natural resources and property rights associated with their management. Such a process should lead to resolving what can be considered Indonesia's most pressing forestry and human rights question -- just what areas should be classified as State forest?

¹⁵ There would be no restriction on land transfers within the community. The intention is that land under *adat* or *hak ulayat* would not enter the land market.

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