

Toward Security and Justice in Tenure

The views of Indonesian civil society groups concerning principles, prerequisites and measures towards reforming policies on control over land and forest zones in Indonesia

Revised Edition
Jakarta
November 7th, 2011



HuMa



WG Tenure



KOSAK



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WG Tenure
Working Group on Forest Land Tenure



KpSHK
Konsorsium Pemertanian dan Kehutanan



PUSAKA



Jaringan Kerja Pemetaan Partisipatif



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We see this document as an account of our participation in designing a concrete and measurable approach to reform policies on control of land and forest zones, providing legal security and socially and environmentally equitability. However, it should be recognised that the International Conference on tenure and forest governance and forestry business in Lombok, 11-15 July 2011, which was organised by the Forestry Ministry and the Rights and Resources Initiative (RRI) was the trigger for continuing the effort to consolidate concept and action.

We express our thanks to the Forestry Ministry and the RRI who have provided the opportunity to participate actively in this Conference. To several institutes: Samdhana Institute, the Ford Foundation Jakarta, the Forest Peoples Programme and ICRAF-SEA who actively supported the idea of civil society groups engaged in this effort, we also express our thanks.

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Jakarta, 7 November 2011
Facilitator of the civil society group for tenure reform

Myrna A. Safitri
Executive Director of Epistema Institute

Towards Security and Justice in Tenure

The views of Indonesian civil society groups concerning principles, prerequisites and measures towards reforming policies on control over land and forest zones in Indonesia

Executive Summary

The Indonesian Forestry needs to free itself from the burden of the tenure issues. Uncertainty and instability with regard to the control of the designated forest zones has hampered the achievement of an effective and just forestry management in Indonesia. This problem does not only concern traditional or local communities, but also forestry business institutions and the government. Overlapping claims on forest zones, uncoordinated licensing, denial of traditional and local rights have triggered the rise of tenure conflicts in the forest zones.

We need *change in the policy on the control over the forest zones in order to achieve security and justice in tenure*. Security of tenure will be realised through a clear judicial system and policies which provide strong and protected rights to all forest user groups. Justice in tenure ascertains that society, in particular the poorest layers, have access to the forest zone, receive actual benefits from such access and will not be excluded from policy making process

Reforms of land and forest tenure policies is the mandate of the 1945 Constitution, the Resolution of the PCA [People's Consultative Assembly or MPR] No. IX/MPR/2001 on Agrarian Reform and the Management of Natural Resources, Law No. 5 of the year 1960 on Agrarian Provisions (the Basic Land Law) and Law No. 41 of the year 1999 on Forestry. Therefore, the Government needs to carry out such reforms seriously. A clear direction in such reforms is required.

The Indonesian civil society proposes three domains for reforming policies on control of land and forest zones, namely: **(1) Improvement of policy and acceleration of the forest gazettment process; (2) Resolution of forestry conflicts; (3) Expanding community managed areas and increasing the prosperity of traditional and other local communities.**

These three domains must be carried out simultaneously and in synergy during the final half of President Susilo Bambang Yudhoyono's Administration (2011-2014). This requires strong collaboration within and between government agencies as well as between the government and civil society groups. The principles of transparency, accountability and participation must inspire all agreed upon actions. And, finally, public evaluation and control shall be the means to guarantee that this reform does not divert from its proclaimed aim and strategy.

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List of abbreviations

AMAN	Aliansi Masyarakat Adat Nusantara – Alliance of Nusantara Adat (Traditional) Society
APBD	Anggaran Pendapatan dan Belanja Daerah – Local Income and Expenditures Budget
APBN	Anggaran Pendapatan dan Belanja Negara – State Income and Expenditures Budget
Bioma	Biosfer-Manusia – Human Biosphere
Bakosurtanal	Badan Koordinasi Survey dan Pemetaan Nasional – National Coordinating Agency for Surveys and Mapping
Balitbanghut	Badan Penelitian dan Pengembangan Kehutanan – Forestry Development and Research Agency
Bappenas	Badan Perencanaan Pembangunan Nasional – National Development Planning Agency
BKPM	Badan Koordinasi Penanaman Modal – Capital Investment Coordinating Board
BKTRD	Badan Koordinasi Penataan Ruang Daerah – Regional Interior Planning Coordination Board
BKTRN	Badan Koordinasi Penataan Ruang Nasional – National Interior Planning Coordination Board
BORA	Badan Otorita Reforma Agraria – Land Reform Authority
BPDAS	Balai Pengelola Daerah Aliran Sungai – Watershed Management Board
BPDASPS	Bina Pengelolaan Daerah Aliran Sungai dan Perhutanan Sosial – Watershed Management Board and Social Forestry
BPKH	Balai Pemantapan Kawasan Hutan – Forest Zone Stabilisation Board
BPN	Badan Pertanahan Nasional – National Land Agency
BRWA	Badan Registrasi Wilayah Adat – Adat Region Registration Agency
BUK	Bina Usaha Kehutanan – Forestry Business Management
DAK	Dana Alokasi Khusus – Special Allocation Fund
Ditjen	Direktorat Jenderal – Directorate General
DKN	Dewan Kehutanan Nasional – National Forestry Council
DR	Dana Reboisasi – Reforestation Fund
ESDM	Energi dan Sumber Daya Mineral – Mineral Resources and Energy
FKKM	Forum Komunikasi Kehutanan Masyarakat – Community Forestry Communication Forum
FPIC	Free, prior and informed consent
HKm	Hutan Kemasyarakatan – Community Forest
HPH	Hak Pengusahaan Hutan – Forest Concession Permit
HPHD	Hak Pengelolaan Hutan Desa – Village Forest Management Permit
HPHTI	Hak Pengusahaan Hutan Tanaman Industri – Permit for Exploitation of Industrial Plantation
HTR	Hutan Tanaman Rakyat – People’s Timber Plantation
HuMa	Perkumpulan untuk Pembaruan Hukum berbasis Masyarakat dan Ekologis – Association for Community- and Ecology-based Law Renewal
ICRAF - SEA	International Centre for Research in Agroforestry - Southeast Asia regional program
Inpres	Instruksi Presiden – Presidential Instruction
IUPHH-HKm	Izin Usaha Pemanfaatan Hasil Hutan pada Hutan Kemasyarakatan – Business Permit for the Utilisation of Forest Products in Community Forests
IUPHHK-HA	Izin Usaha Pemanfaatan Hasil Hutan Kayu pada Hutan Alam – Business Permit for Exploitation of Timber Forest Products in Primeval Forests
IUPHHK-HT	Izin Usaha Pemanfaatan Hasil Hutan Kayu pada Hutan Tanaman – Business Permit for Exploitation of Timber Forest Products in Plantations
IUPHHK-HTR	Izin Usaha Pemanfaatan Hasil Hutan Kayu pada Hutan Tanaman Rakyat – Business Permit for Utilisation of Timber Forest Products in People’s Plantations
Javlec	Java Learning Center

JKPP	Jaringan Kerja Pemetaan Partisipatif – Network of Participative Mapping
Karsa	Lingkar Pembaruan Pedesaan dan Agraria – Circle of Renewal of Rural and Agrarian Areas
Kemendagri/ MoDA	Kementerian Dalam Negeri – Ministry of Domestic Affairs
MoF/ -Kemenhut	Kementerian Kehutanan – Ministry of Forestry
MoFin/ Kemenkeu	Kementerian Keuangan – Ministry of Finance
MoCoIn/ Kemen-kominfo	Kementerian Komunikasi dan Informasi – Ministry of Communication and Information
MoCoop/ Kemenkop	Kementerian Koperasi – Ministry of Cooperatives
Kemenkumham	Kementerian Hukum dan Hak Asasi Manusia – Ministry of Law and Human Rights
MoAg/ Kementan	Kementerian Pertanian – Agricultural Ministry
KLHS	Kajian Lingkungan Hidup Strategis – Strategic Environment Studies
KNUPKA	Komisi Nasional untuk Penyelesaian Konflik Agraria – National Commission on Settlement of Agrarian Conflicts
Komnas HAM	Komisi Nasional Hak Asasi Manusia – National Commission on Human Rights
KKI Warsi	Komunitas Konservasi Indonesia Warsi – Warsi Indonesian Conservation Community
KPA	Konsorsium Pembaruan Agraria – Consortium for Agrarian Renewal
KPK	Komisi Pemberantasan Korupsi – Commission on Eradication of Corruption
KPSHK	Konsorsium Pendukung Sistem Hutan Kerakyatan – Consortium of Supporters of Social Forest System
LSM	Lembaga Swadaya Masyarakat – Non-Government Organisation
Pemda	Pemerintah Daerah – Local Government
Permenhut	Peraturan Menteri Kehutanan – Regulation of Forestry Minister
PHBM	Pengelolaan Hutan Bersama Masyarakat – Community-shared Forest Management
PHKA	Pelestarian Hutan dan Konservasi Alam – Forest and Nature Conservation
PP/GR	Peraturan Pemerintah – Government Regulation
REDD+	Reducing Emission from Deforestation and Forest Degradation+
Renja	Rencana Kerja – Working Plan
Renstra	Rencana Strategis – Strategic Plan
RKTN	Rencana Kehutanan Tingkat Nasional – National Level Forestry Plan
RRI	Rights and Resources Initiative
Sains	Sajogjo Institute
Scale Up	Sustainable Social Development Partnership
SDM	Sumber Daya Manusia – Human Resources
Setjen	Sekretariat Jenderal – Secretariat General
Setneg	Sekretariat Negara – State Secretariat
SKPD	Satuan Kerja Perangkat Daerah – Local Government Working Group
UKM	Usaha Kecil dan Menengah – Small and Medium Enterprises
UKP4	Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan – Presidential Working Group for Control and Supervision of Development
UPT	Unit Pelaksana Teknis – Technical Implementation Unit
UU	Undang-undang -- Law
UUPA	Undang-undang Pokok Agraria – Land Law
WGP	<i>Working Group</i> Pemberdayaan – Empowerment Working Group
WGT	<i>Working Group</i> Tenure – Tenure Working Group

1. Foreword

Uncertainty and inequity of control over forest zones is hampering effective and just management of Indonesia's forests. This problem is not only detrimental to traditional or local communities living and utilizing land and resources within the forest zones, but also to forestry business enterprises and the government. Overlapping claims occur when legislation and policies have not been formulated clearly, permits are issued without coordination and recognition of traditional and local rights are withheld. Tenure conflicts in forest zones is rife. Though some originated from colonial forest policies, others are of more recent origins.

Indonesian forestry has to free itself from this burden of tenure problems. We need ***a change in policies on control of forest zones in order to achieve tenure security and justice***. Security in tenure is to be realised through of a clear system of law and policies providing strong and protected rights to all groups of forest users. Justice in tenure will ensure increasing access to forest by community groups, especially the poorest layers, prevent their exclusion from the process of policy making, and guarantee that they will be able to gain benefits from this access.

Incremental changes in policy should become directional changes, with a long term dimension, accepted by all parties. The present efforts by government to change policy, is a valuable first step. However, the changed policies need to be corrected, revised and adjusted continuously. Government commitment to improve the policy on tenure as revealed through the International Conference on tenure and forest governance and forestry business in Lombok, 11-15 July 2011, co-organized by the Ministry of Forestry, needs to be supported. This document is designed as a contribution toward this effort.

This document represents the views of groups of the Indonesian civil society on the strategy, direction, and measures for reforming control over land and forest resources in Indonesia (hereafter to be referred to as tenure policy reform) in the second half of the period of the administration of the United Indonesia Cabinet II (2011-2014). These groups include Epistema Institute, Perkumpulan untuk Pembaruan Hukum berbasis Masyarakat dan Ekologis (HuMa – Association of Renewal of Community and Ecology Based Law), Forum Komunikasi Kehutanan Masyarakat (FKKM – Community Forestry Communication Forum), Working Group on Tenure (WG-Tenure), Konsorsium Pembaruan Agraria (KPA – Consortium of Agrarian Renewal), Konsorsium Pendukung Sistem Hutan Kerakyatan (KPSHK – Consortium of Supporters of Social Forest System), Aliansi Masyarakat Adat Nusantara (AMAN – Alliance of Nusantara Adat Communities), Pusaka, Kemitraan (Partnership), Jaringan Kerja Pemetaan Partisipatif (JKPP – Network of Participative Mapping), Sajogjo Institute (Sains), Lingkar Pembaruan Pedesaan dan Agraria (Karsa – Circle of Rural and Agrarian Renewal), KKI-Warsi, Java Learning Center (Javlec) and Sustainable Social Development Partnership (Scale Up), The Samdhana Institute Indonesia and Yayasan Biosfer-Manusia (Bioma) as well as several researchers and academics.

Consisting of six parts, this document opens with a foreword. followed with a review on the legal basis for the tenure policy reform effort. The third part then details the principles for policy reform. The fourth part explains the criteria for measuring changes in tenure policy, and the fifth part gives a description of three domains of change for reform of tenure policy in Indonesia. Clos-

ing this document is the part which reaffirms several important principles to ensure the success of the effort to reform tenure policy.

2. Legal basis

Reforming policies to ascertain tenurial security and equity for all groups of forest users is a mandate of the 1945 Constitution, Decision of the PCA (People's Consultative Assembly) No. IX/MPR/2001 (on Agrarian Renewal and Management of Natural Resources; Law No. 5 of the year 1960 on Agrarian Matters (UUPA – Basic Land Act), and Law No. 41 of 1999 on Forestry.

Referring to the 1945 Constitution, *tenure policy reform has to take into account the following aspects:*

- (1) Manifestation of the constitutional state of Indonesia (Chapter 1 article 3 of the Constitution of 1945);
- (2) Implementation of a just and accountable decentralization process (Chapter 18A);
- (3) State recognition of *adat* (traditional/customary) community rights (Chapter 18B, 28I)¹;
- (4) Instruments for effectively implementing the state's right of control in order to attain the goal of the widest possible prosperity for the people (Chapter 3 article 3);
- (5) Implementation of the state's responsibility to guarantee the protection and realisation of human rights, especially in the matter of:
 - a. The people's right to obtain recognition, assurance, protection and certainty of just laws and equal treatment before the law (Chapter 28D article 1);
 - b. The people's right to live in prosperity, and to a good and healthy living environment;
 - c. The people's right for personal property which cannot be taken away arbitrarily.

As said, the tenure policy reform is mandated by People's Consultative Assembly Decision No. IX/MPR/2001). This Decision has regained its strong legal basis with the issuance of Law No. 12 of 2011 replacing Law No. 10 of 2004 on the Formation of Laws and Regulations (see Box 1).

Tenure security and justice is a way for implementing agrarian renewal and management of natural resources as defined in Chapter 2 of PCA Decision No. IX/MPR/2001 as *a continuing process in restructuring control, possession, use and utilisation of agrarian resources, implemented with a view to attaining legal certainty and protection, and justice and prosperity for all the Indonesian people.*

Tenure security and justice is also a prerequisite for management of natural resources. On this basis, PCA decision No. IX/MPR/2001 becomes the basis for all laws and regulations on agrarian renewal and management of natural resources (Chapter 1).

¹ In various legislations, the term "masyarakat hukum adat" (traditional law community) is also used in addition to the term *adat* (traditional) community. In this document both are used interchangeably.

Tenure policy reform should also be implemented according to nine important principles in the Basic Land Law of 1960):

- (1) Recognition of the rights of adat communities and their traditional laws (Chapter 3 and Chapter 5);
- (2) The right of the State as a public authority to control land and natural resources in terms of regulating control, allocation, utilisation, and protection of land and forest sustainability in a just manner to provide prosperity to the people within the framework of the rule of law (Chapter 2);
- (3) The social function of land (Chapter 6);
- (4) A just distribution of land and forest resources, and a ban on the concentration of control of land and forest (Chapter 7, Chapter 13);
- (5) The principle of nationality, with citizens having the priority in the distribution of control and utilisation of land and forest (Chapter 9 article 1);
- (6) Equity in gender, to be expressed as equal opportunities for men and women in obtaining rights to land and forest (Chapter 9 article 2);

Box 1.

Stop polemics on the legal status of the People's Consultative Assembly (PCA) Decision No. IX/MPR/2001

PCA Decision of No. IX/MPR/2001 was designed to become the basis and guidance for regulating agrarian renewal and management of natural resources in Indonesia. However, during the period of 2002-2003, this Decision triggered a wave of polemics. This was due to the interpretation by several parties, that with the change in the task and authority of the PCA following the amendment of the 1945 Constitution in 2002, PCA Decisions were considered no longer to have legal force. To give legality to the status of the PCA Decision, the PCA issued a Decision in 2003 (TAP MPR No. I/MPR/2003) on a Review on the Matter and Legal Status of Decisions by MPRS RI (Provisional PCA of RI) and MPR RI from 1960 up to and including 2002. This decision divided all PCA Decisions issued during that period into six categories. PCA Decision No. IX/MPR/2001 was included in the fourth category, as a Decision that would remain valid until all provisions in the Decision had been implemented. Thereby there is no reason to question the legal status of PCA Decision No. IX/MPR/2001. Yet, the legal status of this Decision was again debated when Law No. 10 of 2004 on Formation of Laws and Regulations no longer included PCA Decisions in the hierarchy of legislation (Chapter 7 article 1). Are PCA Decisions sources of law? Dissenting opinions refer to the stipulation in Chapter 7 article 1 of Law No. 10 of 2004. On the other hand, those who affirm refer to Chapter 7 article 4 of Law No. 10 of 2004, stating that PCA Decisions are still in force as long as they are commanded by the 1945 Constitution. Chapter 7 article 4 of Law No. 10 of 2004 state: "The categories of Legislation in addition to those mentioned in article (1), are recognised and have binding legal force as long as they are commanded by higher Legislation." The polemics on the legal status of PCA Decisions (in general) and PCA Decision No. IX/MPR/2001 ended with the issuance of Law No. 12 of 2011 on the Formation of Legislation to replace Law No. 10 of 2004. Chapter 7 article 1 UU (Law) No. 12 of 2011 again puts PCA Decisions in the hierarchy of legislation, under the 1945 Constitution. By this hierarchy the PCA Decisions (TAP MPR) are of higher level than laws, and therefore have to be referred to by them. It is on this basis that the status of PCA Decision No. IX/MPR/2001 as a basis of mandating for agrarian renewal and management of natural resources need no longer be debated.

- (7) Self-sufficiency of people (Chapter 10);
- (8) Protection of groups living in poverty (Chapter 11);
- (9) The duty of right holders to preserve the forest (Chapter 15).

Finally, tenure policy reform should be understood as an effort to carry out the mandate of Law No. 41 of 1999 on forestry management to create prosperity, in a just and sustainable way. Chapter 3 of Law No. 41 of 1999 is an important reference for this purpose. Tenure policy reform should therefore, support the following objectives:

- (1) To guarantee the existence of a proportional area of forests to be used in an optimal and sustainable manner;
- (2) To Preserve forest areas by increasing the carrying capacity of river basins;
- (3) To build Self-sufficiency of communities resulting in social-economic security and responsibility for the preservation of forests;
- (1) To distribute forests uses and benefit in a just and sustainable way.

3. Principles

The tenure policy reform is based on the following principles:

- (1) Respect for human rights;
- (2) Justice, including gender equity;
- (3) Prosperity;
- (4) Forest sustainability;
- (5) Legal certainty;
- (6) Plurality of just laws and cultures;
- (7) Participation;
- (8) Transparency;
- (9) Accountability;
- (10) Devolution and decentralisation;
- (11) Equality;
- (12) Empowerment;
- (13) Cooperation among parties;
- (14) Coordination among sectors.

4. Measuring change

We are of the opinion that implementation of tenure policy reform will be measurable through the following elements:

- (1) Improvement in policies and the increased participative implementation of forest zones gazettement that is acceptable to all parties, and able to establish strong legitimacy to the government, community and business groups;
- (2) Increase of completed boundary demarcation of state forest zones Inclusion of maps obtained through community mapping activities in the mapping and allocation of forest estates for communities;
- (3) Recognition of maps obtained through mapping activities by the community in the mapping of forest zones and allocation of forest zones for the community;
- (4) Settlement of the legal status of villages within forest zones which have been inventoried up to July 2011;
- (5) The existence of an independent agency and mechanism for settlement of disputes;
- (6) Increase in the number of settled and a decrease in the emergence of new disputes up to 2014;
- (7) Increase in land area managed by communities (including forest zones for *adat*/traditional and other local communities) that are accessible to the poorest and landless groups of people in the community, as identified in July 2011;
- (8) Accessible and simple procedures to gain recognition of *adat* and local community rights to land and forest.
- (9) Increase in the number of permits and other legal tools for the recognition of the rights of *adat* and local communities;
- (10) Increased prosperity of communities which were granted permits and access to the forest zones;
- (11) Improved sustainability of forests zones managed by government, *adat* and local communities and business groups;
- (12) Clear budget support to expand community managed forest areas, and an integrated environment and economic development program for these areas.

5. Three domains of change

The change toward tenure security and justice in Indonesian forest zones requires joint actions by the government and civil society groups in three main domains, i.e.:

1. **Revised policy and acceleration of the forest gazettement process;**
2. **Settlement of forestry conflicts;**
3. **Expansion of community managed forest areas and increased prosperity of *adat* and other local communities.**

We would like to stress that measures in these three domains should be carried out simultaneously and synergistically. Only in this way can the proposed changes be realised during the second half of the of the “Indonesia Bersatu II” Cabinet term of service.

First domain

Revised policy and acceleration of the forest gazettement process

Why should we work in this domain?

Forest gazettement is a process to provide legal status to forest zones or areas. . The process consists of allocating, determining boundaries, mapping and designating the forest areas. The final goal is the creation of legal and legitimate forest zones. “Legal” in the sense that all existing regulations have been met (both procedurally as well as substantively), and “legitimate” in the sense that there is recognition from other parties of the boundaries and the existence of the forest estate. This legal and legitimate forest zone provides legal certainty not only for the state c.q. MoF (the Ministry of Forestry), but also for communities and forestry business permit holders.

The failure to designate legal and legitimate forest zones has been one of the main factors in the many forest conflicts. The fact that only about 14.24 million hectares, about 12 per cent, of the total forest zones has been gazetted shows how limited the forest area with a definite legal status is. If this problem is not immediately addressed, the differences of interpretation about the legality of forest zones may come to a head.²

In practice the government often issues decisions on designating forest zones without a prior check on pre-existing claims of third parties or the presence of community settlements. Reliable evidence of this problem is found through data of MoF and the Central Board of Statistics

² For example, already several regents and individuals filed lawsuits with the Constitutional Court related to Chapter 1 line 3 of Law No. 41 of 1999.

(BPS – Badan Pusat Statistik) which shows that there are 31,957 villages located in and around forest zones with 71.06% depending on forest resources for their livelihood.

We consider the process of defining and demarcation boundaries of crucial importance in the whole process of forest gazettment. Indeed, most, if not all boundaries, have not been defined and marked properly. There are still many forest zones where the boundary demarcation has not been completed to the stage of “closure”. Boundary markers are often not clear, and cannot be verified on the basis of the official minutes (*process verbal*) As well, the process of boundary demarcation often disregards the requirement for active participation of *adat* and local communities who have a stake through customary rights on the land. Community involvement and the chance for them to affirm the proposed boundaries on the basis of accurate information are often missing. This is obvious from the uncertainty of the settlement mechanism when the community does not agree or objects to the delimitation of boundaries process.

The process of demarcation boundaries is an important stage in the whole process of gazettment of the forest estate. In practice most of the boundaries of forest zones have not been defined and marked properly

All these give rise to intricate legal and social problems. As explained above, the legal problem arises from the failure to properly gazette state forest lands and thus respected by all parties. It also violates the constitution, since it appears to justify government to willfully deprive the communities of their rights. The social problem is evident from the many conflicts emerging from the one sided designation of state forest zones which ignores overlapping claims and conflicts with the community or other parties.

It is therefore of vital importance to revise the policy on forest gazettment and accelerate the process of designating forest zones. This will provide a secure legal status for the forest zones to be managed directly by the state c.q. MoF and will facilitate the settlements of conflicts.

In improving policy in this domain, we consider it also important to settle the dualism of regulating land in Indonesia. Control of land within the state forest zones lies with MoF, while land outside the forest estate is under the authority of the NLA (National Land Agency or Badan Pertanahan Nasional - BPN). This distinction has created unequal legality of community control over land within and outside forest zones. Land outside the forest zones can be privatized with individual land deeds, whereas lands inside the forest estate are controlled by the state, in this case MoF, and therefore cannot be allocated for private use. The only legitimate way of communities to utilise land within the forest zones is through forestry permits. Even though not called permits for utilisation of land but permits for utilisation of forest resources, in several cases it cannot be denied that these are a form of land utilisation. The permit for utilisation of timber plantations, where the holder of the permit has the right to plant in forestry zones, is also a permit for utilising the land.

This dualism has complicated land administration and increased the burden of MoF, in regulating land in forest zones, which should be within the authority of NLA. On the other hand, it also limits the authority of MoF to regulate the management of forests outside designated forest

estate which have not yet been designated as forest encumbered with rights (hutan hak).³ The management of forests on lands located in Areas of Other Use (APL – Areal Penggunaan Lain), is not the responsibility of the MoF but of the Local Government. As a result, the principle of integration in the implementation of forestry management as mandated by Law No. 41/1999 on Forestry remains unfulfilled.

We recognize that there are legal instruments and policies on control of land and forest in place. Yet these instruments have not been able to provide tenure security for the government, (MoF), the community nor holders of forestry business permits. Lacking is an integrated legal framework as included in the recommendations of the International Conference on forest tenure, governance and business in Lombok, 11-15 July, 2011.

Legal instruments and the policy related to the control of land and forest zones are in place. However, these instruments are not yet able to provide overall tenure certainty for the government, in this case the Forestry Ministry, the community and holders of forestry business permits. There are also no integrated legal frameworks and policies in place for the control of land and forest zones.

Changes and improvements are needed in revamping the existing legal instruments and policies with the purpose of:

1. Strengthening the legality of forest zones;
2. Strengthening the security of the rights of all parties to forest zones;
3. Creating an effective system for the acceleration of forest gazettement;
4. Encouraging the establishment of an integrated policy for control of land and the forest zones and coordination between sectors dealing with the regulation of control of land and forest zones.

Supporting factors

1. Supporting policy and legislation

The unfinished process of gazetting forest zones in Indonesia and all its legal and social implications has become a major interest of MoF . In the National Forestry Plan (RKTN – Rencana Kehutanan Tingkat Nasional) for 2011-2030 (MoF Regulation-- P.49/Menhut-II/2011) it is stated that of the total area of Indonesia's forest zones and inland waters, covering 130.68 million hectares, only 14.24 million hectares have been gazetted. In addition, the National Forestry Plan also states the intention to hand over forest zones to communities as one way of settling conflicts.

The MoF Strategic Plan (Renstra – Rencana Strategis) for 2010–2014 also provides directions for the process of boundary delimitation of the forest estate. The Strategic Plan has been translated into a Working Plan (Renja – Rencana Kerja) which also includes a target for delimitation of boundaries of forest zones.

³ Law No. 41/1999 divides forests into state forests and forests encumbered with right. Encumbered forests are forests located on lands on which rights have been claimed according to the Land Law (right of ownership, leasehold, right of land use), Permenhut (MoF Regulation)No. P.26/Menhut-II/2005 states that encumbered forests are created by designation of the Regent/Mayor in question

The Ministry of Forestry has also regulated the process of forest gazettement through several regulations. For example, GR (Government Regulation) No. 44 of 2004 on Forest Planning, MoF Regulation No P.47/Menhut-II/2010 on the Committee for Delimitation of Boundaries and MoF Regulation P.50/Menhut-II/2011 on Gazettement of Forest Estates. However, all three regulations have weak aspects.

The above mentioned regulations are meant to elucidate Article 5 section 3 of Law No. 41 of the year 1999 which states, that the status of a forest shall be determined by the government. The government in this case means the Central Government (Article 1 point 14 of Law No. 41 of the year 1999). However, Article 15 GR No. 44 of the year 2004 states, that the gazettement of a forest zone is done by the Minister (in this case the Minister of Forestry). Based on this provision, the authority to designate forest zones solely lies with the Minister of Forestry, not with the (central) government. This is also in contradiction with Article 19 UUPA regarding land registration. Land registration is implemented by the NLA.

The mechanism of forest gazettement generally provides very limited room for community participation, in particular *adat* communities. The principles of Law No. 41 of the year 1999, states explicitly that aspirations and the condition of the community are to be considered, including in the forestry planning process. Moreover, Article 68 of Law No. 41 of the year 1999 also signals the presence of a mechanism to settle conflicts and compensation in cases where communities lose their rights to forest. However this matter is not elaborated in GR No. 44 of the year 2004 and the MoF Regulation derived from it, which should have established the procedures and principles of forestry planning. In GR No. 44 of the year 2004 there is also no mention of a mechanism for inclusion of community aspirations in the process of determining as well as delimitation of forest zone boundaries. Neither are settlement of disputes and objections spelled out.

MoF Regulation P.50/2011 does mention the settlement of community rights. However its mechanism is unclear and, even more basically, there is no mechanism for the community to voice their objections. Should the community submit their objection to the boundary marking committee, the regional government, the Forestry Ministry or to a judicial court? The restricted space for community participation is further affirmed by the ever stronger position of the government, in this case the DG (Directorate General) of Planning of MoF, in the process of boundary delimitation to define State forest zones unilaterally. The DG Planning is authorised to legalise the official minutes (*process verbal*) of boundary demarcation not legalised by the boundaries demarcation committee (pursuant to MoF Regulation No P.47/2010) and to legalise the official minutes of boundaries delimitation describing that the forest demarcation process did not have 'closure' and is therefore incomplete (pursuant to MoF Regulation P.50/2011).

We therefore state that these regulations should immediately be revoked as they are in conflict with the Basic Land Law and Law No. 41 1999. New regulations should immediately be formulated to ensure the full and active participation of communities living in and around the forests in the gazettement of forest zones. This certainty of the legal and *legitimate* is urgently needed not only to guarantee the security of state assets as suggested by a KPK (Commission on Eradication of Corruption) study to the DG Planning, but also to guarantee the security of people's assets in the areas to be included in forest zones.

Additional important supportive regulations are related to openness of information at the Ministry of Forestry. MoF Regulation No. P.7/Menhut-II/2011 on Public Information Services should be applied consistently, especially to give the community at large access to documents on boundary delimitations/ mapping of forest zones and designation of forest zones. With this, the public can participate in just and equitable forest planning but also in supervising actual forest management activities as regulated and implemented by the central and local governments.

The completion of the forest gazettment process does not automatically mean that legal issues will all have been settled. MoF should be provided with a legal basis to control lands in state forest zones. The assumption is that the right of control by the state as set forth in Law No. 41 of 1999 is not valid. A stronger legal basis is required. In this case, Chapter 2 article 4 of the Land Law provides the needed legal basis with the provision on the rights of government agencies to control land (see box 2).

Government Regulations and Forestry Minister's Regulations related to the delimitation of the forest estate need to be revised by involving related parties from civil society groups, academics, representatives of society and the private sector.

2. Support from other government agencies

Revision of policies related to the gazettment of forest zones should not solely be the agenda of the Ministry of Forestry. We have observed that several other government agencies/state institutions support this effort. Support has come for example from the Presidential Working Group on Supervision and Control of Development (UKP4 or Unit Kerja Presiden bidang Pengawasan dan Pengendalian Pembangunan –). UKP4 strives for the creation of an integrated map.⁴ The MoF has issued many versions of forest maps and these are inconsistent with landscape maps by other government agencies.

The prevention unit of the KPK (Commission for Eradication of Corruption) has submitted 17 findings and recommendations for improving the performance of the MoF, especially the DG Planning. Recommendations relating to the problem of forest planning, including forest gazettment, are among others, the request to create a definitive forest map with a resolution useful at site level, maps of forests that are key to environmental integrity and therefore need to be preserved, improvement of norms, standards, procedures and criteria for boundary delimitation and improvement in the procedure to exchange and change function, status and use of forest areas.

3. Support from other parties

Support for the forest tenure policy reform is also evident through a *Letter of Intent* between the Indonesian and Norwegian governments. Included in the document is the demand for clear definition of forest zones to realize REDD+ schemes. This document resulted among other things, in the creation of a REDD+ National Strategy, a plan for the establishment of a REDD+ institute and a moratorium on the granting of new permits in forest zones for a period of two years, starting

⁴ See keynote speech of Kuntoro Mangkusubroto during the Conference on forest tenure in Lombok, 16 July, 2011.

in 2011 (Presidential Instruction No. 10 of 2011).

4. Support from civil society groups

Civil society groups also support the development of clearly delimited legal and legitimate forest zones. The International Conference on forest tenure, governance and business held during 11-15 July in Lombok highlighted the importance of clearly delimited forest zones acceptable for all parties as a way for the creation of tenure security for the community and other parties.

Box 2.

Reinforcing the authority of the Ministry of Forestry over State Forest Zones through Right of Management

The right of management is a legal basis for ministries/agencies/local government to control land in order to be able to carry out its task. During the colonial period, the right of management was known under the term *beheer* (management) (S.1911-110, S. 1940-430). Following Indonesia's independence, the legal basis used was GR (Government Regulation) No. 8/1953 on the Control of State Lands. This Regulation is still in force even though the Land Law was enacted in 1960, with adjustment to the use of the term. The right of control mentioned in GR No.8/1953 has been changed into the right of management. There are several regulations related to this right of management.

The right of management enables a government agency to utilise land for its own interests or to give the right to another party. In the latter case, an agreement of utilisation is made between the agency in question and a third party who is to utilise the land. This third party then pays a fee to the agency holding the right of management. The National Land Agency issues a certificate on the land, generally for the right to use, for building right or leasehold, with the provision stated in the land certificate that the land in question is under the right of management. At the moment that the duration of the right expires, the land will return to the holder of the right of management.

The MoF should have the right of management on state forest areas that it controls. By holding this right, MoF will not be burdened with the matter of releasing forest zones in response to the need for land for development in other sectors. The right of management enables the MoF to exercise its authority to execute forest management over right holders on the land within the jurisdiction of its management. Within the zones that fall within its right of management, the Ministry is still enabled to issue permits for utilisation of the forest.

The consideration to grant the right of management to MoF has been raised in discussions by the Government several decades ago. In the book on the history of forestry in Indonesia it is stated that management of forests requires the control over land based on GR No. 8/1953. In addition, the Instruction of the MoDA (Minister of Domestic Affairs) No. 26/1982 and Circular Letter of the MoDA No. 522.12/4275/Agr of 3 November 1982 state that recognition of the boundaries of forest zones needs to be approved by MoDA. For each forest function in forest zones, status should immediately be ascertained as the right of management of the MoF (Parlindungan 1989:27-8).

In order to achieve our goals the following steps need to be taken

1. **Defining the concept of forest zones, state forest and *adat* (customary law) forest** (see box 3).
2. **Advocate for improvement of policies and acceleration of forest area gazettelement** through:
 - a) Revision of regulations (stipulations in regulations) that imply that Government is only the Ministry of Forestry and or do not support genuine participation of the community in the process of gazettelement (GR No. 44 of 2004, MoF Regulation No P.47/Menhut-II/2010 and MoF Regulation P.50/Menhut-II/2011).
 - b) Designate forest areas with involvement of all parties and supported by accurate basic data.
 - c) Revamping the institution of the committee on delimitation.
 - d) Implementing boundary demarcation and forest use zoning in a participative and transparent manner, respecting the rights of communities.
 - e) Availability of an adequate budget for delimitation of forest zones allocated to the community, for both community forests and village forests.
 - f) Improvement in dispute resolution mechanisms by including procedures for filing complaints during the gazettelement process.
3. **Developing an accountable, open and integrated mapping system** through:
 - a) The establishment of a legal basis and policies for compiling open and integrated maps of the forest zones.
 - b) Compiling *one integrated base map* as reference for all government agencies (ministries/institutes and local governments) in their decision making and development of working programs.
 - c) Adoption and integration of participative maps made by communities and non-government organisations into official maps.
 - d) Integration of *adat* (customary law) district maps into regional land use/spatial planning maps as well as into NLA land maps.
 - e) Encourage *the* implementation of MoF regulation No. P.7/Menhut-II/2011 on Public Information Services within the the Ministry of Forestry.

4. Resolving overlap in licensing and enforcing the law against licensing which deviate from the designated forest use, through:

- a) Reassessment of overlap in licensing, whether in the forestry sector, plantations, mining or other sectors.
- b) Applying Strategic Environment Studies (Kajian Lingkungan Hidup Strategis) as laid down in Law No. 32 of the year 2009 on Protection and Management of the Environment as the basis for issuing and reassessing licences.
- c) Issuing licenses and relinquish forest areas to other sectors only in those areas that have been affirmed as state forest zones.

5. Resolving the legal status of villages located in and around forest areas, through:

- a) Social mapping and mapping of village areas in a participative manner to follow up on inventories by the Ministry of Forestry and the Central Agency of Statistics of 2007;
- b) Create multi actor, cross-agency teams to settle problems of villages located in and around (interacting with) forest areas with a MoF Decision;
- c) Determine the priority of villages to be excluded from the state forest areas in the period of 2011-2014;
- d) Complete the process of relinquishing forest areas to be included in village areas located within forest zones;
- e) Set up a MoF-NLA Agency working group for agrarian reform in areas of villages relinquished from state forest;
- f) Provide legal certainty to villages that remain within the state forest area and tenure security to its inhabitants.

6. To determine the right of management as legitimate legal basis for the Ministry of Forestry to control state forest zones (see box 2) through:

- a) Determining a legal basis for the right of management of MoF referring to Chapter 2 article 4 of the Land Act (UUPA) and GR No. 24 of 2007 on registration of land;
- b) Designating state forest zones which are the object of the right of management of the MoF;
- c) Developing a guide for granting rights to land superimposed on the right of management of the MoF.

Box 3.

Stop misunderstandings on the concept of the state forest estate

Misunderstanding in interpreting several legal concepts related to the categorisation and typology of forest and land control has resulted in the continuing dualism of land administration. We have identified the concepts below as the main stances for defining an integrated concept for a legal framework and an intended policy.

The Forest estate include state forests, rights encumbered forests and forests controlled by adat (customary law) communities

So far the forest estate is often considered to be the same as state forests. This is a legacy of Law No. 5 of 1967. Law No. 41 of 1999 holds a different view. The forest estate according to Chapter 1 point 3 Law No. 41 of 1999 is an allocation of land by the government to be made into permanent forests. Thereby, the status as forest estate does not refer to control of the land. Law No. 41 of 1999 also nowhere states that the forest estate is state forests. Chapter 1 point 4 of this Law says that state forests are forests that are located on areas unencumbered by rights on the land. Based on this, we can state that referring to Law No. 41 of 1999, the forest estate as a form of land use allocation policy can be under different controls. The Forest estate can consist of state forests, forests encumbered by rights, and forests controlled by adat (customary) law communities.

Control of forest zones means also control over the land

The assumption that forest control is separate from land control is unacceptable. In fact, what is called a forest estate is a certain territory (i.e. land) including the resources within it which administratively (by Decision of the Minister of Forestry) is called forest (estate). Our reluctance to agree that control of a forest zone means control of the land is based upon two views. Firstly, that control of the land means ownership. Ideally control is not just ownership. Control includes all kinds of rights, i.e.: to own, use, or enjoy an object. In this case control can be considered as a bundle of (property) rights. Secondly, the right to control is only allocated to the state. This indicates confusion in the use of the term “control” and the concept of the right to control by the state. The right of control land in Indonesia implies a wide spectrum of rights holders, starting with the right of the whole nation, the right of the state to regulate and exercise public authority, adat (customary) communities and their territorial rights, down to individual citizens and their private rights.

Based on the above argument we should embrace the view that control of forest zones implies control of the land. Whether this control is in the form of property right, or whether the control rests with the state or adat (customary) community is a different matter which should be discussed further.

Program, activity, agency and time of implementation

Program	Activity	Output	Responsible agency and agency involved	NGO/network/inter-agent forum having the potential to become a partner/initiator of process	Schedule
1. Finalising the legal definition of forest zones, state forest, traditional (<i>adat</i>) forest.	1.1 review the correct formulation of the legal definition of forest estate, state forest, and traditional forest.	<ul style="list-style-type: none"> document presenting an official interpretation on the definition of forest estate, state forest, and traditional forest. 	<ul style="list-style-type: none"> MoF (DG of Planning, Legal Bureau) NLA UKP4 (Presidential Working Group for Controlling and Supervising Development) National Development Planning Agency) 	<ul style="list-style-type: none"> Epistema Institute HuMa (Association for Community and Ecology-based Law Renewal) AMAN (Alliance of Nusantara Adat Society) PUSAKA Karsa (Circle of Renewal of Rural and Agrarian Areas) Kemitraan ICRAF-SEA 	2011
2. Revise policy and accelerate gazettement of forest zones.	2.1 Revision of regulations (provisions in regulations) that do not support the genuine participation of the community in the process of forest gazettement (GR No. 44 of 2004, MoF Regulation No. P 47/ Menhut-II/2010 and MoF Regulation of the P.50/Menhut-II/2011).	<ul style="list-style-type: none"> Amendment of GR.. No.44 of 2004 for provisions related to community participation in gazetttment of forest areas and forestry planning in general; MoF Regulation on changes in the MoF Reg. No. P47/Menhut-II/2010 and MoF Reg. P.50/Menhut-II/2011. 	<ul style="list-style-type: none"> NLA MoF (DG Planning, Legal Bureau) UKP4 	<ul style="list-style-type: none"> Epistema Institute HuMa AMAN JKKP (Network of Participative Mapping)/ BRWA (Adat Region Registration Agency) Kemitraan ICRAF-SEA 	2011-2012
	2.2 Revamping the committee for boundaries delimitation.	<ul style="list-style-type: none"> MoF Regulation on Changes in MoF Regulation on the committee for boundaries delimitation of forest areas forest. Joint Decree of MoF of , NLA, and MoDA regarding the delimitation boundaries of forest areas. 	<ul style="list-style-type: none"> NLA MoF (DG Planning, Legal Bureau) MoDA UKP4 Regional Governments 	<ul style="list-style-type: none"> JKPP/BRWA AMAN HUMa 	2011-2012
	1.3 Compose a joint regulation of MoF; NLA and MoDA on mechanisms for handling grievances which can be easily accessed by the public in the implementation of forest gazettement	<ul style="list-style-type: none"> Joint Regulation of the MoF, NLA and MoDA on a mechanism for handling grievances regarding the implementation of forest gazetttment. 	<ul style="list-style-type: none"> NLA MoF (DG Planning, Legal Bureau) MoDA UKP4 Regional Government 	<ul style="list-style-type: none"> HuMa Epistema Institute ICEL (Indonesian Centre for Environmental Law) Kemitraan WG-Tenure 	2012
	2.4 Implement boundary delimitation in a participative and transparent way, respecting the rights of the community.	<ul style="list-style-type: none"> Increasing numbers of actors involved in the process of delimitation boundaries in particular from communities directly affected. 	<ul style="list-style-type: none"> Regional NLA Office MoF (DG Planning, Legal Bureau) MoDA Regional Governments 	<ul style="list-style-type: none"> JKPP/BRWA AMAN 	Starting 2012
	1.5 Continue the gazettement of forest zones by involving all parties and supported by accurate More MOF Regulations on the Designation of Forest Zones.	<ul style="list-style-type: none"> Regional NLA Office MoF (DG Planning, Legal Bureau) MoDA Regional Governments 	<ul style="list-style-type: none"> JKPP/BRWA AMAN 	Starting 2012	Starting 2012

3. Developing an accountable, open and integrated system of mapping,	1.1	Develop a policy for mapping forest zones in an open and integrated manner.	<ul style="list-style-type: none"> Joint Decree or Memorandum of Understanding of MoF, NLA, National Coordinating Agency for Surveys and Mapping) on the integration of maps of the forest zones and the map on land use which can be accessed by the public. 	<ul style="list-style-type: none"> NLA/ Head Regional NLA Office MoF(DG Planning, Legal Bureau) National Coordinating Agency for Surveys and Mapping) NLA UKP4 Regional Governments 	<ul style="list-style-type: none"> JKPP/BRWA HUMa Karsa Kemitraan 	2012
	1.2	Adoption and integration of civil society produced participative maps into official government maps.	<ul style="list-style-type: none"> Memorandum of understanding of MoF with BRWA (<i>Adat</i> Region Registration Agency) to make BRWA maps the basis of official forestry maps. 	<ul style="list-style-type: none"> MOF (DG Planning) National Coordinating Agency for Surveys and Mapping NLA UKP4 Regional Governments 	<ul style="list-style-type: none"> JKPP/BRWA AMAN DKN (National Forestry Council) WG-Tenure HuMa 	Starting 2012
	1.3	Integration of maps of <i>adat</i> regions into the regional landuse/spatial planning maps and NLA maps on landstatus (ownership) NLA.	Memorandum of understanding of NLA, MoDA, MPW (Ministry of Public Works), National Agency for Surveys and Mapping with BRWA to make BRWA maps the basis for official maps for regional Land use/spatial planning and maps on the status of control of land (ownership) by the NLA	<ul style="list-style-type: none"> National Coordinating Agency for Surveys and Mapping DG of landuse/spatial planning of MPW NLA MoDA Regional Governments BKPRN/BKPRD 	<ul style="list-style-type: none"> JKPP/BRWA AMAN ICRAF-SEA 	Starting 2012
	1.4	To encourage the implementation of MoF Regulation No. P.7/Menhut-II/2011 on Public Information Service within the MoF	<ul style="list-style-type: none"> MoF Decision to set up a cross-directorate general team/civil society groups/bodies for accelerating the implementation of MoF Regulation No. P7/ Menhut-II/2011. 	<ul style="list-style-type: none"> MoF (PR Bureau, DG Planning) Ministry of Communication and Information 	<ul style="list-style-type: none"> HuMa ICEL WG-Tenure 	Starting 2011
4. Resolving overlapping permits in forest zones and law enforcement	4.1	set up a data base system of permits within forest zones which can be accessed by the public.	<ul style="list-style-type: none"> An online data base system on permits within forest zones. 	<ul style="list-style-type: none"> MoF (all related Directorates General) NLA Ministry of Agriculture (all related DGs) Directorates) Ministry of Mineral Resources and Energy (all related DGs) Ministry of State-owned Enterprises (MoSOEs) National Planning Agency Office of Coordinating Minister for Economic Affairs BKPM 	<ul style="list-style-type: none"> JKPP/BRWA AMAN JATAM (Mining Advocacy Network) Sawit Watch HuMa Sains Kemitraan DKN WG-Tenure 	2011-2012

	<p>1.2 gather data on all permits within forest zones for regions included in the indicative maps for the moratorium on granting new permits based on Presidential Instruction No. 10 of 2011.</p>	<ul style="list-style-type: none"> • Document containing compilation of data. 	<ul style="list-style-type: none"> • MoF (all related DGs) Directorates General) • NLA • Ministry of Agriculture (all related DGs) • Ministry of Mineral Resources and Energy (all related DGs) • National Development Planning Agency • Office of Coordinating Minister for Economic Affairs. 	<ul style="list-style-type: none"> • JKPP/BRWA • AMAN • JATAM • Sawit Watch • HuMa • KPA (Consortium for Agrarian Renewal) • Epistema Institute • FKMM (Community of Forestry Communication Forum) • KPSHK (Consortium of Supporters of Social Forestry System) • Kemitraan 	2012
	<p>1.3 Reassess the existing licenses in the forest zone pursuant to the result of the KLHS (Strategic Environment Study) mandated by Law No.32 of the year 2009.</p>	<ul style="list-style-type: none"> • Issuance of GR on KLHS. • Reassess licenses in forestry, mining and plantations, whether issued by the Central or the Regional government • Issue forestry licenses only in affirmed state forest zones. 	<ul style="list-style-type: none"> • Ministry of the Environment • MoF • Ministry of Mineral Resources and Energy • Ministry of SoE • UKP4 • National Development Planning Agency • Regional Government 	<ul style="list-style-type: none"> • JKPP/BRWA • AMAN • JATAM • Sawit Watch • HuMa • KPA • Epistema Institute • FKMM • KPSHK • Kemitraan 	2012
	<p>1.4 formulate a policy for settling overlapping permits for regions covered by the indicative maps for the moratorium on granting of permits based on Presidential Instruction No. 10 of 2011.</p>	<ul style="list-style-type: none"> • Joint Decree by the MoF, MoDA, NLA, MofAg, and Ministry of Mineral Resources and Energy. 	<ul style="list-style-type: none"> • Ministry of Forestry (all related DGs) • NLA • Ministry of Agriculture (all related DGs Ministry of Mineral Resources and Energy (all related DGs) • National Development Planning Agency • Office of Coordinating Minister for Economic Affairs • Regional Government 	<ul style="list-style-type: none"> • JKPP/BRWA • AMAN • JATAM • Sawit Watch • HuMa • KPA • Epistema Institute • FKMM • KPSHK • Kemitraan 	2012
	<p>1.5 Enforcement of law in cases that violate provisions on the function of forest in regions included in the indicative maps for the moratorium based on Presidential Instruction No. 10 of 2011.</p>	<ul style="list-style-type: none"> • Documentation on cases of investigation, interrogation, charges and court trials against violations in the granting of permits within the forest estate. 	<ul style="list-style-type: none"> • MoF (all related directorates general) • KPK • Police • District Attorney's Office • Supreme Court • Police Commission, District Attorney's Office Commission, Judicial Commission • Ombudsman • Ministry of Mineral Resources and Energy • Ministry of Agriculture • NLA • BKPM • Regional Governments 	<ul style="list-style-type: none"> • PiLNet (Public Interest Lawyer Network) • YLBHI (Legal Aid Institute) • ICW (Indonesian Corruption Watch) • HuMa • ICEL 	Starting 2012

5. Resolving the legal status of villages located within the forest estate.	5.1 Social mapping and mapping of village areas in a participative manner to follow-up inventories by the Ministry of Forestry and Central Bureau of Statistics of 2007.	<ul style="list-style-type: none"> • Document incorporating mapping output. 	<ul style="list-style-type: none"> • MoF (Forestry Development Research Agency, Planning Directorate General) • Ministry of Domestic Affairs • Regional Government 	<ul style="list-style-type: none"> • Karsa • Sains • JKPP/BRWA • Epistema Institute • DKN, Community Chapter • AMAN • KPA 	2011-2012
	5.2 set up an multi-agent, cross-agency team, to settle problems of villages located in and around (interacting with) the forest estate through a MoF Decision.	<ul style="list-style-type: none"> • MoF Decision on the establishment of a working team to settle problems of villages located within and around (interacting with) the forest estate. 	<ul style="list-style-type: none"> • MoF (Forestry Development R • esearch Agency, Planning Directorate General, Legal Bureau, other related directorates general) • MoDA • Ministry of BUMN • Regional Governments 	<ul style="list-style-type: none"> • Karsa • Sains • JKPP/BRWA • Epistema Institute • DKN, Community Chapter • AMAN • KPA 	2012
	5.3set priorities of villages to be excluded from the forest estate for the period 2012-2014.	<ul style="list-style-type: none"> • MoF Decision of the on designating village areas to be prioritised for relinquishment from the forest estate. 	<ul style="list-style-type: none"> • MoF (Forestry Development Research Agency, Planning Directorate General, Legal Bureau) • MoDA • Bappenas • Regional Governments 	<ul style="list-style-type: none"> • Karsa • Sains • JKPP/BRWA • Epistema Institute • DKN, Community Chapter • AMAN • KPA 	2012
	5.4 complete the process of relinquishing forest areas to villages within forest zones.	<ul style="list-style-type: none"> • MoF Decision on relinquishing forest areas to villages within the forest estate. 	<ul style="list-style-type: none"> • MoF (DG Planning, Legal Bureau) • MoDA • Ministry of BUMN • Regional Governments 	<ul style="list-style-type: none"> • DKN, Community Chapter • AMAN • Karsa • Sains • HuMa • KPA 	2012-2013
	5.5. To set up a working team of MoF and NLA to include village areas relinquished from the forest estate into objects of agrarian reform.	<ul style="list-style-type: none"> • MoF-NLA Joint Decision on including village areas released from forest zones into objects of land reform. 	<ul style="list-style-type: none"> • MoF (DG Planning, Legal Bureau) • NLA • Ministry of BUMN • Regional Governments 	<ul style="list-style-type: none"> • DKN, Community Chapter • AMAN • Karsa • Sains • HuMa • KPA 	2013-2014
	5.6 Provide legal certainty and tenure security to villages which decide to remain within the forest estate,	<ul style="list-style-type: none"> • Joint Decree of MoF, NLA, and MoDA, regarding legal status of villages located within the forest estate. 	<ul style="list-style-type: none"> • MoF • NLA • Kementerian BUMN • MoDA • regional governments • Bappenas/Bappeda • Kantor Menko Perekonomian • Kantor Menko Kesejahteraan Rakyat 	<ul style="list-style-type: none"> • KPA • HuMa • DKN • Sains • Kemitraan 	2013-2014

6. Strengthening the legality of control of forest zones by the Ministry of Forestry through the right of management.	1.1	Compose a legal basis for the right of management of the Ministry of Forestry referring to Chapter 2 article 4 of the Land Law and Govt. Reg. No 24 of 2007 on land registration.	<ul style="list-style-type: none"> • Presidential Regulation on the right of management of the MoF. 	<ul style="list-style-type: none"> • State secretary • MoF (Legal Bureau) • BPN 	<ul style="list-style-type: none"> • Epistema Institute • HuMa 	2012-2013
	1.2	designate the state forest areas that will be the object of the right of management of the MoF.	<ul style="list-style-type: none"> • Decision of the Head of NLA and the Minister of Forestry on the designation of state forest areas to be objects of the right of management of the MoF. 	<ul style="list-style-type: none"> • MoF (DG Planning, Legal Bureau) • BPN 	<ul style="list-style-type: none"> • Epistema Institute • HuMa • KPA 	2014
	1.3	decide on guidelines for granting rights to land on top of the right of management of the MoF.	<ul style="list-style-type: none"> • Joint Decision by the NLA and MoF on guidelines for granting rights on land on top of the right of management of the MoF. 	<ul style="list-style-type: none"> • MoF (Legal Bureau) • BPN 	<ul style="list-style-type: none"> • Epistema Institute • HuMa • KPA 	2014

Second domain

Resolution of forestry conflicts

Why should we work in this domain?

Tenure conflicts in the forestry sector occur practically everywhere in Indonesia. The latest data released by HuMa (2011) mention 85 cases of open conflicts in Indonesian forest zones. These conflicts lead to loss of peace, livelihoods, and even the lives of members of the communities engaged in conflict. Conflicts also cause uncertainty to license holders and interfere with the government's performance.

Tenure conflicts in forestry have various causes, such as violation of the forest designation procedure and unilateral claims on forest territory as state forest by MoF and earlier the colonial administration. Conflicts are aggravated when land is handed over to a third party, denying the existence and recognition of community rights.

There have been numerous initiatives to settle conflicts, from grassroots level efforts to national programs. However we have as yet been unable to find a conflict resolution mechanism which is comprehensive and institutionalised. As a result we can observe how new conflicts emerge faster than can be resolved.

Resolving forestry conflicts will have a significant impact, not only for communities to improve their prosperity but also for business as it provide certainty to the licence holders. As well, there will be less deforestation and destruction of forests.

There have been numerous initiatives to settle such conflicts, starting at grassroots level up to national level, however we have as yet been unable to find a settlement mechanism of a comprehensive and institutionalised character. That is why we all observe that the speed of settling conflicts lags far behind the birth of a new conflict.

A Typology of tenure conflicts in forestry

Resolving tenure conflicts in forestry requires an understanding on the typology of existing conflicts. From the perspective of actors involved conflicts can be grouped into several categories:

- (1) Conflicts between adat (customary law) communities and the Ministry of Forestry when adat territories are claimed as state forest;
- (2) Conflicts between of local communities, MoF, and NLA. For example, when NLA issues a certificate of ownership for land in an area classified as state forest;
- (3) Conflicts between transmigration communities, adat/local) communities, MoF, regional governments and NLA . For example, when a transmigration program includes an area of state

forest whereby transmigrants are given certificates of title to the land;

- (4) Conflicts between of migrant farmer communities with MOF and the regional government. For example, when a wave of farmers migrate and claim state forest land to start farming activities;
- (5) Conflicts between a rural communities and MoF. For example when forest zones overlaps with village territory;
- (6) Conflicts of land brokers with political elites, farmer communities, MoF and NLA. For example, when land brokers, supported by a mass organisations or a political party, trade in state forest land and assist in issuing certificates for such lands;
- (7) Conflicts between local (adat) communities and license holders. Although this is the consequence of the MOF unilaterally claiming forest as state forest and then granting rights of exploitation to license holders, quite often this type of conflict is triggered by exclusion of communities by the license holder;
- (8) Conflicts between forest license holders and other licences such as mining and plantations;
- (9) Conflicts due to the combination of various actors mentioned in points 1 through 8.

Supporting factors

1. Support through policies and laws and regulations

Law No 41 of 1999, the Land Law and PCA Decision No.IX/MPR/2001) regulates and mandates the resolution of forestry/land conflicts. Moreover, the Medium Term Development Plan 2010-2014 underscores the necessity to establish a special mechanism for the settlement of land and natural resources conflicts. In another domain, the National Strategy for Access to Justice also adopts an agenda for the resolution of land and natural resources conflicts. These different laws and policies provide a strong legal base for efforts of settling conflicts of tenure.

Within the MoF, efforts to settle forestry conflicts are emerging through different policies, amongst others the issuance of a MoF decree No SK.254/Menhut-II/2008 on the Establishment of a Mediating Team for Forestry Conflicts. In addition, the various forestry planning documents (the National Forestry Plan, Strategic Plan, and Ministry/Agency workplan of MoF) stresses this matter by including conflict resolution as part of the MoF' work program. This is apparent in the National Forestry Plan 2011-2030 plan which mentions that MoF will release approximately 18 million ha of forest zone as one means to settle conflicts with the community and other parties.

Finally, we also need to mention that the National Forestry Council has taken the initiative to settle several forestry conflicts in an *ad hoc* manner. In the absence of an institutionalized mechanism for forestry conflict resolution, this initiative deserves our support.

Nevertheless, there are several shortcomings in the overall endeavor to develop a policy

on tenure conflict resolution . The International Conference on the tenure and management of forestry zones and forestry business in Lombok from 11-15 July 2011 has recommended that the government create an independent agency or mechanism for the settlement of conflicts. Independence in this case is key to make the settlement of conflicts legitimate and acceptable to all parties. Aside from the issue related to legitimacy, the settlement of conflicts needs to be institutionalised with easy to apply procedures. This is, first, to show that resolving conflicts on tenure is part of the state's responsibility in creating public order. Second, institutionalising conflict resolution will also respond to the need of conflicting parties for legal certainty. We are of the opinion that this entire issue has not yet been resolved by current MoF efforts to settle conflicts.

2. Support from government agencies and other state institutions

The settlement of tenure conflicts is not solely the responsibility and the problem of the Forestry Ministry alone. Because tenure conflicts arise due to policies of other government agencies in issuing licenses for mining, plantations, land certificates, allocation of transmigration zones and land utilisation for military purposes. Therefore the settlement of tenure conflicts also requires a strong coordination between agencies.

We have identified various interesting developments that ought also to be observed by the Forestry Ministry in the effort of developing such coordination. The existence of a deputy for the settlement of land disputes at the National Land Agency (BPN), for example, is something that should be optimised. The National Development Planning Agency (Bappenas) that totes the National Strategy of Access to Justice – which was earlier stated mandates the settlement of tenure conflicts – is another agency that is also significant in developing coordination. The Regional Legislative Council (DPD) that proposes to map the natural resource conflicts is a significant institution for establishing coordination with. Finally, the Supreme Court as the supreme judicature that should play a role as a *legitimate* conflict settlement institution also needs to be involved in this process.

3. Equal initiatives from civil society groups

Settlement of tenure conflicts is the major agenda toted by the civil society groups in Indonesia for more than a decade now. These groups proposed the creation of a National Commission on the Settlement of Agrarian Conflicts, or KNUPKA – that continued with the proposal to establish the Land Reform Authority, or BORA (Badan Otorita Reformasi Agraria) as an independent institution with the task to settle conflicts, not restricted to forest zones or non-forest zones. The major argument behind this proposal is, that the cross-sector and cross-time character of tenure conflicts requires the presence of a special and independent institution, which is not caught within the conflict of competency with other parties, and which is able to work effectively to handle current and past conflicts. This proposal is still relevant to date. The Government ought to observe the urgency of such an establishment.

Prerequisites for effective settlement of conflicts

1. Trust by all parties

The first thing that is required from an agency that will settle tenure conflicts is, that all parties have trust in such an institution. The reputation, credibility and independence of the institution or the persons that are to settle the conflicts must be observed.

2. availability of accurate data and data processing

The proper settlement of a conflict requires the availability of accurate data and information regarding causes, the actors and the victims. Considering that most tenure conflicts arise from implementation of policies and licensing, we need access to documents and accurate maps and data on the designation and allocation of forest zones and delimitation of boundaries, as well as on territory claimed by the communities.

conflicting parties and the conflict resolving agencies/ parties must be given access to all of the data mentioned above. For the settlement of tenure conflicts in forest zones cooperation will also be required from several major units in the MoF such as the DG Planning with several other organization that have already undertaken efforts to settle conflicts and to expand the forestry conflict data base, such as the National Forestry Council, the Tenure Working Group (WG Tenure) or the Association for Community- and Ecology based Law Renewal (HuMa).

3. availability of adequate human resources and funds

The availability of human resources (HR) and funds constitutes another important prerequisite. Policies do not work without budget allocation and clarity as to who is going to implement them. Different types of personnel might be required, such as: (1) facilitators, to assist communities in the conflict settlement process; (2) assessors, to study and analyze conflict data submitted by the conflicting parties and verify such data; (3) data processors; (4) mediators, a third party to be mutually agreed upon who will undertake the mediation; (5) lawyers, to maintain and set forth the settlement process in a form of agreement that has legal strength and is executable. All of the above mentioned personnel require special expertise and therefore require adequate financial support.

Financial support could be allocated from the National Budget/Regional Budget bearing in mind that there is already a general policy in place regarding the settlement disputes on land and natural resources in the Medium Term Development Plan 2010–2014. Financial resources from third parties are needed, however these should be based on strict conditions and not binding.

4. Grievance handling unit as front line for avoiding conflicts

By understanding a conflict as a process escalating from grievances and complaints to open disputes, the existence of a unit handling complaints from the community is of utmost importance. This unit must be part of the government authority closest to the community.

5. Continuous conflict handling

The issue of forestry tenure conflicts is latent and extra resources are required for its settlement. Therefore it cannot be dependent on the term of duty of specific officials or restricted budget allocations from the National/Regional Budgets. A conflict settlement policy must be an integral part of the government work program supported by a commitment for continuous funding.

6. Justice and welfare for the victims

Resolving conflicts legally through a court faces numerous constraints. Intricate and expensive procedures and corruption are some of its problems. Meanwhile an out of court settlement often provides only a temporary solution. However the biggest issue in conflict settlement is to what extent does it provide a sense of justice for the parties involved? This is key for a successful conflict settlement.

Existing mechanisms (whether in or out of court) often make it difficult for the victim to grasp justice. All the more so when victims are poor and marginalised such as women and adat communities. Conflict settlement must also ensure access for poor and marginalised people to get justice through a court decision or agreement. Inherent to such access is the guarantee that victims will experience a better life after the conflict is settled. Post-conflict programs for social and economic rehabilitation programs must be undertaken.

Measures that must be taken

1. Develop an integrated strategy for of forest tenure conflict resolution

2. This program is to enhance mutual trust of parties involved in conflict t. Activities that could be undertaken comprise amongst others, indentifying the type of the conflict, analysing the conflicts and determining which agency has authority to resolve the conflict based on its type. **Accelerate the process of conflict resolution and prevention of new conflict.**

The conflict settlement process in the forestry sector is unable to quickly settle existing conflicts and fails to prevent the occurrence of new conflicts. A different resolution mechanism will be required , for example those undertaken by the community itself which has proven to be effective. Though often *ad hoc*, temporary or interim, these processes have succeeded in creating a sense of justice within communities and security of access to forest land and its resources. Such a settlement mechanism typically is build on efforts to reach a pact/ agreement between the conflicting parties.

3. Institutionalising conflict resolution.

This is undertaken by strengthening the existing conflict settlement agencies and organizations. In the medium term an independent agecny should be established to settle conflicts (not in forest zones alone) consisting of multiple parties and covering multiple sectors with executive authority. Such an agency could work together with other parties to identify conflicts and to facilitate consultations or mediation.

Program, activity, agency and time of implementation

Program	Activity	Output	Responsible agency and agency involved	NGO/network/inter-agent forum having the potential to become a partner/initiator of process	Time
1. Develop forest tenure conflict resolution.	1.1 undertake a study of the typology of forestry conflicts and the effectiveness of conflict settlement models	<ul style="list-style-type: none"> Document on the typology of forestry conflicts and the effectiveness of conflict settlement models. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry, Conflict Resolution Task Force) NLA (Deputy for the settlement of land disputes) National Commission on Human Rights 	<ul style="list-style-type: none"> DKN WG-Tenure Epistema Institute HuMa Scale Up (Sustainable Social Development Partnership) KKI Warsi (Warsi Indonesian Conservation Community) Kemitraan Samdhana Institute 	2011-2012
	1.2 Together with civil society groups and other government agencies, collect data on conflict	<ul style="list-style-type: none"> Memorandum of Understanding for the development of a data system on forestry conflicts accessible to the public. Conflict Data accessible to the public. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry, Conflict Resolution Task Force) NLA (Deputy for the settlement of land disputes) National Commission on Human Rights House of Regional Representative 	<ul style="list-style-type: none"> DKN HuMa JKPP Sawit Watch Forest Watch Indonesia (FWI) WG-Tenure Scale Up KKI Warsi Samdhana Institute 	2011-2012
	1.3 Draft a strategy on the settlement of forestry conflicts in coordination with other Ministries/ Agencies.	<ul style="list-style-type: none"> Document outlining a strategy for settlement of forestry conflicts. Regulation of the Minister of Forestry on the procedure and mechanism for the settlement of forestry conflicts. Joint Decree between the MoF and the NLA on the settlement of forestry tenure conflicts. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry, Conflict Resolution Task Force) NLA National Development Planning Agency National Commission on Human Rights 	<ul style="list-style-type: none"> DKN HuMa JKPP Sawit Watch Forest Watch Indonesia (FWI) WG-Tenure Epistema Institute AMAN Kemitraan Pusaka KPA FKKM KPSHK Scale Up KKI Warsi 	2012

1. Accelerate the process of conflict resolution and prevention new conflicts.	2.1 Compile a list of priorities for the settlement of forestry conflicts 2012-2014.	<ul style="list-style-type: none"> • MoF Decree of the on priorities for resolving conflict in forest areas for 2012-2014 • Joint Decree of MoF and NLA on determining priorities for the settlement of tenure conflicts involving both institutions. 	<ul style="list-style-type: none"> • MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) • NLA (Deputy conflict settlement) • National Forestry Council • National Commission on Human Rights 	<ul style="list-style-type: none"> • DKN • HuMa • JKPP • Sawit Watch • Forest Watch Indonesia (FWI) • WG-Tenure • Epistema Institute • AMAN • Pusaka • KPA • FKMM • KPSHK • Scale Up • KKI Warsi • Kemitraan • Samdhana Institute 	2012
	2.2. establish a team for the settlement of conflicts in priority territories/ cases.	<ul style="list-style-type: none"> • MoF Decree of the on the establishment of a team for conflicts resolution in priority areas/ cases 2012-2014 to replace MoF Decree No.SK.254/Menhut-II/2008. This Decree grants a mandate and clear authority to the Task Force for Conflict Resolution to settle conflict in priority cases. • Joint Decree of MoF and the Head of BPN on the establishment of an integrated team for the settlement of tenure conflicts in forestry zones. 	<ul style="list-style-type: none"> • Forestry Ministry (Planning Directorate General, BUK, PHKA, BPDASPS, Legal Bureau) • BPN (Deputy conflict settlement) • National Commission on Human Rights 	<ul style="list-style-type: none"> • DKN • HuMa • JKPP • Sawit Watch • Forest Watch Indonesia (FWI) • WG-Tenure • Epistema Institute • AMAN • Pusaka • KPA • FKMM • KPSHK • Scale Up • Kemitraan • Samdhana Institute 	2012
	2.3 Resolve conflicts in priority cases/ territories through mediation and negotiations resulting into an agreement.	<ul style="list-style-type: none"> • Documentation on the conflict settlement process and follow up plan. 	<ul style="list-style-type: none"> • MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) • BPN • National Commission on Human Rights 	<ul style="list-style-type: none"> • DKN • HuMa • JKPP • Sawit Watch • Forest Watch Indonesia (FWI) • WG-Tenure • AMAN • Pusaka • KPA • FKMM • KPSHK • Scale Up • KKI Warsi • Kemitraan 	2012-2014
	2.4 develop a Government Regulation for out of court settlement of disputes in the forestry sector as implementation of Article 74 Law 41 of the year 1999. Draw up a policy to recognize the conflict settlement mechanism conducted by communities provided it does not contradict human rights principles.	<ul style="list-style-type: none"> • Government Regulation on out of court settlement of forestry disputes. 	<ul style="list-style-type: none"> • MoF (DG Planning DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) • State Secretariat • Ministry of Law and Human Rights • BPN • National Commission on Human Rights • Supreme Court 	<ul style="list-style-type: none"> • DKN • AMAN • HUMa • Epistema Institute • WG-Tenure 	2012-2013

2. Institutionalising conflict resolution	3.1 Clarify the role of the National Forestry Council in supporting forestry tenure conflict resolution including a clear authority and adequate budget allocation.	<ul style="list-style-type: none"> Revised MoF Decree No. 254/Menhut-II/2008 appointing the National Forestry Council as the interim forestry conflict resolution agency until a permanent independent agency can be established. Adequate budget is allocated to the National Forestry Council Establishing a grievance handling unit at the Forestry Ministry. 	<ul style="list-style-type: none"> Forestry Ministry Secretariat General (Legal Bureau) 	<ul style="list-style-type: none"> DKN HuMa WG-Tenure Kemitraan Samdhana Institute 	
	3.2 Establish a grievances units at the MoF as part of the National Forestry Council Conflict Mediation Team and at all Regional Forest Service agencies.	<ul style="list-style-type: none"> MoF Decree on the Establishment of a grievance unit at MoF as part of the Conflict Resolution Mediation Team with the necessary staff assigned, budget allocated and facilities provided grievance unit. Joint Decree of MoF and the MoDA regarding the establishment of a grievances unit at regional government agencies. 	<ul style="list-style-type: none"> Secretariat General of MoF (Legal Bureau) Ministry of Domestic Affairs (Directorate for the Handling of Conflicts) 	<ul style="list-style-type: none"> DKN HuMa WG-Tenure Kemitraan Samdhana Institute KPA 	2012
	3.3. form a joint committee M0F, MoDA, BPN, National Commission for Human Rights, several Governors/ Bupatis and civil society groups to prepare an independent agency for the settlement of tenure conflicts.	<ul style="list-style-type: none"> Joint Decree of MoF, MoDA, , NLA, and National Commission on Human Rights Chairman to prepare an independent institution for the settlement of tenure / land conflicts. 	<ul style="list-style-type: none"> MoF MoDA NLA Chairman National Commission on Human Rights 	<ul style="list-style-type: none"> DKN HuMa KPA WG-Tenure Kemitraan Samdhana Institute Epistema Institute 	2012
	3.4. establish an independent agency for the settlement of tenure conflicts having executive authority and in line with regional autonomy.	<ul style="list-style-type: none"> GR on the establishment of an independent agency for tenure conflicts resolution. An independent agency for the resolution of tenure conflicts established and equipped authority, personnel, and financing. Joint decree of MoF , NLA, MoDA regarding the establishment of forestry conflict grievance units at regional government agencies. 	<ul style="list-style-type: none"> MoF NLA State Secretariate Ministry of Justice and Human Rights National Development Planning Agency (Directorate of Law and Human Rights) National Commission on Human Rights Ministry of Domestic Affairs 	<ul style="list-style-type: none"> KPA HuMa Epistema Institute WG-Tenure AMAN Pusaka Kemitraan Samdhana Institute 	2012-2014

The third domain

Expansion of community managed forest areas and increased prosperity of adat (customary law) and local communities

Why should we work in this domain?

Adat and local communities are the two major social groups living in and around the forest area. The two groups have different histories of land and resources control, and thus a different basis for claiming forest zones. In practice, both groups are marginalized with no recognition of their rights and no adequate access to forest zones to make a fair living.

Recognition of adat community rights is important, as approximately 30-50 million members of adat communities live and depend for their living from the forest. Though contrary to the 1945 Constitution and the Land Law (UUPA), Article 1 point 6 and article 5 section 2 of Law No. 41 of the year 1999 included adat forest as part of state forests and thereby gave rise to the conflicts of today. Without a strong, acceptable, legal basis for recognition and protection of their rights, adat communities are very vulnerable.

Adat rights are special in that they are often collective and hereditary, arising from resource use long before the Republic of Indonesia was formed. It is this special character that constitutes an argument to treat adat communities in a special manner in the forest tenure issue.

In general, communities living and existing in villages inside and around the forest, whether they identify themselves as adat or local community, mostly live in poverty. Some 15% of the 48 million people who live inside and around the forest are poor. The MoF Strategic Plan 2010–2014 mentions that in 2003 approximately 10,2 million poor people are linked to forest territory. Meanwhile data from MoF and the Central Statistics Bureau show some 5,5 million people categorised as poor living around forest zones in 2007.

The MoF has developed a set of policies meant to empower forest communities including several schemes, such as Community Forests (HKm), village forest and People's Timber Plantation (HTR). Nevertheless implementation has been extremely slow. Between 2007 when the policies were issued until December 2010, the area defined for HKm was only 78,901.36 hectare, Village Forest 13,351 hectare and People's Timber Plantation (HTR) 631,638 hectare. At the same time up to December 2010, the Districts issued 11 Business Permits for the Utilisation of 19,711.39 hectare Community Forests (IUPHKm), the Governor has issued 5 Village Forest Management Permits (HPHD) for an area of 10,310 hectare and several districts have issued 54 Business Permits for the Exploitation of Timber Forest Products in People's Timber Plantations (IUPHHK-HTR) with an area of 90,414.89 hectare. The total area is much less than the targets set by MoF and minuscule compared to the area of large scale forest enterprises for which the government issued licenses. The number of Forest Concession Permits (HPH) - now Business Permit for the Exploitation of Timber Forest Products in Primeval Forests or (IUPHHK-HA) - in the year

2009 alone was 304 units with an area of 25.7 million hectares, whereas the number of units for the Permit for the Exploitation of Industrial Plantations (HPHTI) or the Business Permit for the Exploitation of Timber Forest Products in Plantation Forests (IUPHHK-HT) until 2008 amounted to 227 units with an area of 10.03 million hectares. . Obviously, this constitutes an injustice.

Policies for community empowerment, in particular policies on Community Forest (HKm), Village Forest, Collaborative Forest Management (PHBM) by State Owned Enterprise Perum Perhutani and People's Timber Plantation (HTR) are in fact quite restrictive, with communities having no access to utilise high value forest products, such as timber. As well, most do not grant priority to the poor and the landless or practically landless. The procedure for obtaining permits for the utilisation of timber from Community Forests (HKm) and Village Forests is still centralised at the MoF and its licensing mechanism distinct from the Business Permit for the Utilisation of Forest Products in Community Forests (IUPHKm) and Village Forest Management Permits (HPHD). The government also issued policies for empowering communities in conservation zones, such as in Nature and Wildlife reserves. Several schemes are possible: (1) the development of conservation villages; (2) permits to collect non-timber forestry products in the exploitation zone or block, traditional exploitation, and nature tourism service enterprises; and (3) facilitation of partnership for holders of forest exploitation licenses with the community. These policies are not yet implemented as GR No. 28 of the year 2011 on the Management of Wildlife Reserve and Nature Conservation Zones was only promulgated on 19th May 2011 and there are no implementation regulations yet. Moreover, they do not include the option of allocating Community Forest in conservation areas with the exception of nature preserves and national park core zones. GR No. 6 of the year 2007 states that the provisions regarding community forests in conservation forests will be arranged by separate government regulation.

As some Community Forest initiatives were developed in areas which were redefined as conservation areas, such a policy is badly needed. . The conservation village concept or scheme has not provided much help as it remains unclear to what extent the access granted will empower the community.

The policy for community empowerment in conservation forest only targets communities living next to KSA and KPA – and does not yet provide for communities living within such zones. A ministerial level policy that clarifies this matter is MoF Regulation No. P.56/Menhut-II/2006 on Guidelines for Zoning of National Parks. This regulation makes it possible for a special zone to be designated inside a National Park to provide a source of livelihood for community groups who were present before the territory was designated as a National Park. Will community living within the special zone be able to develop a conservation village and will they have access to licenses and facilities for the empowerment of the community according to GR No. 28 of the year 2011?

Meanwhile, the development of community empowerment through partnership schemes, thus far has no adequate guidelines for equal partnership models able to provide tangible benefits to the forest village communities. Studies show that existing, partnership models, involving SOE environment or the private forestry sector, have not yet been able to provide significant profits to the lowest layers of society. In fact, most profits from such partnership programs have been enjoyed by upper layers of society. Thus partnership programs in the forestry sector are of-

ten seen as having the tendency to reproduce poverty gaps. Partnership programs such as PHBM (Collaborative Forest Management) on Java, or the HTI (Industrial Plantation Forest) outside Java, should be encouraged to develop an empowering partnership, not the reverse. Government policy intervention, in this case from the MoF, is seen to be urgently needed, whether for normative reasons to carry out their mandate of regulating or for strategic reasons to break the poverty chain in the forest village community environment.

The various illustrations above show how policies for community empowerment does not yet fully fulfil the principles and aims of forest management (General Provisions Part Two of the Principles and Aims, Law 41 of the year 1999), in particular with regard to the principles of democracy and justice. The elucidation of the principles of democracy and justice in forestry management states, that each forestry management program must provide equal chances and opportunity to all citizens according to their ability, thus enhancing the prosperity of the entire population.

In order to fulfill the principle and aims of forestry management as commissioned by Law No. 41 of the year 1999 and the recognition of the rights of the adat community as mandated by the 1945 Constitution and the Land Law (UUPA), it is necessary to immediately undertake efforts to accelerate and expand the area of forest zone designated to adat and other local communities in and around the forest, the so called the people's management territory.

Synergy of legality and prosperity communities managed area

Strengthening the legality of control of the forest areas by communities is very important and of great urgency, however this alone is not enough. The right on forest areas assigned to the community will not immediately produce improved prosperity of the beneficiary community. Likewise, neither does it guarantee that all layers of the community will receive equal access to the forest and enjoy its benefits. Therefore, **enhancing prosperity of forest managing communities and its equitable (re)distribution among its members, in particular to the poor and marginal groups**, must become one of the major targets of the forest tenure policy reform in Indonesia.

It is important to realise that the relations of control over resources are very complicated. It is not merely a matter of establishing *legal relations* (as the basis for granting rights on specific resources), nor solely *technical relations* (related to technology and management of utilisation and management of resources), but most importantly it involves *social relations* (i.e. concerning the position of various social groups in respect of access and control of resources). The latter is not limited to relations between the state-the community-the entrepreneur (which is frequently construed as the manifestation of the "*troika principle*"); but includes social relations among the various groups within the community itself (i.e. involving the gender relations, relations between social layers, between ethnical groups, between generations etceteras).

With this understanding, the expansion of the community managed area is just an initial step in restructuring the *legal relations* between the community and the forest area that serves as their source of living. However, only getting rights to the resources is not enough benefits

from such resources. Allocating rights will provide an *endowment* to a certain resource, however it does not automatically provide *entitlement*. Moreover, the allocation of the right itself, might in fact exclude poor and marginal groups, thus having the potential of intensifying the social gap within the community.

To ascertain enhancement of prosperity and equitable distribution of benefits, another agenda must be carried out simultaneously with the restructuring the *legal relations*, i.e. restructuring *technical and social relations*. This includes the development of people's capability to utilise resources, and an equitable (re) benefit distribution scheme. As communities are not homogeneous, we need to also develop affirmative measures to ensure inclusion of poor and marginal groups.

Thus, there are two major initiatives to enhance prosperity, namely *first*, developing community *capabilities* in such aspects of technical skills, accessing capital and markets, management, through government programs. This encompasses amongst others: 1) facilitation in development of economic opportunities, 2) capacity building, 3) access to credit parallel to strengthening the capacity to use savings as capital for collective enterprise, 4) the provision of market information, 5) development of domestic markets, 6) public investment in rural production facilities (irrigation, production roads, transportation means, lighting, clean water, machineries and tools to turn raw material into finished/ ready for use objects, etceteras. Only then will the community be able to maximise benefits from forest zones.

Second, develop *affirmative action* to ensure that the poor and marginal groups shall receive the same opportunities to gain benefits from the recognition of the community managed areas.

Prerequisite

We hold the opinion that the expansion of community managed areas and improved livelihood of adat and local communities needs to fulfill a set of prerequisites applicable to all types of communities and efforts.

The recognition of the adat community rights must comply with the following prerequisites:

- Accept that the right of communities to a territory providing their source of livelihood, constitutes an authentic right, in the sense that it has existed before the Republic of Indonesia was established, and that has been handed through generations. Thus, rights of adat communities must be comprehended as *human rights*, and not just as *legal rights* endowed by the State;
- Adat communities are dynamic. An adat community itself determines whether it still exists or not; (*self-identification*);
- Understand the existence of adat communities as a continuum, from high to low social-political resilience. As well, accept the fact of the existence of tribes independent of ad-

ministrative villages, such as the nomadic tribes, like the Suku Anak Dalam (Rimba);

- Active involvement of adat communities in the planning and implementation of activities that impact their rights and their environment. In the process of legal recognition, it will be necessary to apply the *free, prior and informed consent* (FPIC) principles;
- establish a process/ process proposal that allow participation by several government agencies, including MoF, NLA, the MoDA, and regional governments in the recognition of the rights of adat communities on their territory.

Acceleration and expansion of the community managed areas providing legal access through existing policy instruments (Community forest or HKM, Village Forest or Hutan Desa, and People's Timber Plantation or HTR) requires the fulfilment of the following prerequisites:

- Based on principles of justice and equity all rural forest communities should have equal opportunities to access and make use of available policies such as HKM, Village Forest or Hutan Desa, and People's Timber Plantation or HTR in accordance with the forest's function and community's condition;
- Partnership schemes such as Collaborative Forest Management or PHBM and People's Timber Plantation or HTR, should be oriented at developing the people's self-sufficiency, and should avoid being exploitative and benefitting only the village elite;
- The regional government should play an active role in the implementation of policies on community empowerment from the proposal phase until facilitating community empowerment, both prior to and after obtaining permits. We need a regional policy that is not contrary to community aspirations for obtaining permits for Community forest or HKM, Village Forest or Hutan Desa, and People's Timber Plantation or HTR. MoF should support the Regional Government through technical advice and or financing;
- Pro-active policies for the expansion community management area, through laws and regulations that provide easier procedures in obtaining management rights. Such regulations could be in the form of MOF regulations Joint Ministerial Decree Presidential Regulations or Presidential Instructions (Inpres).
- Civil Society Groups to facilitate community access to the the empowerment policy. MoF should be proactive in developing cooperation and synergy with Civil Society Groups from the local level up to the national level.

To empower communities in conservation zones, the following prerequisites must be observed:

- Ensure legal security and support to communities in and around the Conservation Areas (KSA, KPA) in the effort to build solidarity in sustaining the conservation function of forests

- Solve the dualism between the forestry policies (Law No. 41 of the year 1999) and conservancy policies (Law No. 5 of the year 1990) by reconciling Government Regulation (GR) No. 6 of the year 2007 and GR No. 28 of the year 2011.
- The Law on Conservation of Biodiversity Resources and their Ecosystem (Law No. 5 of the year 1990) must be revised by accommodating conservation initiatives of the (adat and local communities).

The prerequisites to develop a partnership program able to attain equality within the community are as follows:

- Government regulations are allowing the development of partnership schemes which empower forest village communities.
- Partnership programs needs to be targetted to marginalized groups of society.
- Measures preventing elite capture need to be in place.
- Partnership programs must be based on equality, therefore must include affirmative actions.
- Sustainable monitoring and evaluation strategies are required supported by independent parties.

Whereas to enhance prosperity the following prerequisites are needed:

- Complete and accurate field data to support the schemes of right enforcement, licensing and development programs for the community. We need social economic maps of the community, including the discrepancy in controlling sources of production. We need the involvement of various parties to provide such data, including the participation of the community from different social backgrounds;
- Support from the Government and the Regional Government. The social and economic development of communities around forest areas is lagging far behind due to limited access, low HR quality, infrastructure conditions, and public service. Governments at all levels should create a condition enabling communities to utilise and exploit forest areas in a productive and sustainable manner;
- Integrate economic development of communities in the forestry sector with other sectors in the form of rural industrialisation. The rural industrialisation we have in mind is to add of value from forestry and agricultural production in rural areas to move beyond dependence on raw material, to also produce finished products. Thus, endowment of legal rights is the first step in the overall efforts to transform the rural into a stronger, more productive and integrated economy with the other economic sectors. This requires integration of the inter-sector policies and programs towards empowering rural communities, , in particular those who live around or within the forest zone with a minimum of infrastructure and public service;

- Provision of a special credit scheme for communities around the forest in line with the capacity building in management of enterprises and the development of economic institutions. The productive exploitation of the forest zone is only possible if communities are enabled to make long term investment. Such investments requires the availability of sufficiently large capital, which could be obtained amongst others through access to bank credits. Public funds must be allocated sufficiently to provide a special credit scheme to communities surrounding the forest. Providing access to credit must be accompanied with capacity building to manage an enterprise, whether from the institutional aspect, skill and knowledge, access to market information and alternative markets. Thus, access to credit could provide productive power rather than providing a way to be ensnared in debt;
- Prioritising participation of poor and marginal groups in the scheme of developing economic institutions focusing on endeavours to fulfill subsistence needs in a productive manner before shifting to processes for integration for rural industrialisation.

Measures to be undertaken

For the expansion of community managed areas and enhancement of prosperity the following range of measures must be undertaken:

- 1. Recognition of the right of adat communities to their territory** through:
 - a) Identification, inventories and mapping of adat territories;
 - b) Social mapping of adat communities;
 - c) Determining priorities for recognition of rights of the adat communities 2012-2014;
 - d) Strengthening the social-economic conditions of adat communities in priority territories 2012-2014;
 - e) Recognition of the existence and rights of adat communities by the Regional Government and excluding adat territories from the forest estate in the priority territories 2012-2014;
 - f) Establishing laws for the recognition and the protection of adat communities. This is based on our view that the currently existing regulations are not effective and not strong enough to encourage the Regional Government to acknowledge the existence of the local community, in particular in relation to forest territories/ zones.
- 2. Acceleration and expansion of the community managed areas of local communities through schemes of Community Forest (HKM), Village Forest (Hutan Desa) and People's Timber Plantation (HTR),** through:
 - a) Cross sector policy support for community empowerment in and around forest areas

through community forests to be set forth in a Presidential Instruction and Joint Decree of the relevant Ministers/ Heads of Agencies;

- b) Increased support of resources (budget)⁵;
- c) Simplification of procedures for determining the work area of Community Forests (HKm) and Village Forest (Hutan Desa) through changes in the MoF Regulations No. P.47/Menut-II/2007 and No. P.49/Menhut-II/2008 which delegates authority to determine the work area of Community Forests (HKm) and Village Forest (Hutan Desa) from the Minister to the Technical Implementation Unit (UPT) of the Agency for Forest Zone Protection);
- d) Integration of timber utilisation permits by Cooperatives and Rural Community Enterprises (BUM Des) into Business Permits for the Utilisation of Forest Products in Community Forests (IUPHKm) and Village Forest Management Permits (HPHD) to facilitate people's access to harvest and market timber;
- e) The provision of one-stop service for licensing Community Forests (HKm), Village Forest (Hutan Desa) and People's Timber Plantations (HTR) in the regions;
- f) Facilitating the community and the regional government;
- g) Additional allocations of Community Forests (HKm) and Village Forests (Hutan Desa) areas and increased the number of licenses for Community Forests (HKm) and Village Forests (Hutan Desa);
- h) Amendment of MoF Regulation on the expansion of the utilisation of the Special Allocation Fund (DAK) and the Reforestation Fund (DR) for the community empowerment schemes.

3. Empowerment of the community within the conservation areas through:

- a) Revision of Law No. 5 of the year 1990 in order to accommodate the conservation initiatives of adat and local communities;
- b) Develop a joint concept on Community Conservation Forest (HKm Konservasi) and Conservation Villages as the basis for developing policies on the empowerment of community in conservation zones;
- c) Issuance of policies on community empowerment in conservation zones that will be

⁵ In a simulation conducted by Kemitraan, the calculation of average cost needed for the development of the HKm and Hutan Desa programs, from its initiation, including facilitation until the issuance of the utilisation permit by the Bupati or the Governor, is Rp. 500,000/hectare. A minimum of 250 billion/yr would therefore be needed to achieve the government targets (Hery Santoso, 2011). The total of the budget for Social Forestry in 2011 was Rp. 51.2 billion, of which Rp. 29 billion for HKm and Rp. 19 billion for Hutan Desa is managed by other Directorates and UPTs of Directorate General BPDASPS, while the Social Forestry budget managed by the Directorate of Social Forestry in 2011 was only Rp. 1.6 billion for HKm and Hutan Desa. . Whereas the budget.

able to provide protection and tenure certainty to the community.

4. Community Empowerment through partnership schemes:

- a) Compiling regulations that contain guidelines for equitable partnership and that are able to nurture equality;
- b) Development of affirmative action approaches;
- c) Development of an arbitration agency by a third party;
- d) Development of sustainable monitoring and evaluation institutions.

5. Enhancement of prosperity, via:

- a) access to capital and forest product marketing through institutional strengthening, building ability in business management and product development;
- b) Cross sector coordination to facilitate access to capital/credit, expansion of the timber and non-timber product market and product development from raw material into finished or semi-finished products;
- c) Facilitation for Social-economic development to ensure access and protection of the poor and females to the (re)distribution of forest product benefits;
- d) Support rural infrastructure and production facilities development via public investment, oriented at the self-sufficiency to avoid dependence on private investment.

Program, activity, agency and time of implementation

Program	Activity	Output	Responsible agency and agency involved	NGO/network/inter-agent forum having the potential to become a partner/initiator of process	Time
1. Recognition of the right of adat communities to their territory	1.1 Identify, inventory and map adat community managed territories in and outside the forest zone with their participation;	<ul style="list-style-type: none"> Memorandum of Understanding between MoF, NLA, AMAN, BRWA to identify, inventory and map adat community managed territories in the forest estate; 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) BPN 	<ul style="list-style-type: none"> AMAN BRWA Kemitraan 	2011
		<ul style="list-style-type: none"> MoF Decree on the establishment of a work unit at the DG Planning for the identification, inventory and mapping of the adat community managed area in the forest estate; 	<ul style="list-style-type: none"> MoF (DG Planning , Legal Bureau) 	<ul style="list-style-type: none"> AMAN BRWA/JKPP HuMa Pusaka Epistema Institute Karsa Kemitraan 	2011
		<ul style="list-style-type: none"> MoF Decree on the establishment of a work group MoF-AMAN, NGO for the implementation to identification, inventory and mapping of the adat community managed areas in forest zones; 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> AMAN BRWA/JKPP HuMa Pusaka Epistema Institute Karsa Kemitraan KKI Warsi Bioma (Human Biosphere) 	2012
		<ul style="list-style-type: none"> Document on the results of the of the identification, inventory and mapping of adat community managed territory which is accessible by the public. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, PR Bureau) 	<ul style="list-style-type: none"> AMAN BRWA/JKPP HuMa Pusaka Epistema Institute Karsa Kemitraan KKI Warsi Bioma 	2012-2014
	1.2 Social-Economic Mapping of Adat Communities;	<ul style="list-style-type: none"> MoF Decree to establish a team for Social-Economic Mapping of Adat Communities in the forest zone. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Forestry Development Research Agency, PR Bureau) 	<ul style="list-style-type: none"> AMAN KPSHK KKI Warsi Sains Pusaka Epistema Institute HuMa Karsa Kemitraan Bioma 	2012
		<ul style="list-style-type: none"> Document on the results of Social mapping consulted with adat communities and civil society groups. 	<ul style="list-style-type: none"> MoF (DG Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Forestry Development Research Agency, PR Bureau) 	<ul style="list-style-type: none"> AMAN KPSHK KKI Warsi Sains Pusaka Epistema Institute Karsa Kemitraan Bioma 	2012-2014
	1.3 Designating priority areas for adat communities pursuant to output of 1.1 and 1.2;	<ul style="list-style-type: none"> MoF Decree on the designation of priority areas for adat communities in the forest zone 2012-2014. 	<ul style="list-style-type: none"> MoF (DG of Planning , DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Forestry Development Research Agency, Legal Bureau) 	<ul style="list-style-type: none"> AMAN BRWA/JKPP KPSHK KKI Warsi Sains Pusaka Epistema Institute Karsa Kemitraan Bioma 	2013

	1.4 Recognition of adat communities' rights;	<ul style="list-style-type: none"> Regional Regulation on the recognition of the existence and the rights of adat communities in priority territories. 	<ul style="list-style-type: none"> Ministry of Domestic Affairs Ministry of Law and Human Rights Regional Government 	<ul style="list-style-type: none"> AMAN HuMa Epistema Institute Pusaka Karsa Kemitraan Bioma 	Starting 2013
		<ul style="list-style-type: none"> MoF decree on exclusion of adat territories from of forest zone 	<ul style="list-style-type: none"> Ministry of Forestry (DG Planning General Legal Bureau) 	<ul style="list-style-type: none"> AMAN HuMa Epistema Institute Pusaka Karsa 	Starting 2013
	1.5 Implementation of a program to support economic and social development for adat and local communities including providing access of the poor and women in adat and local communities to forest product benefits.	<ul style="list-style-type: none"> MoF Decree on the implementation of the program to strengthen adat communities in forest zones 2012-2014. 	<ul style="list-style-type: none"> MoF (DG forest business, , DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> AMAN KPSHK Sains Bioma Epistema Institute 	2013
		<ul style="list-style-type: none"> Memorandum of Understanding between MoF and , Regional Govts in priority areas y and AMAN for the implementation of programs to support economic and social development of . adat communities 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> AMAN KPSHK Sains KKI Warsi Bioma Epistema Institute 	2013
		<ul style="list-style-type: none"> Report on the implementation of the program to support economic and social developmentof adat communities in forest zones 2012-2014. 	<ul style="list-style-type: none"> MoF (DG DG Forest Enterprise, DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry,, PR Bureau) 	<ul style="list-style-type: none"> AMAN KPSHK Sains KKI Warsi Bioma Epistema Institute 	2013-2014
2. Acceleration and expansion of local community managed areas	2.1 Strengthening cross sector policy support for the program to empower the local community in and around the forest zone;	<ul style="list-style-type: none"> Pres.Instruction on the empowerment of the community in and around the forest; Joint Decree MoF, MoDA ,Min. of Agriculture, Min. of Cooperatives/small and medium scale enterprises, State Min. for developing undeveloped regions and MoFin for synergy of the social and economic empowerment of communities in and around the forest. 	<ul style="list-style-type: none"> State Secretariat MoF (DG DG Forest Enterprise, DG Watershed Management and Social Forestry,) PDT Ministry Cooperatives/ Ministry UKM MoAg MoDA MoFin 	<ul style="list-style-type: none"> FKKM WG-Empowerment (Empowerment Working Group) Javlec KKI Warsi KPA Kemitraan 	2012
	2.2 Simplifying the procedure for the allocation and licensing of HKM and Village Forest and integration of the timber utilisation permit in the HKm and Village Forest licenses;	<ul style="list-style-type: none"> MoF regulation on the third amendment of Permenhut No.P.37/Menhut-II/2007 on HKm, and Permenhut No.P.49/Menhut-II/2008 on Village Forest (amendment related to the procedure of allocation and licensing and integration of the timber utilisation permit. 	<ul style="list-style-type: none"> MoF (DG Watershed Management and Social Forestry, and Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Kemitraan KKI Warsi Javlec 	2011-2012

	2.3 Establishment of one door service units for HKm, Village Forest and HTR licensing;	<ul style="list-style-type: none"> MoF regulation on One Door Service in HKm, Village Forest and HTR licensing (this Permenhut will provide the legal basis for functional efficiency UPT BP DAS, BPKH and BP2HP as one door service in the region. 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Kemitraan Javlec KKI Warsi 	2012
	2.4 Further support and facilitating of the community in submitting requests for HKm, HTR and Village Forest permits;	<ul style="list-style-type: none"> Memo of Understanding between MoF and NGOs to expand community facilitation and support programs in submitting requests for HKm, HTR and Village Forest permits; 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, , DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha JKPP Bioma Kemitraan 	2012
		<ul style="list-style-type: none"> Document on process and output of community support accessible to the public. 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, ,DG Watershed Management and Social Forestry,, PR Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha JKPP Bioma Kemitraan 	2012-2014
	2.5 Facilitating and supporting Regional Governments in for submitting proposals on the work area of HKm, HTR, Village Forest;	<ul style="list-style-type: none"> Memo of Understanding MoF and Mo DA for the facilitation and support to Regional Governments in submitting proposals forest land allocation and issuing of licenses for HKm, HTR, Village Forest; 	<ul style="list-style-type: none"> MoF, (DG Forest Enterprise, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Bioma Kemitraan 	2012
		<ul style="list-style-type: none"> MoF Decree on allocation of priority areas for Regional Governments support 2011-2014; 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha Bioma Kemitraan 	2012
		<ul style="list-style-type: none"> MoF Decree for the establishment of a work team to support Regional Governments; 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Watershed Management and Social Forestry,, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha Kemitraan 	2012
		<ul style="list-style-type: none"> Process documentation and results of support to Regional Governments. accessible to the public. 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Watershed Management and Social Forestry,, PR Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha Bioma Kemitraan 	2012-2014

	2.6 Additional areas allocated for HKm, Village Forest and HTR by moF;	<ul style="list-style-type: none"> MoF Decree on allocation of areas for area HKm, Village Forest and HTR. 	<ul style="list-style-type: none"> MoF (DG Forest Enterprise, DG Watershed Management and Social Forestry, Legal Bureau) 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha Bioma Kemitraan 	2011-2014
	2.7 Additional licenses issued for HKm, Village Forest and HTR by Bupati and Governor.	<ul style="list-style-type: none"> Bupati/ Governor Decree on issuance of IUPHKM, HPHD, IUPHHK-HTR particularly in areas supported. 	<ul style="list-style-type: none"> Governors and bupati the respective regions 	<ul style="list-style-type: none"> FKKM WG-Empowerment Javlec KKI Warsi Konsepsi Watala Samantha Bioma 	2011-2014
3. Empowerment of the community in KSA and KPA (Conservation zones).	3.1 Revise Law No. 5 of 1990 on the Conservation of Biological Resources and their Ecosystem in order to accommodate the conservation initiatives by adat and local communities	<ul style="list-style-type: none"> Text of Revised Law No. 5 of 1990. 	<ul style="list-style-type: none"> MoF (DG Forest Protection and Nature Conservation, Legal Bureau) Inter-departmental Team State Secretariate 	<ul style="list-style-type: none"> DKN HuMa FKKM Task Force on Conservation Policies (Pokja Kebijakan Konservasi) 	2011
	3.2 Develop a common concept on Conservation Community Forests (HKm Konservasi) and Conservation Villages (Desa Konservasi) as the basis for developing policies on community empowerment in conservation areas.	<ul style="list-style-type: none"> MoF Regulation of (Permenhut) on community empowerment in conservation areas 	<ul style="list-style-type: none"> MoF (DG Forest Protection and Nature Conservation, DG Watershed Management and Social Forestry, Legal Bureau) 	<ul style="list-style-type: none"> Kemitraan FKKM Task Force on Conservation Policies (Pokja Kebijakan Konservasi) 	2011-2012
4. Empowerment of the community through partnership scheme	1.1 Review on partnership models of national forestry sector;	<ul style="list-style-type: none"> Map of partnership scheme of the forestry sector 	<ul style="list-style-type: none"> MoF (DG Watershed Management and Social Forestry,) 	<ul style="list-style-type: none"> WG-Empowerment FKKM DKN Javlec KKI Warsi Epistema Institute 	
	1.2 Draft guidelines for partnerships in the forestry sector	<ul style="list-style-type: none"> MoF regulation on guidelines for partnerships 	<ul style="list-style-type: none"> MoF (DG Watershed Management and Social Forestry) 	<ul style="list-style-type: none"> WG-Empowerment FKKM DKN 	

	1.3	Develop-ment of a partnership arbitration agency in the forestry sector.	<ul style="list-style-type: none"> • Forestry partnership arbitration agency 	<ul style="list-style-type: none"> • National Forestry Council • Working Group for Community Empowerment 	<ul style="list-style-type: none"> • FKMM • Javlec • KKI Warsi • Epistema Institute 	
5. Enhancement of prosperity.	5.1	Develop community capabilities in economics; product development and business management of by providing and facilitating access to forest resources, capital and markets ;	<ul style="list-style-type: none"> • Joint Decree of MoF, MoDA, MoFin, Director of Bank Rakyat Indonesia, Coop./MoCooperatives/ Small Scale Industries (MoCSSI) and Business, and MoAg to improve community access to capital and markets. 	<ul style="list-style-type: none"> • MoF (Directorate General, DG Watershed Management and Social Forestry Legal Bureau) • MoDA • MoAg • MoCSSI • MoFin • Bank Rakyat Indonesia 	<ul style="list-style-type: none"> • Sains • KpSHK • Yayasan Setara • Kemitraan 	2012
	5.2	Establishment of mechanisms and rules to coordinate credit flow from several sectors to communities in and around the forest for the purpose of developing entrepreneurship in HKm and Village Forest;	<ul style="list-style-type: none"> • Cross-sector Coordinating Forum to provide UKM Credit to communities in and around the forest at Kabupaten level in the areas where HKm and Village Forest is facilitated. 	<ul style="list-style-type: none"> • District Governments • Related SKPD (Forestry, Agriculture, Cooperative/UKM) 	<ul style="list-style-type: none"> • Sains • KPSHK • Yayasan Setara • Kemitraan • Regional NGO's 	Starting 2012
	5.3	Establishment of regulations on affirmative action , and economic-social support to poor and marginal groups within communities in and around the forest to ascertain equal access to benefits from HKm, HTR and Village Forest	<ul style="list-style-type: none"> • Document reporting on facilitation processes and outputs accessible to the public. 	<ul style="list-style-type: none"> • District Governments • Related SKPD (Forestry, Agriculture, Cooperative/UKM) • Implementing actors of the Poverty Eradication Programs 	<ul style="list-style-type: none"> • Sains • KPSHK • Yayasan Setara • Kemitraan • Regional NGO's 	Starting 2012

6. Closing Remark

This document is meant as an accountability report presented of civil society on of how to achieve justice with regard to forest tenure rights. We have composed this document as a contribution to the endeavours of the Indonesian Government, specifically the Ministry of Forestry to reform the forest tenure policy. Although this document focuses on the policy reform efforts in the period of 2011-2014, we understand this period as the time to lay a solid base for future efforts to improve the policy and management structure of forestry.

Collaboration is central to this effort, both internal government collaboration (coordination), among the Ministries/institutions or among the work units within the Ministries, as well as collaboration between the central and regional governments. In addition we stress the necessity for collaboration between the central/regional governments with civil society groups based on the principles of transparency, accountability and participation.

Finally, no improvement will be possible without consistent evaluation and strong public control of the progress. It is for this that the civil society groups are ready to fulfil their role in order that improvement on all fronts may become a reality.

References

Andiko

2011 *Konflik kehutanan dan penanganannya di Indonesia*. Paper at the Workshop Merumuskan Arah Reformasi Kebijakan Penguasaan Hutan di Indonesia, Hotel Grand Cemara, Jakarta 31 Mei 2011.

Arsyad, Idham

2011 *Forestry land reform: Gagasan dan pelaksanaannya di Indonesia*. Paper at the Workshop Merumuskan Arah Reformasi Kebijakan Penguasaan Hutan di Indonesia, Hotel Grand Cemara, Jakarta 31 Mei 2011.

Ministry of Forestry and Central Statistic Bureau

2007 *Identifikasi desa dalam kawasan hutan 2007*. Jakarta: Ministry of Forestry and Central Statistic Bureau.

Muhajir, Mumu, Yance Arizona, Andiko, Asep Y. Firdaus and Myrna A. Safitri

2011 *Arah reformasi kebijakan penguasaan kawasan hutan di Indonesia*. Jakarta: HuMa and Epistema Institute.

Muhshi, Muayat Ali, Mia Siscawati and Hery Santoso

2011 *The challenge of community-based forest management after a decade of forestry reform in Indonesia*. Paper at the Workshop Merumuskan Arah Reformasi Kebijakan Penguasaan Hutan di Indonesia, Hotel Grand Cemara, Jakarta 31 Mei 2011.

Nababan, Abdon

2011 *Hak-hak masyarakat atas tanah dan hutan: Perspektif berbagai kelompok masyarakat Pengguna Hutan*. Paper at the Workshop Merumuskan Arah Reformasi Kebijakan Penguasaan Hutan di Indonesia, Hotel Grand Cemara, Jakarta 31 Mei 2011.

Parlindungan, A.P.

1989 *Hak pengelolaan menurut UUPA*. Bandung: Mandar Maju.

Safitri, Myrna A.

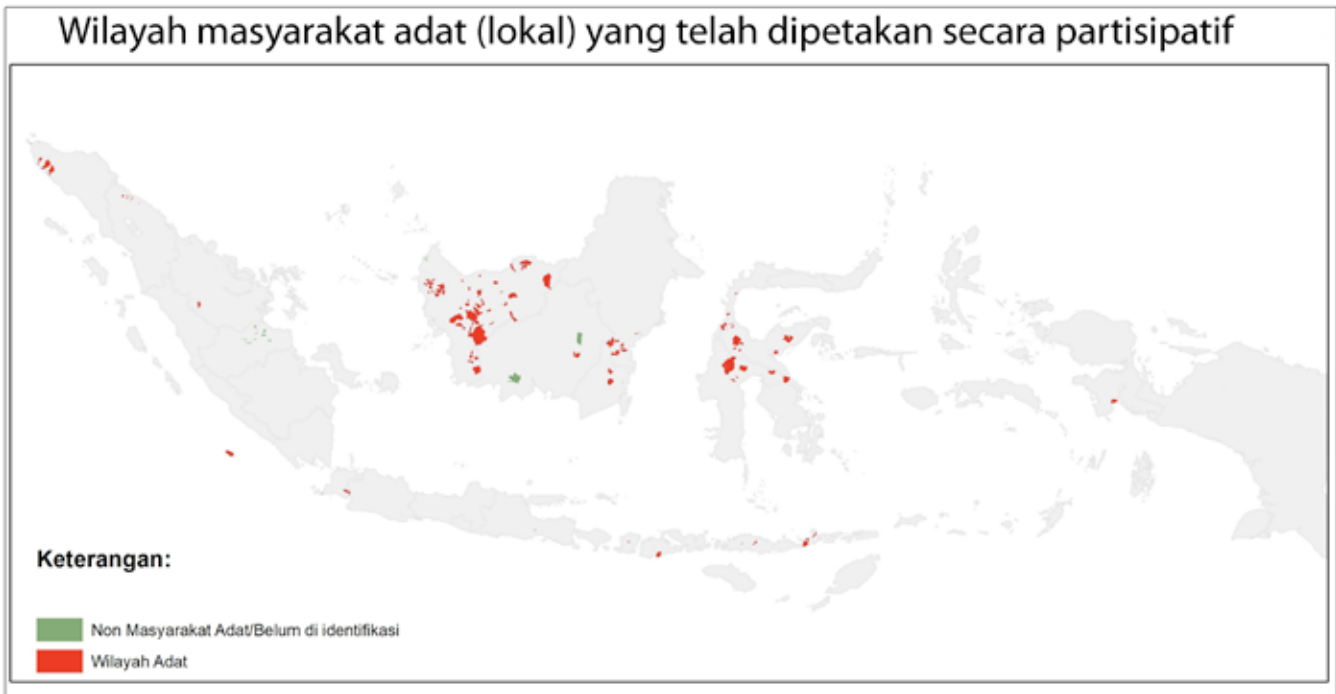
2011 *Kepastian hukum atas kawasan hutan di Indonesia: Tunggakan masalah dalam konsep, legislasi dan interpretasi*. Paper at the Workshop Merumuskan Arah Reformasi Kebijakan Penguasaan Hutan di Indonesia, Hotel Grand Cemara, Jakarta 31 Mei 2011.

Sirait, Martua, Andiko, Hariadi Kartodiharjo, Ahmad Zazali, Kasmita Widodo and Ade Fadli.

2011 *Catatan tentang sub masalah penanganan konflik: Pengamatan selama Tenure Conference 11-15 Lombok 2011*. Paper not published.

Appendix 1:

Adat and local community territory mapped in 2011



Adat (Local) Community Territory Mapped with their participation

Source: BRWA, 2011.

Appendix 2:

Profile of supporting organisations and individuals

1.	<p>Epistema Institute is a research, education and knowledge management institute related to law and eco-social justice. This institute supports the advancement of advocacy quality of the civil society groups in law reforms in Indonesia. Its programs include a learning circle for eco-social justice, legal-, community and environment inter-disciplinary research, and a management centre for resources and knowledge. Contact: Jl. Jati Mulya IV No. 23 Jakarta 12540; Tel. 021 78832167; Fax.021 7823957; e-mail: epistema@epistema.or.id; website: www.epistema.or.id</p>
2.	<p>HuMa is an association that works to promote law reform based on the recognition of the adat (traditional) and local communities rights on natural resources, the diversity in social/cultural and legal systems in the control and management of natural resources and ecological preservation. Contact: Jl. Jatiagung No. 8, Jatimulya, Jatipadang, Pasar Minggu Jakarta Selatan;, Tel. 021 78845871; Fax. 021 7806959; e-mail huma@huma.or.id; website: www.huma.or.id</p>
3.	<p>FKKM constitutes a dialogue and joint learning forum of multi parties regarding community forestry. This forum aims at becoming the vessel for exchanging information on community forestry issues and forestry policies in Indonesia. Contact: Gedung Kusnoto Lt 2 Jl. Ir. H. Juanda No. 18 Bogor 16002; Telp/Fax : 0251.8310396; e-mail : seknas-fkkm@indo.net.id; website : www.fkkm.org</p>
4.	<p>Working Group on Tenure is a multi-party work group for the handling of land tenure issues within state forest zones. This group conducts programs related to inventory, identification and recommendation of forestry conflicts. Contact: Perum Villa Citra Jl. Belimbing 2 Blok E4 No. 14, Bogor; Telp./fax : 0251 8326967; e-mail: mailto:wg_tenurial@cbn.net.id; website: www.wg-tenure.org</p>
5.	<p>KPA is a consortium with the objective to advocate the creation of a just land system, and to guarantee equal allocation of land resources to the entire people; guarantee of ownership, control and use of land resources for the farmers, fishermen and adat communities; as well as social guarantees for the poor. Contact: Jl. Duren Tiga No. 64 Pancoran Jakarta Selatan 12760; Tel. 021 79191703; Fax. 021 79190264; e-mail: kpa@kpa.or.id; website: www.kpa.or.id.</p>
6.	<p>KPSHK is a network organisation with the objective to become the propelling motor systematically supporting traditional forest management by adat and local communities in and around the forest. Contact: Jl. Sutiragen V No.14, Indraprasta I – Bogor 16153; Tel. 0251 8380301; Fax.: 0251 8380301; e-mail: kpskh@kpskh.org; website: www.kpskh.org</p>

7.	AMAN is an independent social organisation whose members consist of adat communities from various corners of the Indonesian archipelago. AMAN is a vessel for the joint struggle with the adat community to enforce the sovereignty of the adat community in politics, economic independence and to have cultural integrity. Contact: Jl. Tebet Utara 2C No.22, Jakarta 12820; Telp/Fax : 021 7802771; e-mail: rumahaman@cbn.net.id ; website: www.aman.or.id
8.	Pusaka is an institution conducting research on advocacy, documentation and the promotion of the rights of adat communities, development of capacity, education and empowerment related to adat communities rights, the right on land, economic, social and cultural rights, and the strengthening of community organisations. Contact: Kompleks Rawa Bambu Satu, Jl. B No. 6 B, Pasar Minggu, Jakarta 12520; Tel/Fax: 021 7892137; e-mail: mailto:yay.pusaka@gmail.com
9.	Kemitraan is a multi-stakeholder organisation established to promote reform of the national and regional administration structure. Kemitraan programs include Government Structure in the Security and Judicial Sector (SJG), Government Structure in the Public Service Sector (PSG), Democratic Government Structure (DEG) and Government Structure in the Economic and Environmental Sector (EEG). Contact: Jl. Wolter Monginsidi No. 3, Kebayoran Baru, Jakarta Selatan 12110; Tel. 021 72799566; Fax. 021 7205260; website: www.kemitraan.or.id
10.	JKPP is a network of people's organisations, non-government organisations and individuals who are concerned about issues of participative mapping in the interior of Indonesia. This network conducts several programs, including improving access to mapping and participative planning by the people and to enhance the advocacy of land use/spatial planning policies as well as improving the quality of using participative mapping as a tool in planning, organising, and advocacy of policies. Contact: Kasmita Widodo (National Coordinator); Tel/fax. 0251 8379143; e-mail: kwidodo@gmail.com , seknas@jkpp.org ; website: www.jkpp.org .
11.	SAINS is an institution engaged in the development of knowledge regarding land affairs and rural reform through research, education, training and policy advocacy, with the aim of developing a critical mass in the movement of enforcing justice in land affairs and to develop rural independence. Contact: Jl. Malabar No 22, Bogor 16151. Tlp/fax: 0251-8374048; website: www.pustaka-agraria.org .
12.	KARSA is an association whose members care about rural and land reform issues . Karsa organises learning processes in the frame of increasing knowledge, capacity and capability of learners in order to promote rural and land reform. Contact: Dsn Jambon, Rt 05 Rw 23 Desa , Gamping, Sleman, Jogjakarta 55291; Tel. 0274- 7484045;. Fax : 0274 7498477; e-mail: perhimpunankarsa@indosat.net.id ; website: www.perhimpunan-karsa.org .
13.	JAVLEC is a non-governmental organisation that works on forestry issues, the environment and the poverty of the village forest communities in Java, Bali and Madura. This institution has several program clusters such as poverty eradication, improved access to information and communication. Contact: Jl. Kaliurang Km. 6,5. Plemburan RT5 RW25 No. 41. Sriharjo. Ngaglik. Sleman. Yogyakarta;. Tel. 0274 7100722; Fax. 0274 4532631; e-mail: javlec@javlec.org ; website: www.javlec.org

14.	KKI Warsi endeavours the creation of development and growth of conservancy principles based on a just, harmonious, participative, open and sustainable community. This organisation conducts conservancy and people's empowerment programs, policies and advocacy, communication, information and learning of community based natural resources management. Contact: Jl. Inu Kertapati No.12. Kelurahan Pematang Sulur –Kecamatan Telanai Pura – Jambi.. Tel. 0741 66678, 66695;; Fax. 0741 670509; e-mail : office@warsi.or.id , mailto:rimbopusako@gmail.com
15.	SCALE UP is an independent institution to promote the achievement of accountability and sustainable social development through a dynamic <i>partnership</i> between the <i>civil society</i> , the <i>government</i> and the <i>private sector</i> in order to create a good social life structure and just social prosperity. Contact: Jl. Ketitiran No. 26, Kampung Melayu, Sukajadi, Pekanbaru, Riau; Tel/Fax 0761 40028; e-mail: infoscaleup@yahoo.com ; website: www.scaleup.or.id/
16.	The Samdhana Institute Indonesia is Indonesian legal entity which aim to promote harmonizing all aspect of social, environment and spritual of life, and resolving a peacefully environmental conflict. Our contact: Jl. Guntur No. 32 Bogor 16151; Tel/Fax: 0251-8313947, website: www.samdhana.org .
17.	Yayasan Bioma is a non-governmental organization that carries out the mission for enhancing citizen participation on protecting and utilizing natural resources in a sustainable ways. Kontak: Jl. A.W. Syahrani Komplek Ratindo Griya Permai Blok F 7-8 Samarinda 75124 Kalimantan Timur. Tel./Fax.: 0541-739864; e-mail: biosfer.manusia@gmail.com
18.	Muayat Ali Muhshi is an independent consultant on community forestry. He was the founder and secretary general of FKMM and coordinator of KPSHK.
19.	Sandra Moniaga is a graduate doctoral student at Leiden University, the Netherlands, founder and member of HuMa and member of the Epistema Supervisory Council.
20.	Martua Sirait is a graduate doctoral student at the Institute of Social Sciences, Den Haag, also a researcher at the World Agroforestry Centre.
21.	Mubariq Ahmad is a lecturer at the Faculty of Economy of the University of Indonesia, active in various international institutions related to forestry and climate change.
22.	Hariadi Kartodihardjo is a professor at the Faculty of Forestry IPB, active in several NGO work groups on the reform of forestry and natural resources policies as well as in the National Forestry Council.
23.	Christine Wulandari is a lecturer at the Faculty of Agriculture of the University of Lampung, active in several national and international organisations to support people's forestry.
24.	Satyawan Sunito is a senior lecturer of Institut Pertanian Bogor, active in research and networking with NGO work groups on community forestry and conflict resolution.
25.	Gamma Galudra is a researcher at World Agroforestry Centre, active in research with NGO group on tenure and conflict.

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| 26. | Grahat Nagara is a researcher of Yayasan Silvagama, actively involved on research and advocacy on forestry governance. He previously work with Komisi Pemberantasan Korupsi (Commission of Corruption Eradication) to research corruption aspect on forestry sector. |
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HuMa



WG Tenure
Working Group on Forest Land Tenure



PUSAKA



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KARSA

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