

# The Conflict of Forest Tenure and the Emergence of Community Based Forest Management in Indonesia

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## *The Conflict of Forest Tenure and the Emergence of Community Based Forest Management in Indonesia*

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### **ABSTRACT**

The forest tenure policy remains a controversy in Indonesia specially, on the issues of how to maintain forest on sustainable way and at the same time how to share of benefit of forest resources to the local communities. Yet, the state is the main actor on forest tenure in Indonesia could not succeed to do so.. This paper discusses the Community Based Forest Management (CBFM) programme in Indonesia with some details relating to the Indonesian political and legal basis on land and natural resources. This paper also describes the conflict of forest resources and the state's failure in forest resources management in Indonesia. CBFM can be used as an alternative to share resources and conserve the forest by engaging local communities.

Key words: Conflict of resources, forest tenure, forest management and CBFM.

### **INTRODUCTION**

The first section of this paper describes a legal and political analysis of the forest tenure in Indonesia. Understanding the land ownership and resources, mainly in the forest areas, can be useful to explain the CBFM implementation. In particular, this paper has the aim to clarify who are the main actors and who control, maintain and classify the forest. For example, conflict and tension between state and community with regard to ownership, regulation and use of forest resources is a common problem in Indonesia. Because of unclear forest boundary, some areas could be owned and maintained by many parties. Besides, the

existence of double and multi-managers leads to the forest resources being degraded radically. Conflict is a difference in perspective that can appear in the form of complaints, war and violence (Wulan 2004). Conflict can be seen as social phenomena and can be analysed by deferent perspective specially in environmental and natural resource policy decision making and conflict management (Daniels and Walker 2001). Consequentially, the next section of this paper explains the conflict of forest resources in Indonesia, particularly focusing on how the communities can deal not only with the state interest but also market needs.

Further, in this paper it will be discussed how Indonesia's government developed the CBFM Policy, how this policy changed over time and how the communities adopted it. The CBFM policies is a policy of Indonesian central government that give rights to communities gaining access to the state forest and attempt to reduce community poverty by sharing resources and preserving the forest sustainability. This paper is crucial to understand what the benefit of CBFM is for the communities and then how they can utilise this programme sustainably.

Forest degradation and conflict over forest resources can create forests vulnerable and their management less sustainable. On the other hand, there was a grass root movement and political change in Indonesia for instances, the authoritarian regime of Soeharto moved to the reformation or democratic regime. These situations made the natural resource policy to continue changing dramatically. After Soeharto stepped-down, central government could not maintain the resources and they should decentralise it. The idea of decentralisation allowed the central government to distribute their authority. It supported the shifting of policy from state centre not only to region government but also to community-based institutions. The last section will discuss the emergence of CBFM in Indonesia particularly in the selected areas.

This study focuses on CBFM, a programme -initiated by Indonesian central Government and is implemented by communities in selected state forest areas. Therefore, analysing the CBFM's

implementation should rely on the legal and political system in Indonesia. There are several arguments why those frameworks are important. First of all, in Indonesia the state has absolute rights to own and control land, water, and resources (2000). According to the Constitution of Indonesia 1945 article 33 (3), state has the rights to control and utilise the earth, water, and airspace including any resources on it (2000). Secondly, the state holds and occupies around 60 percent of forest (Fay and Sirait 2005; Safitri 2010). In this context, positioning and policy of the Ministry of Forestry as the state's representative must be understood clearly. Thirdly, Indonesia is a unitary state whereby the central government directs the provincial and districts governments strongly.

To understand the above arguments, it is necessary to explore some issues such as, the legal basis of state's right of land and resources, the interpretation of the state's rights and the implication of state's rights on forest community (Safitri 2010). It is also important to elaborate the conflict and friction on forest resources management in Indonesia by analysing the overlapping policy and law in these issues. By understanding the legal and political basis of the forest tenure, mapping of conflict of forest resources between state and community, providing the state's failure on forest resources, this research could develop a strong argument why the community can be the best actor to maintain forest resources and to support that, CBFM programme should be applied.

Forest Tenure and Forest Management in Indonesia

In the the Indonesian 1945 Constitution contains explicit or implicit views and fundamental values, so the 1945 constitution is not only the political constitution but also an economic constitution and the social constitution (Asshiddiqie 2005). The Constitution is not just related to the regulation by the state and the structure of governance but also has dimensions of economic and social welfare arrangements (NO AUTHOR???(2000). These ideas were stated in Article 33 of the Constitution. The Article is the basis for the economic system of Pancasila, which is better known as the economic democracy (Mubyarto, Boediono et al. 1981). This Article is also used as a base where state has a right to control Indonesian natural resources. Following is the article: (2000):

*“Section (1) says; economy is structured as a joint venture based on the principle of kinship, Section (2); Branches of production which are important for the State and the welfare of*

*the people majority controlled by the State, subsection (3) states; Land, water and natural riches contained therein controlled by the State and used for the prosperity of the people, subsection (4), organized a national economy based on economic democracy with the principles of togetherness, efficiency of justice, sustainability, environmental friendliness, independence, and balancing progress and unity the national economy.”*

In terms of legal basis of the state's right over land and resources, Indonesian Constitution of Article no 33, as the highest legal basis for state's rights, states that the land and the water as well as the natural riches therein are to be controlled by state and to be exploited for the greatest welfare of the people (NO AUTHOR(2000). Safitri (2010) points out that this stand of views was followed by the Basic Agrarian Law (BAL) 1960, the Forest Acts of 1967 and 1999. The laws declare a manifestation of people's administration and people's needs so the State should control the land and the resources on behalf of the people. Both of the Forest Laws (1967 and 1999) state that all forest areas within Indonesian territory including all the natural resources are controlled by the State (Safitri 2010). This includes minerals, gas and oil which can be found in forest areas. Therefore, the state's right to control the land and the resources grants the state with authority to: regulate and implement the allocation, use, reservation, preservation of land water and air spaces; decide and make regulations on legal relations between human and land, water and air space; decide and make regulations on legal relations among human and legal actions relating with land, water and air space (Tunggal and Indonesia. 2009; Safitri 2010).

Paragraph two that states “Branches of production which are important for the State and the welfare of the people majority” has multi interpretations and leads to debates. For example, which one is an important production, who has the majority? As a result, the Constitutional Court interpreted the word “important production” that should be determined between the central government and the parliament. In addition, the phrase “controlled by state”, means that the state holds the public authority of policy-making, regulating, governing, managing, and supervising and monitoring on the land and natural resources for the greatest prosperity of the Indonesian people (Tunggal and Indonesia. 2009; Safitri 2010). The Constitutional Court explains the term regulating means the authority to legislate and implement laws, regulations and policies. In addition, the term of governing means



that the state has the authority for issuing and revoking licenses and concessions. The term of managing land and natural resources means that the state can utilise the resources directly through state enterprises and/or share holding. Meanwhile, the term monitoring and supervising means that the state should assure that the implementation of state's control of land and resources is performed for the prosperity or beneficial of Indonesian people (Tunggal and Indonesia. 2009; Safitri 2010).

Historically, the idea that state should control of land, water, air and everything in it was supported by Indonesia's founding fathers such as Soekarno, Hatta and Soepomo (Asshiddiqie 2005). They argued that market mechanism is unfair and relies on colonialism so they were against imperialism that manifest in market mechanism (Mubyarto 1997). They wanted the state to control all resources to bring the prosperity of the people. Hatta was very strong in criticising the open market policy, and suggesting that foreign capital and foreign investments could come to Indonesia but it should be minimised and controlled (Mubyarto 1997). This is the reason that Constitution recognizes the need for the state to control and carry out the economic development and natural resources.

The interpretation on prosperity of the people relates to the idea of Social welfare in the Constitution. This idea was proposed by one of the founding fathers, Mohammad Hatta, an economist who was the first Indonesian Vice president. Hatta argued that the national economic system should be managed on the idea of mutual help and collective action (Mubyarto 1997). Actually, Hatta did not reject foreign investment and market but he wanted to make clear that foreign loan and foreign investments do not interfere the national independence. He was concerned that Indonesia's development might not able to face with market mechanisms. Wilopo supported Hatta's idea. Wilopo was the Indonesian Prime Minister from 1952 to 1953. He stated that the Constitution Article 33 is the economic constitution of Indonesia that worked against liberalism which its motives to seek personal gain (Mubyarto 1980). Wilopo also argued that Market mechanism and individual gain seeker could not meet with the background of Indonesian revolution and independent (Mubyarto 1997).

The idea that state should control and hold the land, water and its resources is a value of the Article 33 of the Constitution. The state is a representative of public needs

so the government has the mandate to carry out the development of the state of Indonesia. It is relevant with Hatta's argument that the role of the state is central and important to ensure the resources' exploitation relies on national needs and public prosperity (Mubyarto 1980; Safitri 2010). Mr Soepomo, who is one of Constitutional thinkers, said that the centralisation of state control on land, water and its resources must be in the highest position in Indonesia (Safitri 2010). Based on the historical and constitutional approach, therefore, it is clear that the state is main actor in managing not only forest resources but also natural resource in Indonesia.

As it is mentioned above, that state's right to control and manage forest resources has strong legal basis. The point of view of state authority is a state-led economic centred but the Constitution obligates that the state should create the regulation and implementation to control land and natural resources for developing people prosperity (Safitri 2010). Actually, this idea is influenced by economic socialism (Mubyarto 2004). In other words, in Forest tenure and management in Indonesia is a combination between economic centred and economic socialism approach.

## CONFLICT OVER FOREST RESOURCES AND INEQUALITY OF DISTRIBUTION OF RESOURCES

Conflict over Forest resources in Indonesia

It is really important then this section analyses the implication of state's rights on forest community especially on revealing conflict of forest resources and also inequality of distributions its resources. The Constitution is the main legal standing or the source of the law as it was stated a general statement that state has right of controlling the land, water and its resources. This should be described and implemented by its law under such as Decree and Law. This section then focuses on the regulation about the implementation of the state's rights especially on community and private forest ownership.

Every country has own law how to hold and manage their land and natural resources that legalise it through various national law based on their history and background. In Asian cases, these laws mainly, have been following the colonial law or regulations (Indonesia 2007; Safitri and Moeliono 2010). Indonesia, has own law that adopts some point of views colonial law such as, State is the main authority of the resources, and the

community can own the resources as long as does not interfere the state needs. In term of the hierarchy of land legislation and natural resources law, the Basic Agrarian Law No. 5 of 1960 and the Forest Act No. 41 of 1999 are the most important legislation after the Constitution 1945. Both of these rules are directly regulate the management and distribution of land and natural resources. However, both of those policies have different points of view on land ownership. This situation leads to a conflict of interest and unclear of law enforcement.

The Basic Agrarian Law No. 5 of 1960 led government in the provision of 7 types of land rights and additional rights to use 3 types of natural resources (Fay and Sirait 2005; Tunggal and Indonesia. 2009). The rights of the most powerful and the most full of all kinds of these are proprietary. According to this law, people, community or industry can hold a land ownership instead of state rights. On the other hand, the Forest Act No. 41 of 1999 claims that all of the land is a state property and should be managed by state (Tunggal and Indonesia. 2009).

In these contexts, the situation of the management of forest and natural resources in Indonesia is very diverse. In the millions of hectares forest areas, local people plant trees with productive forest trees, fruit, and coffee, cocoa and often mixing timber species. These forests provide many environmental services, resemble natural forests but with slightly lower in term of its biodiversity than natural forests. In other words, the situation of Indonesia's natural forests can only be described as a crisis when there are forest degradation and destructive of bio-diversity. Yet many people remains protecting natural forests in the landscape, sometimes in collaboration with local authorities, including forest officials as well as conducted independently (Fay and Sirait 2005).

However, conflicts between the local communities and the state and between the local communities and the industries on rights to land and resources of existing forest region are so massive in Indonesia (McCarthy 2006; Moeliono, Wollenberg et al. 2009). For example, there are 359 conflicts recorded by CIFOR from 1997 to 2003 (Wulan 2004). In addition the conflict between forest industries and forest officials have been seen consistently sticking last for 15 years (McCarthy 2006). The ambiguity of both the public and the industry ownership has led to a reduction in land area under forests and is often accompanied by violence. The core of

these problems is unclear "rules" by the Ministry of Forestry. The department states have jurisdiction over mainland Indonesia but cannot manage such a vast area and provide tenure security and management required for both the local community and for the forest industry.

The confusion and disagreement on who should have control of the forest and who is the owner of forests in Indonesia has increased and has been seen as the main cause of Indonesia's failure to manage its forest area (Awang 1999; McCarthy 2006; Moeliono, Wollenberg et al. 2009). The root of the problem is caused by the basic understanding of what and where the forests of Indonesia are and then what and where the authority of the Ministry of Forestry is. At the same time, conflicts over land and natural resources that are also caused by the uncertainty of state land to the people of the land will still be there if there is no serious attempt to rationalize state forests through clear strategic priorities (Fay and Sirait 2005).

Actually, the MPR Decree No IX 2001 on Agrarian Reform and Natural Resources Management explicitly says that the laws and regulations related to conflicting and control of land and other resources by department/agency sector should be stopped, because it creates a conflict of poverty and degradation of natural resources (Fay and Sirait 2005; Tunggal and Indonesia. 2009). This legislation should be revised, repealed or modified using a holistic approach. At the same time the conflict must be resolved through a fair process. On 14 November 2003 at UGM-Yogyakarta, all departments and state agencies related to land and natural resources (including forests) have met and agreed that it is important to revise the Basic Agrarian Law (BAL) No. 5 of 1960 (Fay and Sirait 2005). This revision could create a framework of land tenure system and other natural resources to better managed and not partially approached. Other laws such as the Law on Spatial Planning and the Law of Natural Resources needs to be created and to be revised as well. (Tunggal and Indonesia. 2009).

However, State perception argues that 120 million hectares of Indonesia which is 61% of the Indonesian land is "forest land", which should be owned and managed by the Forestry Department. This includes grasslands, agricultural areas, mostly rural areas, as well as vast areas of primary forest and secondary forest. The Indonesia's natural resources can only be described as a crisis when the Forestry Department claims jurisdiction,



so the implications for local communities leads to conflict of land tenure between local communities and the state, and then treat to the protection of natural forests.

According to BAL, Some of the rights stipulated in this law are the right to the land, which shall be further managed clearly such as leasehold, broking and right to use (Anonim 1999; Tunggal and Indonesia. 2009).

Furthermore those issues have been clarified by the Government Regulation No. 40 of 1996. In addition, Government Regulation no. 24, 1997 on Land Registration organize concepts and procedures for the submission or provision of various types of land rights (Tunggal and Indonesia. 2009). In this rule the land divided into 2 (two) types which are the customary land rights, i.e. rights that have long recognized its existence long before the BAL and other rights granted land with more detailed rules are broking, leasehold or right to use based on the right of petition to the subject of land rights, which consist of individual persons and legal entities. However, BAL still leaves a lot of problems for example; in the formation of laws and regulations, is BAL implementing regulations or not?. Besides, BAL generally not equipped with a thorough thought to the implementing regulations.

Actually, BAL gives much attention to the recognition of the communal land or customary rights. However, it is really difficult to implement that policy persistently and consistently. Central government seems does not want the indigenous people to get their land. They prefer to give forest concession to industries (Simon, Perhutani Perum. et al. 1992; Indonesia 2007). This situation leads to conflict amongst forest stakeholders in Indonesia. Minister of Forestry uses the Forest Act No. 41 of 1999 as a legitimacy of state ownership on land and forest resources. This Act is one of the laws issued after Suharto era known as the period of reform. This legislation authorizes the government through the Ministry of Forestry to determine and manage the Indonesian Forest (Fay and Sirait 2005; Indonesia 2007). As A result, legally forests can be divided into two parts. Firstly is State Forest area, ie areas where the government represented by the Department of Forestry has determined that there is no private right to the land. Secondly is Private Forest areas, the areas where the forest land and other private rights granted.

In conclusion, understanding the Indonesian forestry

legislation such as BAL and the Forest Act 1999 is necessary in order to clarify some terms and concepts used by the state. With regards to property rights, there are classified as a state property, a private property and a community property and meanwhile based on its function, it is classified as a production forest, a protection forest and a conservation forest (Safitri 2010). Besides, Indonesian government has another concept namely forest areas. This concept is different from state forest and community forest (Safitri 2010). Therefore, it is useful to clarify those concepts and terms in order to be able to analyse the establishment of CBFM and its implementation in local community. Following are several terms that appear in the forest legislation and policy Indonesia.

#### A. STATE FOREST, PRIVATE FOREST AND FOREST AREAS.

According to the Forestry Law 1999, forest is any environmental landscape which unites land and all biological resources, in particular trees, into integrated ecosystem unit (Anonim 1999). Moreover, based on property rights and ownership, forest divided into state forest and private forest. State forest refers to the untitled land and private forest refers to the titled/registered land. In addition, state forest can be managed by village institutions and can be utilised for community empowerment with Community-based forest management (Safitri 2010). On the other hand, private forest that located and entitled by private ownership is called community's forest (*hutan rakyat*).

However, the existence of private forest is not fully protected especially, community forest or customary land (*tanah adat*). The private ownership in grey areas such as customary land is in danger because it is not clear whether it is private or state forest area. This situation is getting worse because of the lack of land certification process and the abuse of government authority in providing permit to exploit the forest. Every person should own a land certificate to make sure that their land is belong to them, however the process of certification takes a lot of time and often very costly. Besides, the Forestry Decree 2005 states that the minister of forestry has an authority to change the private forests to state forest if these forests are located in protected forest areas and conserved forest areas. Safitri (2010) argues that this process is a systemic expansion of state control over the Indonesian forest, because this process is less transparent and if the Minister sates that the function of the forest

changes to protection or conservation areas, the private forest should be changed straightaway (Safitri 2010).

According to Forest Act 1999, forest areas mean the particular areas that are designed and required by Government as permanent forest (Anonim 1999). The forest areas are administrated by the Ministry of Forestry and they are who design to allocate and utilise a certain land area (Anonim 1999). Some scholars assume that this process is very political. It is the way state use their power to control the land and natural resources (Peluso and Vandergeest 2001; Safitri 2010). As a result, this leads to conflict on forest resources in Indonesia. Many communities should leave their lands and move from their areas because the state changes the function of the forest. On the other hand, some scientists say that the idea of forest areas is not the way how state should control the forest but it is just an appropriate way to maintain the land in sustainable way (Fay and Sirait 2005; Hidayat 2008; Safitri 2010). For example, the state should preserve at least 30 percent of their areas to become forest areas. In addition, the idea of forest areas is the policy to promote forestry planning and management.

In order to implementation the Forestry Law 1967 and 1999, the Ministry of Forestry can control and manage land and its resources (Safitri 2010). In terms of management, forest management should be supervised done by the minister of forestry (Fay and Sirait 2005). In regard to this the Ministry of Forestry enacted a ministerial regulation No. 50/2009. In this regulation, it can be declared as a forest areas if it meets several requirements such as, the forest areas have been designed and described clearly, the process verbal deliberation has been approved by the Ministry of Forestry and the forest areas have been enacted by the Ministry of Forestry (Safitri 2010).

## B. THE CHANGE OF FOREST AREAS

Even though, the terms of forest areas are debatable and controversial, the Minister of Forestry still controls land and forest. In addition, its control can be transferred and changed to other stakeholders such as industries and communities. There are three activities relating this process which are release of forest areas, exchange of forest area land, and agreement to let and use of land (Safitri 2010). The policy on release and exchange the forest areas is only applicable to production forest. In general, this process has been taken when the Ministry

of Forestry need to develop this areas. Forest release mainly happens in Sumatra and Kalimantan and these areas are changed into transmigration and plantation project (Safitri 2010). If those areas will be transferred and changed, it should be clear and clean of its legal status and its boundary. In many cases, the process is unclear and leads to conflict of resources among stakeholders.

## C. THE FUNCTION OF FOREST

When we discuss forest management in Indonesia, we have to understand the function of forest. The Forest Act No. 41 of 1999, there are three main of forest functions such as production, protection and conservation forest. Protection forest is an area that is intended to protect life-supporting systems, prevent floods, counter erosion, maintain soil fertility and prevent sea water intrusion (Anonim 1999; Safitri 2010). The production forest is divided into limited production forest, permanent production forest and convertible production forest (Anonim 1999).

Moreover, the limited production forest is defined as a limited logging activities areas and then the permanent forest areas is an area that can be exploited and utilised because of its contribution to the need of people and state. Meanwhile, the convertible forest areas are known as a production forest, especially for specific purposes such as agriculture and transmigration. On the other hand, the conservation forest strictly could not be exploited and should be preserved. It is divided into several types of forest such as, natural reserve, grand forest parks, wildlife sanctuaries, national parks, and recreation parks. In regard to the forest function policy, - this regulation is not only applicable for state forestry but also for private forestry. Private forests' functions are designed and allocated by regency and town authority. According to the Law no 24/1992 and Law 26/2007, the private forest can be divided into protected areas and cultivated areas.

## D. LICENSING OF FOREST RESOURCES

The Forestry Law 41 1999 enacted that anyone can access and utilise a state forest as long as they hold a License from the state authority. Forest Licenses are not private land ownership and the Licenses offer the right of utilising the state forest areas from the specific period. In the Licenses, there is term and condition that should

TABLE 1. LICENSES OF FOREST UTILISATION, ACCORDING TO GR 6/2007

TYPE OF THE LICENSE	LOCATION	LICENSE HOLDER	MAXIMUM DURATION	LICENSE ISSUER
License of Commercial Utilisation of Forest Area ( <i>Izin Usaha Pemanfaatan Kawasan, IUPK</i> )	Protection Forest	Individual Citizen Cooperative	10 years	<i>Bupati/Mayor/Regent</i> , Governor for cross-district areas; Minister of Forestry for cross-province areas
	Production Forest		5 years	
License of Commercial Utilisation of Environmental Services ( <i>Izin Usaha Pemanfaatan Jasa Lingkungan, IUPJL</i> )	Protection Forest	Individual citizen Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	50 years depending on type of utilization	<i>Bupati/Mayor/Regent</i> , Governor for cross-district areas; Minister of Forestry for cross-province areas
	Production Forest			
License of Commercial Utilisation of Timber Products ( <i>Izin Usaha Pemanfaatan Hasil Hutan Kayu, IUPHHK</i> )	Natural production forest	Individual citizen Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	55 years	Minister of Forestry
	Industrial Plantation Forest Area (HTI)	Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	100 years	Minister of Forestry
	People Plantation Forest area (HTR)	Individual citizen Cooperative	100 years	Minister of Forestry; can be delegated to governor
	Rehabilitated Plantation Forest (HTHR)	Individual citizen Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	1 year	Minister of Forestry
	Natural production forest for ecosystem restoration	Individual citizen Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	100 years	Minister of Forestry
	License of Commercial Utilization of Non-Timber Forest Products ( <i>Izin Usaha Pemanfaatan Hasil Hutan Bukan Kayu, IUPHHBK</i> )	Natural and planted production forest	Individual citizen Cooperative State-owned corporations (central/regional government corporations) Indonesia private corporation	10 years
License of Timber Products Harvesting ( <i>Izin Pemungutan Hasil Hutan Kayu, IPHHK</i> )	Natural Production Forest	Individual citizen Cooperative	1 year	<i>Bupati/Mayor/Regent</i> , Governor for cross-district areas; Minister of Forestry for cross-province areas
	Planted Production Forest	Individual citizen Cooperative	2 years	
License of Non-Timber Products Harvesting ( <i>Izin Pemungutan Hasil Hutan Bukan Kayu, IPHHBK</i> )	Natural Production Forest	Individual citizen Cooperative	1 year	<i>Bupati/Mayor/Regent</i> , Governor for cross-district areas; Minister of Forestry for cross-province areas
	Planted Production Forest	Individual citizen Cooperative	2 years	
	Protection Forest	Individual citizen Cooperative	1 year; 5 years only for bird nest collection	

Source GR 6/2007 adopted from (Safitri 2010)

be followed by the License holders. Most of the Licenses are extendable and based on the evaluation procedures. The Licenses can be issued to individual, corporate, industry, and state enterprises. The MF can offer a License to selected party for utilising any state forest

areas, from conserved forest areas to protected forest areas or from productive forest areas to non-productive forest areas. There are several forest licenses well-known such as (Table 3.1), a. License for commercial utilisation of forest areas (*Ijin Usaha Pemanfaatan Kawasan Hutan*



IUPKH). b. License for commercial utilisation of environmental services (*Ijin Usaha Pemanfaatan Jasa Lingkungan-IUPJL*). c. License for commercial utilisation of timber products in natural and planted forest (*Ijin Usaha Pemanfaatan Hasil Kayu-IUPHHK*). d. License for commercial utilisation of non-timber products in natural and planted forest (*Ijin Usaha Pemanfaatan Hasil Bukan Kayu-IUPHHBK*). e. License for commercial utilisation of timber products in natural for ecosystem restoration (*Ijin Usaha Pemanfaatan Hasil Kayu-IUPHHK restorasi ekosistem*). f. License for harvesting of non-timber forest products (*Ijin Pemungutan Hasil Hutan Bukan Kayu-IPHHBK*).

### INEQUALITY AND MISMANAGEMENT OF FOREST RESOURCES IN INDONESIA

The state has very strong power and authority to control, manage and regulate land, and natural resources especially forest resources in Indonesia. Based on the Forest Act 41 1999, they state that around 70 percent Indonesia land is forest and it reclaimed as a state forest. The MF can also change an area to be a forest area, and/ private and state forest areas, even without community or private agreement. (Safitri 2010; Tunggal and Indonesia. 2010). However, those areas can be changed its function from the cultivated forest to the conservation forest. The MF Decree no 26/2005 said that the MF can enact a regulation to manage private forests' function to become a protective forest ore state forest (Tunggal and Indonesia. 2010).

The Spatial Planning Law no 24/1992 and 26/2007 determines that the mechanism and processes of the changing of Forest functions should be clear and it should be set up by scientific criteria and measurable procedures (Tunggal and Indonesia. 2010). If the government changes the private forest into conservative forest, this means that the people will lose their lands, therefore, the government should give compensation to the people. In many cases, the government never compensate to the people and it leads to conflict (Barber 1998; Matthews, Achmaliadi et al. 2002; Yasmi, Guernier et al. 2009). This also happen is customary land. This creates massive conflict between state and local community. In other words, it is just another example of inequality and mismanagement on forest resources. .

In the context to understand mismanagement on forest resources, it should be described the Indonesian

forest production systems properly. The Indonesia government creates three main forest production management systems such as KPH, HTI and HPH (Tunggal 2011). The KPH (*Kesatuan Pemangkuan Hutan/Forest Stewardship Unit*) system has been developed in Java following the long history of forestry plantation dating back to the colonial era mostly by the Dutch. Most KPH planted teak trees. The second forest management system is HTI (*Hutan Tanaman Industri/Industrial Forest Plantation*). The main purpose of HTI is "an activity to rejuvenate and revitalize in order to increase the potential of production forest to guarantee the availability of industrial material. And then it is an effort to rehabilitate unproductive production forest." In practice, HTI establishment is just a way to getting more profits by cutting the logs in the HTI land (Barber 1998). The third forest production system is HPH (*Hak Pengusahaan Hutan/natural forest concession*). This license is issued by the MF to Indonesian corporations or individuals. The licenses are only granted in production forests and limited production forests. The HPH license is non-transferable and can be hold for 20 year (Tunggal 2011).

The prominent example of the failure of state forest management is on the issue of logging concession which is called HPH (*Hak Pengusahaan Hutan/natural forest concession*). After more than three decades of operation, the HPH system has failed to achieve sustainable forest management. By June 1998, forest degradation from HPH operations had reached 16.57 million ha. According to FAO (FAO 2009), Deforestation in Indonesia contributed by most of the industrial activities, particularly timber industry, which has been misusing concessions, granted thereby leading to illegal logging. Deforestation in Indonesia reached 40 million cubic meters a year. In other word, from the 1970s to present, the government granted concessions to logging companies but the government has failed to adequately enforce sustainable harvesting and replanting regulations (Hidayat 2008; FAO 2009).

Safitri also proves another example mismanagement and inequality of forest resources management; the government gives logging concessions to industries and individuals without taking into account the forest function (Safitri 2010). The companies hold the concession to exploit the forest were located in protected or conserved forest areas and it was not in production forest areas (Safitri 2010). Besides, due to abuse of power and

lack of procedures, many HPH perform without pay attention the land ownership. Some of them do not have clear boundary and ownership (Aguilar, Uson et al. 2005; Purnomo 2010). Therefore, there are conflicts between corporate, that holds the License, and the communities who claim the land which traditionally belong to them (Aguilar, Uson et al. 2005). Actually in the Forest Act No. 41 of 1999, there is not listed the issuing authority of the Department of Forestry types of land tenure rights. However, this law is exploited by Central government to control and manage forest resources. Even legally correct to say that "forest land" does not exist in Indonesia as a definition of the law. The term forest land is neither an official term Indonesian nor statements used in forestry and forest management debate.

#### THE EMERGENCE OF CBFM IN INDONESIA

In this section, it will be discussed the emergence of Community Based forest Management in the contexts of Indonesia. As above mentioned before, the state is a major factor in forest tenure and management in Indonesia. They can control, regulate, manage, and exploit the forest as long as they want. The idea that state's right to control the resources to promote the social welfare and community prosperity is just as a good as the blue print but it is far in the reality. The industrialisation of forest resources in Indonesia drove the Indonesia government to exploit the forest resources so massively so there are some crucial problems on this issue such as conflict of resources, degradation of forest and marginalisation of local communities.

In relating with the regulation, the unclear and ambiguous forest policy between the BAL and the Forest Act leads to a catastrophe on forest resources. For example, the License concession policy or HPH to Industries gave the industries to exploit the forest for 100 years and the industries utilised the License in a maximum way. As a result, the deforestation in Indonesia was so massive and was alarming. In 2002 the rate of the deforestation was 1.6 million ha per year and then in 2012 the rate was 3.6 million ha per year (Navir, Murniati et al. 2007; Musfah 2013). Industries such as timber industry and palm industry got access and occupied nearly 63 million hectares forest in 1995 which rose 69 million hectares forest in 2000 (Forestry 2002). On the other hand, the land rehabilitation carried out only covering 400,000-500,000 ha per year and a success rate is around 50 percent (Nurdin 2013). This policy was very bias to market

mechanisms and relied on the economical orientation. KPA also recorded 198 conflicts on forest areas with the areal extent of the conflict reaching more than 963,411.2 hectares, involving 141,915 heads of households (Nurdin 2013). In addition, since 2004 until now, there have been 618 conflicts with the natural resources area of 2,399,314.49 hectares and involving 731,342 heads of households (Nurdin 2013). These conflicts occurred between state and communities and or the industries and communities.

Indonesia government also loses the revenue from forest resources exploitation, because the Indonesian logging industry has been involved in corruption in recent times including tax evasion (HNW.org 2010). This happen, because of the weakness of law enforcement and less transparency as well as results in lack of accountability. Secondly are global needs. In Asia, Indonesia constitute the biggest log exporter (Alliance 2008). It leads to more deforestation and corruption, providing cheaper and illegal resources (Alliance 2008).

Moreover, the forest policy do not accommodate to local communities and local initiative. People who lived near the state forest was so poor and marginalised (Awang 2004). They could not get an access to state forest areas even near then their area. Even though, the state forest was degraded and could lead to landslide, the communities could not do anything (Awang 2004; Sepsiaji and Fuadi 2004). This situation really needed to be solved by the Government.

The number of deforestation was really high but the effort to rehabilitate the forest has been very weak. Besides, the conflict over forest resources management was alarming as the government policy only focused and supported to industries and has marginalised local communities. Most of policies in forest management were driven by economical needs.

However, in global and national level, there was a changing of paradigm on community development from top-down to bottom-up approach. In Indonesia context, there was also a political dynamics where the civil society was so active on campaigning of community empowerment. In respond to that, the MF established a policy called Community based forest management in 1995. The policy refers to the product of government regulations and implementing rules to the rule (Suharjito 2000; Sepsiaji and Fuadi 2004).

CBFM was introduced by the MF when they enacted



the Ministerial Decree No. 622/1995. The aims of the policy, mainly, are to rehabilitate the degraded forest and give the communities change to get an access to the state forest. The first step, the government will not give community right to use the land for long period if the communities cut down the three. This approach, is a form of empowerment” for the local communities. The policy has been changed nearly five times between 1995 to and the present. At the first time, the policy was created by Central Government especially to maintain degraded forest. The number of Forest degradation was so massif and the government could not deal with this situation. In 1995, the Minister of Forestry enacted the Decree no 622/1995 and gave a chance to local community planting trees and crops in degraded forest areas. However, the policy was changed many times. It was a sifting policy from 622/1995 to 677/1998, 31/2001, 37/2007 and the last 18/2009. The idea for utilizing to empowering the local communities also has been introduced by implementing those policies. The current policy gives the communities to use the land for long period (35 years) and then communities can utilize the trees also.

## CONCLUSION

In Indonesian contexts, understanding the property regime is compulsory for mapping the actors involved in the forest management properly. It is clear that the state's right of controlling forest resources is mandated by the Constitution of Indonesia. The original and amended versions of the Constitution states that the land, water, air and contained therein controlled by the State and used for the prosperity of the people, declared in the Article 33. As a result, the legal basis of the state to control, manage, and regulate the forest resources is fundamental.

Historically, the idea to put the state in the central actor on forest resources is supported by the founding fathers. Soekarno, Hatta, Soepomo and Wilopo have similarity ideas that the market mechanism is not suitable in Indonesia and it only supports neo colonialism and capitalism. Hatta suggested that economic should be driven by mutual work and collective action. In other words, this idea is influenced by economic socialism and in the contexts of forest tenure and management in Indonesia is a combination between economic centred and economic socialism approach.

The interpretation of the state's rights is a crucial issue on forest and natural resources management in Indonesia. It is stated in the formulation of the Indonesian 1945 Constitution contained explicit or implicit views and fundamental values, so the 1945 constitution is not only the political constitution but also is an economic constitution and the social constitution. Moreover, the state is a representative of public needs so the government is the mandate to carry out of the life of the state of Indonesia. However, the Constitution is just stated a general statement of state's right and it should be described and implemented by its law under such as Act and Law. In term of the hierarchy of land legislation and natural resources law, the Basic Agrarian Law (BAL) No. 5 of 1960 and the Forest Act No. 41 of 1999 are the most important legislation after the Constitution 1945.

The crucial problem arises when the implementation of those policies is unclear and is not well executed by the Ministry of Forestry (MF). The BAL does unclear the position of the communal forest or customary land whether it is a private or public property right. This situation has been getting worse when the Forest Act no. 41/1999 was enacted. According to the Forest Act, the MF can design, regulate and enact the Forest areas without any permission from other parties such as community or individual. The MF also can change the forest function from productive forest to conserved forest. As a result, many individual and community forest areas taken over by the MF. This condition leads massive conflicts between state and community in Indonesia.

Due to the mismanagement and inequality of forest management, Indonesian government has been suffering in getting forest resources revenue. The Government loses the forest diversity and also is unable to find income. On the other side, the local communities never be able to utilise forest resources because the government only supported the industries and market needs. However, there is a solution has been introduced by the MF representing the state. The MF established Community Based Forest Management policy (CBFM). This policy brings an idea to redistribute and re-allocate the forest resources and at the same time, it can conserve the forest sustainability and support to local communities' empowerment.

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