

Perspectives of Indonesian forest communities

Few Indonesian communities have statutory ownership of their customary lands



Local communities in Indonesia: How much do they stand to gain from current approaches to tenure reform? Photo: Hwan Ok Ma

Speeding up community tenure

by Muayat Ali Muhshi

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In Indonesia we have many practices we call indigenous community forestry because of the long interaction of people with forest resources. The evidence is in the way they use the land—forest land-use becomes more complex the longer it is practised. Indigenous land management has several elements, including conservation, such as in sacred areas; conservation and production, such as in rubber plantations; and production, such as in rice paddies. Unfortunately, most indigenous people have no legal basis for their occupancy of the land and, when their land overlaps with, for example, a national park or a timber concession, they are forced to flee.

Obstacles to expanding community tenure

Actor	Condition
Regional government	Regional government generally considers HKM and HD as burdensome.
National government	The Ministry of Forestry allocates only 51.2 billion rupiah (2011 financial year) for an annual target of 500 000 hectares, while the actual cost is 250 billion rupiah.
Donor agencies and NGOs	Most HKM and HD schemes are developed in areas where there is support from NGOs and donor agencies.
Financial and marketing institutions	There is no access to capital or support for marketing.

The area of forest under licences for community forests (HKM) and village forests (HD) is very small and even the low target that has been set for the granting of such licences (500 000 hectares per year) is a long way from being met. There has been slightly more progress in the creation of community-based timber estates (HTRs).

There are many differences in procedures between these types of community forestry, which may account for differences in the progress made. The HTR process is top-down; it begins with the designation of forestland for HTR by the Director General of Forestry Utilization, and the proposer can be individuals from the local community (in reality, people on the ground are rarely ready for HTR). The processes for HKM and HD are more bottom-up: the proposal must come from communities (which, in reality, need outside assistance—e.g. from NGOs). The HKM and HD licences are separate from the timber extraction permit (IPK), the issuer of which is the Minister of Forestry. The licence for an HTR includes the IPK licence.

The table indicates some of the bureaucratic blockages to the expansion of HKM and HD.

To speed up and improve the process of the granting of community rights, I suggest the following:

- The registration of community-based forest management through mapping and legal recognition.
- The provision of one-stop licensing and a simplification of the process for obtaining HKM and HD permits so that they include timber extraction.
- Making HKM and HD priorities at the Ministry of Forestry.

- The provision of financial assistance and access to funds and the development of value-added community-based forest enterprises.
- The building of networks and synergies within civil society, from the local to the national level, to accelerate and expand the areas under community forestry.

Another challenge is to link Ministry of Forestry programs with national land-tenure reform. It is unclear if the three community-based arrangements in forests are part of the national process.

Resolving conflicts

by Andiko

Executive Director

Association for Community and Ecologically Based Law Reform (HuMa-Indonesia)

When many parties are interested in the same scarce resource, there is a high risk of destructive patterns of behaviour or interaction that can trigger conflict.

CIFOR documented 359 forest conflicts in Indonesia between 1997 and 2003, 34% of which were in protected areas, 27% in forest concessions and 39% in plantations. According to HuMa research there were 85 conflicts in 2010 covering 2.45 million hectares, 91% of which were between companies and communities; about 8% were between communities and the central government. In the last two years there has also been an increase in conflict between different types of licences—such as between plantation and mining permits. At present, there is no effective mechanism for resolving such conflicts.

Attempts have been made to resolve particular disputes. In Central Sulawesi, for example, the crux of the problem is that the state has claimed forest as forest estate under the principle of *domein verklaring*, or 'legitimate domain' (state control). In 2005 only 10% of the forest had been subject to delineation and a legalization process, however, and many people live there, most of whom are indigenous and poor. We tried first to use a formal process through the criminal court, but this did not resolve the problem. Non-formal methods were also pursued.



Fair point: Participants chat during a break in proceedings at the conference. Photo: Hwan Ok Ma

One of the things that hinder conflict resolution is inequality of data; the community often does not have access to information. Some actors try to hide their data. Moreover, not everyone has good mediation skills.

Beyond the right to use

by Idham Arsyad

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What do we mean by 'agrarian reform'? It is a political action to correct an imbalance in the tenure and use of agricultural land and also in the relationship between people and companies.

There are at least three reasons why forest-tenure reform, a subset of agrarian reform, is important. First, most of Indonesia's poor live in forests and have no rights to the resources. Securing those rights is an important step towards alleviating their poverty. Second, even though an area has been designated as forest, it is often no longer forested. And, third, most of the forest allocated to companies is not being exploited—it is being neglected.

Agrarian reform could slow the rate of deforestation and degradation. Because of the limited availability of agricultural land, many people go into forests and open up plots for farming. With agrarian reform we can address conflict and reduce both poverty and forest loss. But it is not an easy thing—a great challenge lies ahead. To this day our forest policy paradigm has not changed; it still has the ideology of state-based forestry. There are still limitations on people going into the forest. The President does not have a strong commitment to agrarian reform. Maybe this forum can call on the President to implement this reform.

There is also the challenge of the differences in perspective among stakeholders on how to deal with the problem. Is it possible to allow ownership, or should rights be restricted to the right to use the forest? How can different actors, each with a different landlord, share a single resource, above and below ground? This is politically complicated.



Conference participant **Yati Bun** of the Foundation for People and Community Development, PNG. Photo: Hwan Ok Ma

How do we go about implementing reforms? When we talk about tenure we have to refer to agrarian law. We have to be clear about which department has the most authority. If we are committed to justice in the forest sector we need a transition from the right to use, to ownership.

Who are adat communities? by Mina Setra

Director of Advocacy

AMAN

What do we mean by *adat* communities? *Adat* people themselves created a definition in 1999. Under that, AMAN estimates the number of *adat* people at 50–70 million. Under the government's definition, on the other hand, only 1.1 million people would be classified as *adat*. So there is a significant difference.

Adat communities have managed their resources for hundreds of years. They believe that the forest is the 'house' of their ancestors, who are the owners of the forest. So the forest needs to be maintained as the domain of their ancestors.

There is no national database of customary forests and indigenous territories, which reduces clarity and leads to conflict. The conservation models of indigenous communities are passed over in favour of imported conservation models that can deny forest access to indigenous peoples.

There is an urgent need in Indonesia for a law on the recognition and protection of indigenous rights that would serve as a reference for other laws. There needs to be certainty about free, prior and informed consent. We also want a reorganization of the Ministry of Forestry to include a special unit on indigenous issues and indigenous territories and a clear conflict-resolution mechanism.

The legality of adat forest by Myrna Safitri

Executive Director

Epistema

Legality is important, not only for communities but also for government and business. It is important to protect the rights of actors, and it is also important to provide an incentive for long-term investment in the forest. In Indonesia, we need to address three legal issues:

- Concepts—i.e. the legal concepts of forest, forest area and state forest.
- Unclear and inconsistent regulations.
- Incomplete procedures for establishing forest areas.

Forest (*hutan*) is not forest area (*kawasan hutan*). 'Forest' is the ecological fact of a standing forest. 'Forest area' is any

particular area designated by the government as permanent forest—i.e. it is a politico-administrative decision of the government (Ministry of Forestry) regarding the allocation and use of land. Forest areas exist because of a decision by the Minister of Forestry based on an inter-agency consensus on forest land use in the past (TGHK), now synchronized with provincial spatial plans (RTRWP). An estimated 30% of the *kawasan hutan* is not forested.

Forest areas exist under a set of procedures called forest establishment (*pengukuhan kawasan hutan*), carried out to provide legal certainty regarding the property status, position, boundary demarcation, function and size of the land. These procedures do not affect the legal status of that land but, in practice, *kawasan hutan* has been perceived as state forest. Article 68(4) of the Forest Law, 1999, implies that *kawasan hutan* is state forest by allowing people to obtain compensation due to the loss of her/his land (ownership) rights in the process of establishing *kawasan hutan*.

Is *adat* forest state forest or private forest? Under Article 5(2) of the Forest Law, 1999, it would seem that *adat* forest is state forest, but the Basic Agrarian Law, 1960, is unclear on this point, implying in Article 2(4) that it is state land but in articles 3 and 16(1) that it is private land.

Many steps must be taken to establish a forest area. The process is complex. If we assume that *adat* forest is private forest, we can divide the territory between forest and non-forest, and within the forest there will be state forest and private forest. The authority to manage the forest resides with the Ministry of Forestry but the decision on the allocation of land tenure is delegated to other institutions. If *adat* forest is assumed to be part of state forest, we need to be clear that not all state forest need be under the control of the Ministry of Forestry. Citizens can apply for rights and the government must have a clear legal basis if it is to physically control the land.

Comment from representative of farmers from Jambi Province:

There is an agrarian conflict in Jambi province. I represent 14 000 heads of household accounting for 60 000 people and the rights to their land have been taken over by a concession covering 49 000 hectares. The conflict started in 1996 and still there is no resolution. The lands of these people have been seized by the company, which is taking refuge behind the minister's decree. I convey to all participants that there have been casualties—six people have died, and more than 80 members have been taken to the police station and intimidated. It is very concerning. I have made many attempts at mediation with the provincial and national governments, but there is still no clear way to resolve the problem. I have sent letters—the only person I haven't sent a letter to is God, and if I knew his address I would send it to him. Where should I look for justice for these farmers?