



INTERNATIONAL TROPICAL TIMBER ORGANIZATION

**PARTICIPATORY FOREST MANAGEMENT FOR SUSTAINABLE
UTILIZATION OF NON TIMBER FOREST PRODUCTS (NTFPs)
SURROUNDING THE PROTECTED AREA OF RINJANI AND
MUTIS TIMAU MT, NUSA TENGGARA – INDONESIA
PD. 521/08 Rev. 3 (I)**

TECHNICAL REPORT II - 2012

**MANAGEMENT POLICY
ANALYSIS STUDY OF NON-TIMBER FOREST PRODUCT (NTFPs)
IN WEST NUSA TENGGARA PROVINCE & EAST NUSA TENGGARA PROVINCE**

Prof. Dr. Gatot Dwi Hendro, SH,M.Hum



MINISTRY of FORESTRY of REPUBLIC of INDONESIA
WORLD WILD FUND – INDONESIA
FORESTRY SERVICE of NUSA TENGGARA BARAT PROVINCE



Serial Number : PD 521/08 Rev.3(1)

Starting Date of the Project : June 2011

Actual Duration of the Project : 27 months

Original Budget (USD) : US\$ 490,374.00 (ITTO)
Switzerland : \$ 400,000.00
Japan : \$ 45,187.00
U.S.A. : \$ 45,187.00

Actual Project Cost (USD) : US \$ 400,402.00

Type of Report : Project Technical Report II - 2012

Executing Agency : Directorate General of Watershed
Management and Social Forestry
Development, Ministry of Forestry of Republic
of Indonesia - Manggala Wanabakti Building
Block I, Floor 12, Jl Gatot Subroto Senayan
Jakarta
Telp/Fax : +62 21 5704501 ext. 477/5730136
Email : sahalasimanjuntak@yahoo.com
In collaboration with:
(1)WWF Indonesia Program Nusa Tenggara Jl.
Arief Rahman Hakim No. 43 A Mataram,
Lombok. NTB Indonesia Telp/Fax: +62
(370) 642401; 630505;
Email:RHakim@wwf.or.id
(2)Forestry Service of West Nusa Tenggara
Province (*Dinas Kehutanan Provinsi Nusa
Tenggara Barat*) Jl. Majapahit No. 54
Mataram, West Nusa Tenggara Indonesia
Phone (+62-370) 633071; fax (+62-370)
633961 Email:Kehutananntb@yahoo.com

Place of Issued : Jakarta

Date of Issued : July 2012

LIST OF CONTENTS

	Page
LIST OF CONTENTS.....	ii
SUMMARY.....	iii
1. Introduction	1
2. Purpose	2
3. Research Location	2
4. Research Methode	2
5. Findings	3
6. NTFPs Management Policy Alternatives	16
7. Conclusions	24
8. Recommendations	24
9. Practical Implication	25
Bibliography.....	26

SUMMARY

This research aims to analyze the policies regarding non-timber forest products (NTFPs) management. The objective is to find the right policy option for NTFPs development that suits each characteristic of the research locations. The research method used is a combination of normative and empirical method. The empirical method is meant to help the normative method. The approach used in this research is Statute Approach, while the approach for the empirical method is Modified Participatory Action Research.

The findings in the three research location are that (1) NTFPs are not fully concerned while the community realized that the potential of NTFPs is quite large and NTFPs could largely benefit the community living near the forest estate. This indicates that NTFPs policy is not yet stipulated in the local legislation product and/or regency strategic plan; (2) the result of NTFPs management research only holds an indicative value and it only functions as an academic paper. It does not have legal power over either the researcher or the users. Thus, there needs to be a firm and clear legislative umbrella for NTFPs than could bind both the policy makers and the community under the laws; (3) There are many policy options regarding NTFPs management needed to be stipulated in the legal product/policy, i.e. the establishment of NTFPs Working Groups ; the establishment of potential NTFPs commodity in regional level; strategy, policy, and program planning of NTFPs management in regional level; and NTFPs administrative regulation in regional level; (4) There is a legal opportunity to propose a revision over Forestry Ministry Regulation No.35/Menhut-II/200 concerning NTFPs through the procedure or mechanism of legislation formation.

1. INTRODUCTION

Based on the Forestry Ministry Regulation No. P.21/Menhut-II/2009, it is said in the annex that the economic value of NTFPs in Indonesia is estimated to reach 90% of the total number of the economic value that could be produced from the forest ecosystem. Besides that, NTFPs commodity is also one of the resources that can really touch the local community life living around the forest. NTFPs have also become a direct income for fulfilling many households and community around the world (Iqbal, 1993; Walter, 2001).

To develop and increase NTFPs production, the central government has issued several policies, i.e. Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs and P.19/Menhut-II/2009 concerning National NTFPs Development Strategy. It is expected that through the NTFPs development policy, for NTFPs either coming from the inside or outside the forest estate, the community's dependence on timber products could be reduced, the income of the community living around the forest could be increased, there is a realization to preserve the forest, NTFPs foreign exchange could be increased, and a new employment opportunity could be created in the forestry sector from NTFP commodity (Dephut, 2009). Besides that, by developing NTFPs, it is hoped that there is an optimization of NTFPs utilization that covers the number of types, form, and processing stages, as well as the quality, and also an optimization of local potential in NTFPs development as alternatives for food, medicine, and fiber producer, sap producer, which could improve local and national economy.

In Nusa Tenggara Barat (NTB), the potential of NTFPs are quite large, both inside and outside the forest estate. Based on the result of NTFPs Management Plan research in Lombok Utara regency and Lombok Tengah regency, there are some commodities that can be developed by the community. Inside the forest estate of Lombok Utara regency, there are 27 commodities inside the community forest and 19 commodities outside the community forest. Meanwhile, there are 25 commodities outside the forest estate. Inside the forest estate in Lombok Tengah regency, there are 39 commodities inside the community forest and 23 commodities outside the community forest, while outside there forest estate there are 36 commodities (WWF, 2012).

The result of WWF research in 2012 is that the module of local community capacity building, NTFP management strategic plans, and community economy development strategy are only guides for local stakeholders, so that they only have

an indicative value. They do not have a legal value. Regarding that, this study becomes important since this study could become an academic basis to create objective, rational, and responsive policies. The involvement of the community and/or stakeholder in policy formulation process holds a very substantial value since its legitimacy and validity are socially applicable.

2. PURPOSE

This research on policy aims to review the laws issued from the national level to the local level related to NTFPs development. The purposes of this study cover:

- a. Finding the right policy option and legal basis for local NTFPs development plan.
- b. Analyzing local stakeholders' response over NTFPs development plan.
- c. Formulating a follow-up recommendation for local NTFPs development plan.

3. RESEARCH LOCATION

The locations of this research are in two provinces, Nusa Tenggara Barat and Nusa Tenggara Timur. Two regencies are chosen from NTB, Lombok Utara regency and Lombok Tengah regency, while in NTT, one regency is chosen, Timur Tengah Selatan regency.

4. RESEARCH METHOD.

Research method used in this study is the combination of normative and empirical method. The empirical method is meant to help the normative method (Soerjono Soekanto and Sri Mamudji, 2000). The approach used in this research is Statute Approach. Statute Approach is done by reviewing the laws from the national level to the regency level. Meanwhile, Modified Participatory Action Research approach is done by involving the stakeholders in the reviewing process. The analysis will combine the findings from secondary data review, in-depth interview, Focus Group Discussion (FGD), and workshop (Muktasam, 2008). Modified Participatory Action Research approach is used to get to know what really happens in the field (existing condition) including social and environmental condition, the related parties' response, and to get inputs and ideas regarding NTFP policy formulation plan.

The working plan of the policy research covers:

No	Activity	May		June				July		
		3	4	1	2	3	4	1	2	3
1.	Collecting legal material									
2.	Reviewing the laws									
3.	<i>In depth interview</i>									
4.	<i>Focus Group Discussion : Regency (Lombok Utara, Lombok Barat dan Timur Tengah Selatan)</i>									
5.	Preparing report draft : Synchronizing the legal findings with the empirical findings									
6.	Workshop									
7.	Preparing report									

5. FINDINGS

5.1. Policy Analysis

There are two steps in the NTFP policy analysis. The first one is identifying the policies related to NTFP management, starting from the highest policy in the hierarchy (the Constitution) to local regency policies. Secondly, findings from the identification are analyzed deeper to find the legal basis for formulating policy option in the form of policy suggestion in the local level or policy option in the national level.

5.1.1. Policy Identification

The result of the policy identification on this report covers the policies and the substance that can be used as legal basis in formulating policy option. The result of the identification can be seen in the table below.

Tabel 1. The hierarchy of policies concerning NTFPs management

No	Policy	Substances
1.	1945 Constitution	<ul style="list-style-type: none"> • NTFPs are a part of Indonesia natural wealth that should be utilized to make the community prosperous. • The state has the right to control and subsequently regulate the utilization of NTFPs based on current legislation.
2.	Act No.5 of 1990 concerning Conservation of Living Resources and Their Ecosystem	<ul style="list-style-type: none"> • This act put conservation as its priority. • NTFP existence should be seen as an effort of protecting living resources and their ecosystem. • This act embraces the concept of ecocentric, means that

No	Policy	Substances
		the main reason of environmental protection is the environment itself.
3.	Act No.41 of 1999 concerning Forestry	<ul style="list-style-type: none"> • Besides concerning forest conservation aspect, this act also gives an opportunity to utilize the forest for its economic value. • NTFPs have high economic potential and the potential to improve the welfare of the society. • This act embraces the concept of anthropocentric, means that the environment (forests) exists for humans to utilize. • The concept that is wanted to be developed is "sustainable forest created prosperous community."
4.	Act No.32 of 2004 concerning Regional Administration	<ul style="list-style-type: none"> • Becoming a legal basis in relation to the authority of the utilization of natural resources including NTFPs, between the central government and local governments and among local governments. • Becoming the legal basis in conducting cooperation and profit sharing over the utilization of natural resources including NTFPs and other resources among local governments. • Because of the authority possessed by the legislation (attributive), the central government and local government have the authority to issue permit in the utilization of natural resources including NTFPs and other resources.
5.	Government Regulation No 38 of 2007 on the Distribution of Government Affairs between the Government, Provincial Government and Regency/Municipal.	<ul style="list-style-type: none"> • Implementing the provision of Article 14 Paragraph 3 of Act No.32 of 2004 concerning regional administration which basically regulate the governmental affair division between the central, provincial, and regency/municipal government. • Local governments conduct their autonomy as far as they can to organize and manage their own affairs based on the principle of autonomy and assistance. • Government affairs under the authority of local governments conducted by the criteria of externality, accountability, and effectiveness and shall consist of obligatory and optional affairs. • Optional affairs, both in the provincial and municipal level, covers governmental affairs that really exist and have recurring potential concerning local potential. • Forestry affairs including NTFPs are obligatory and optional affairs that shall be conducted as well as possible.
6.	Government Regulation No.6 of 2007 concerning Forest Arrangement and Formulation of Forest Management Plan and Forest	<ul style="list-style-type: none"> • Utilization of NTFPs is an activity to utilize and commercialize NTFPs by keeping in mind to not damage the environment and not reduce their principal function (Article 1 Paragraph 8). • The extraction of timber and NTFPs is an activity to

No	Policy	Substances
	Exploitation	<p>extract either timber and or NTFPs within a time, area, or volume constraint.</p> <ul style="list-style-type: none"> • Commercial Timber Utilization Permit, hereinafter abbreviated IUPHHK and/or Commercial Non-Timber Forest Products Utilization Permit, hereinafter abbreviated IUPHHBK are permits granted to utilize forest products, timber and NTFPs, in natural forest in production forest through extraction or logging, enrichment, maintenance, and marketing (Article 1 Paragraph 13). • IUPHHK and/or IUPHHBK in plantation is a permit granted to utilize forest products, timber and NTFPs, through land preparation, seeding, planting, maintenance, harvesting, and marketing (Article 1 Paragraph 15). • Timber Extraction Permit, hereinafter abbreviated IPHHK is a permit to extract timber forest products in production forest through harvesting, transporting, and marketing within a time and volume constraint (Article 1 Paragraph 16). • Non-Timber Forest Products extraction Permit, hereinafter abbreviated IHHBK, is a permit to extract NTFPs in protected forest and/or production forest including rattan, honey, fruits, saps, and medicinal plants within a time and volume constraint (Article 1 Paragraph 17).
7.	Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs	<ul style="list-style-type: none"> • NTFPs originated from the forest subject to and are governed by the provisions in the field of forestry. • NTFPs which are not listed in the annex of this rule but as long as they are originated from the forest subject to and are governed by the provisions in the field of forestry. • NTFPs listed in teh annex of this rule originated from the outside of the forest subject to and are governed by the current regulations. • NTFPs in the form of protected and unprotected plants and wildlives listed in the Appendix Cites subject to and are governed by the current regulations.
8.	Forestry Ministry Regulation No. P.19/Menhut-II/2009 concerning National NTFPs Development Strategy	<ul style="list-style-type: none"> • The formulation of this Grand Strategy is intended to provide direction, policies, and description of NTFPs development to entrepreneurs, stakeholders and communities that will develop NTFPs, while the objectives are: • Exploring the local potential in NTFPs development as an alternative source of food, medicine, fiber, saps, and others that can improve the welfare of the community. • Supporting the national policy in developing and improving NTFPs production. • To be a reference of planning until post-harvesting of NTFPs for entrepreneurs, stakeholders, and

No	Policy	Substances
		communities related to NTFPs development.
9.	Forestry Ministry Regulation No. P.21/Menhut-II/2009 concerning Criteria and Indicator of the Establishment of potential NTFPs	<ul style="list-style-type: none"> • These standard criteria are intended as a reference in determining the type of potential NTFPs and to make the understanding and NTFPs development steps in line in an effort to develop NTFPs to improve the welfare of the community. • Meanwhile, the goal is to make available potential NTFPs types that will be developed with more focused and directed more towards a high economic value commodity in both national and local levels.
10.	Forestry Ministry Regulation No. P.46/Menhut-II/2009 concerning Method of Timber and Non-Timber Forest Products Extraction Permit Provision in the Production Forest	<ul style="list-style-type: none"> • IPHHK is as stated in Article 1 Paragraph 16 of Government Regulation No.6 of 2007 in conjunction with Government Regulation No.3 of 2008. • IPHHBK is as stated in Article 1 Paragraph 17 of Government Regulation No.6 of 2007 in conjunction with Government Regulation No.3 of 2008.
11.	Forestry Ministry Regulation Mp P.8/Menhut-II/2010 concerning Forestry Ministry Strategic Plan of 2010-2014	<ul style="list-style-type: none"> • The chapter on Community Economic Empowerment in and around the Forest estate affirmed that: <i>“ Activities undertaken to support policy priority Community Economic Empowerment in and around the Forest Estate are implemented through the development and empowerment of the community’s economic condition through the development of community forest, village forest, conservation, and rural. Further improvement of the community’s economic condition is conducted through the development of timber and non-timber forest products such as rattan, sap, fruit, tuber, and nature tourism business”.</i>
12.	Nusa Tenggara Barat Provincial Regulation No.6 of 2004 concerning Guidelines for the Implementation of Community Forest in Nusa Tenggara Barat province	<ul style="list-style-type: none"> • This local regulation is substantially formed based on Act No.41 of 1999 concerning Forestry and Government Regulation No.34 of 2002 concerning concerning the Management of Forests and the Use of Forest Area. • Norms in this local regulation repeat a lot of norms regulated in the Act No.41 of 1999 and Government Regulation No.34 of 2002 (occurs norm reps) that do not have to be done because it will reduce the norms set out in the set regulation (Acts and Government Regulations).
13.	Lombok Tengah Regency Local Regulation No.4 of 2009 concerning the Implementation of Community Forest	<ul style="list-style-type: none"> • Referring to the provision of Article 96 of Government Regulation No.6 of 2007 concerning Forest Arrangement and Formulation of Forest Management and Utilisation Plans. • The objective of the existence of the community forest is to improve the welfare of local communities through the utilization of forest resources optimally, equitable and sustainable while maintaining the sustainability of

No	Policy	Substances
		the forest and their living environment. <ul style="list-style-type: none"> • Setting the types of utilization permits. • Community Forest, IUPHHK in the community forest, and IUPHHBK in the community forest.
14.	Lombok Medium Term Development Plan 2011-2015	<ul style="list-style-type: none"> • The local development strategy and direction do not explicitly regulate the importance of NTFPs as the local potential worthy to be developed, while this area has a forest estate (of NTFPs) that is very potential to be developed to improve the welfare of the community.
15.	Lombok Tengah Medium Term Development Plan 2011-2015	<ul style="list-style-type: none"> • Not much different from the factual condition in Lombok Tengah, the NTFPs MTDP in Lombok Utara regency did not explicitly regulate NTFPs development plan as the local potential.

5.1.2. Policy Analysis regarding NTFPs

Normatively, the law can be interpreted as regulations in the legal system. In the legal system itself, there are various legal principles that must be adhered to; one of them is that the law in the lower hierarchy should not contradict with the law in the higher hierarchy. Strictly speaking, there is a hierarchy in the legal system that should be considered along with the content that being regulated in the hierarchy. In the context of NTFPs management, there are various relevant policies that can be used as a reference for regulation, starting from the highest norm (the Constitution) to the lowest norm (local regulation).

The 1945 Constitution implicitly affirms that the natural wealth of Indonesia (including NTFPs) should be utilized to their greatest for the welfare of the community. The state has the right to control and subsequently regulate the utilization of NTFPs based on current legislation.

National-wide regulations (starting from laws, government regulations, until forestry ministry regulations) as the basis reference for NTFPs is sufficient. That means, general and macro things from the laws have been technically explained into lower level regulations and forestry ministry regulation.

The Act No. 5 of 1990 concerning Conservation of Living Resources and Their Ecosystem obviously put conservation forward. Thus NTFP existence should be seen as an effort of protecting living resources and their ecosystem. This is understandable because this act embraces the concept of ecocentric, means that the main reason of environmental protection is the environment itself.

Unlike Act No.5 of 1990, act No.41 of 1999 concerning Forestry seems to embrace the concept of anthropocentric, means that the environment (forests) exists for humans to utilize. The concept that is wanted to be developed is “sustainable forest created prosperous community”. Thus, besides concerning forest conservation aspect, this act also gives an opportunity to utilize the forest for its economic value. NTFPs have high economic potential and the potential to improve the welfare of the society.

Beside those two acts, there is also Forestry Ministry Regulation: P.37/Menhut-II/2007 regarding Community Forest. That means there is awareness from the policy makers that forest management cannot be borne by the government alone, but it should also involve the community, especially those who live near the forest estate.

When examined, the policies regulating forest issues has have reflected the main issues in Earth Summit in Rio de Janeiro, Brazil which gave birth the concept sustainable development. Sustainable development requires three essential elements to be present, i.e. ecological sustainability, economic sustainability, and social sustainability.

Conceptually, sustainable development, especially in the field of forestry, is very good. The supporting legal instrument, starting from the legal system, government regulation, to forestry ministry regulation is pretty sufficient. However, often in the implementation, that concept cannot be implemented properly. It seems that there is ambiguity at the local level especially among local policy makers regarding following up and formulation strategic decision in relation to NTFPs. Current analysis shows that national policies either in the form of acts, government regulations, forestry ministry policies, have never been followed up in the form of local policies. Provincial Regulations, Regency Regulations, or any other policies like Medium Term Development Plan do not firmly and meticulously regulate NTFPs.

On the other hand, there is a gap between what is supposed to be (das sollen) and what really happens (das sein). The example of this gap, especially in the field of forestry, can be seen in the Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs, along with its annex containing a list of strictly chosen commodities. In practice, (at least what happened in the research location) there are many commodities developed by local community that are not stipulated in the annex of Forestry Ministry Regulation No. P.35/Menhut-II/2007.

Local community developed commodities outside the stipulated list in the Forestry Ministry Regulation No.35. If not, there need to be strategic steps that should be done to improve the welfare of the community in the forest estate to maintain and sustain the principal function of the forest. Meanwhile, in the Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs, it is affirmed that:

- NTFPs originated from the forest subject to and are governed by the provisions in the field of forestry.
- NTFPs which are not listed in the annex of this rule but as long as they are originated from the forest subject to and are governed by the provisions in the field of forestry.
- NTFPs listed in the annex of this rule originated from the outside of the forest subject to and are governed by the current regulations.
- NTFPs in the form of protected and unprotected plants and wild lives listed in the Appendix Cites subject to and are governed by the current regulations.

Even though at the central level there is a regulation that strictly stipulated NTFPs, but at the local level (at least at the 3 research locations) there is no regulation to that particularly regulate these NTFPs. Derivative of the higher norm can be used as a reference or guideline to regulate NTFPs at the local level.

5.2. Social Analysis

5.2.1. Lombok Utara Regency (LUR)

Based on the result document of NTFPs Management Planning research in LUR regarding the potential of NTFPs, either outside or inside the forest estate, done by WWF Nusa Tenggara (2012), the potential of NTFPs inside the forest estate of the community forest is accounted for 27 commodities, and 19 potential commodities outside the community forest. Meanwhile, the potential of NTFPs outside the forest estate accounts for 25 commodities. It is possible for those numbers to be increased because until now there is no identification and mapping done regarding the complete number of NTFPs commodity. As an example, in LUR there are potential commodities such as Mango Bayan and Pecan, but until now there has been lack of support from the local government regarding the management of both commodities.

Given that the potential of NTFPs both inside and outside of the forest estate is quite large, the local government should provide regulation that could provide convenience and economic benefit to the community especially those

who live around the forest estate. That regulation is a realization of government partisanship in decreasing the number of poor people around the forest estate that up until now is still quite large. Besides that, NTFPs regulation could provide assurance and legitimacy in utilizing the natural resources. That is in accordance with the facts in the field whereas the dominant livelihood of the community depends on NTFPs.

In the context of NTFPs management regulation formulation, the regulation should still refer to current regulations. As a first step, there could be a local policy that corresponds to LUR's readiness, i.e. Working Group whose role and function is to accelerate the policy formulation process in determining potential commodities and local regulations.

Some important things to be regarded in preparing the regulation are:

- a. Clarity of coordination mechanism and role division between the vertical institution and local SKPD
- b. Implementation strategy of NTFPs development
- c. Preparation of community institution
- d. Marketing infrastructure
- e. Local norm characteristics and values

In NTFPs management regulation formulation, it is important to pay attention to Forestry Ministry regulation No. P.35/Menhut-II/2007. The articles that should be regarded are those concerning (a) NTFPs originated from the forest subject to and are governed by the provisions in the field of forestry; (b) NTFPs which are not listed in the annex of this rule but as long as they are originated from the forest subject to and are governed by the provisions in the field of forestry; (c) NTFPs listed in the annex of this rule originated from the outside of the forest subject to and are governed by the current regulations. In the context of LUR, up until now there are 25 commodities originated from outside the forest. Therefore, in formulating the regulation, policy makers should be able to formulate the right policy so that it is not counter-productive.

Based on the findings, there are a number of issues as followed:

- a. Institutionally, forest management is still combined with other fields like agriculture, plantation, and animal husbandry. It has an implication to a restricted scope regarding the planning and budget allocation.
- b. According to Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs, it is known that a number of commodities have not been

able to accommodate what is developed by the community. Therefore, it is necessary to formulate a solution to provide legal certainty over existing commodities. Thus, there need to be a consideration and caution because the dominant commodities developed by the community are quite resistant with the forestry institution. To that end, the determination of NTFPs should retain physical characteristics, value, and function of the forest.

- c. Until now NTFPs has yet become a concern, although it is realized that the potential of NTFPs is quite large and NTFPs could provide the community its greatest benefits especially for those living in the forest estate. This indicates that NTFPs policy has yet been set forth in the form of act or LUS strategic plan.
- d. There is no appropriate legal certainty (policies) in NTFPs development in regional level.

Apart from several issues mentioned above, the response of stakeholders (local government, NGOs, universities, and the community) against the effort to push NTFPs management policy is quite supportive. Besides that there is already academic and technical support for NTFPs policy formulation. However, it is realized that in the future there should be a political support.

The importance of NTFPs development regulation is expected to be a legal umbrella and assurance for the community in NTFPs management. The local government, especially technical institution, is expected to be a reference in formulation program to support NTFPs management. Therefore, there need to be strategic steps that include:

- a. There need to be a Working Group whose function is to prepare and accelerate NTFPs management planning. The legal umbrella for Working Group establishment is the regency's decision.
- b. There need to be acceleration in local potential NTFPs determination. This determination will be one of the Working Group roles.
- c. There need to be NTFPs development management planning that later on becomes a reference among the technical institutions.
- d. There need to be NTFPs management policy that include:
 - The mechanism of incentives and disincentives provision
 - NTFPs permit and administration
 - The implementation of environmentally friendly technology
 - Coordination mechanism and role division between local agency and the local vertical institution

- Community institution empowerment
- Regulation of NTFPs marketing network

5.2.2. Lombok Tengah Regency (LTR)

Based on the result document of NTFPs Management Planning research in LTR, regarding the potential of NTFPs, either outside or inside the forest estate done by WWF Nusa Tenggara (2012), the potential of NTFPs inside the forest estate of the community forest is accounted for 39 commodities, and 23 potential commodities outside the community forest. Meanwhile, the potential of NTFPs outside the forest estate accounts for 36 commodities. It is possible for those numbers to be increased because until now there is no identification and mapping done regarding the complete number of NTFPs commodity, given that the potential of NTFPs development in the forest estate reached around 8,000 ha.

On the NTFPs management regulation formulation plan, the stakeholders (executive, legislative, local NGOs and the community) agree to support the initiative of NTFPs policy regulation, considering that the economic potential of NTFPs could support and provide benefit to the ecology of the forest estate.

Based on the findings, the NTFPs management policy formulation can be its own regulation or it could be synchronized with Tourism and Marine Agribusiness Development Plan that is still in the formulation. NTFPs regulation could provide legitimacy and validity for the community in utilizing natural resources. The fact in the field showed that the community depend their life on NTFPs, especially those living in the community forest area both in Batu Kliang Utara and south area.

Based on the analysis, if NTFPs become its own regulation, it is important to consider several things, i.e.:

- a. Before formulating NTFPs management plan into local policy, there need to be a comprehensive study covering study of the social condition, economic condition, potential mapping, and implementation strategy.
- b. Formulation of NTFPs management regulation should firmly stipulate the communities's and government's rights and obligations. The community should get a benefit and their role in the conservation should be defined so that the area of the damaged forest could be reduced. The government should provide guidance including budgeting support.
- c. Clarity of coordination mechanism and role division between the vertical institution and local SKPD

- d. NTFPs development initiative should be followed by clear stages, starting from planning, dissemination, implementation strategy, monitoring, and incentives and disincentives provision mechanism.
- e. NTFPs policy formulation plan should have a clear concept by taking into account fairness between areas that is the south area and north area development.
- f. The institution responsible for formulating NTFPs policy draft comes from Forestry Service. However, they need to synergize the draft with the initiative developed by WWF Nusa Tenggara.
- g. In the process of NTFPs management policy formulation, the executive need to be involved. The executive also supports and expects to be involved. This is important in order to gain political support in the future

Findings in the field showed that there are issues, both social and legal. The social issue concerns about some commodities developed by the community that are not accommodated in the Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs. Like what happened in LUR, it is necessary to formulate a solution to provide legal certainty over existing commodities. Thus, there need to be a consideration and caution because the dominant commodities developed by the community are quite resistant with the forestry institution. To that end, the determination of NTFPs should retain physical characteristics, value, and function of the forest. The legal issue concerns about the local government that has not fully concerned and formulated local legislation, although it is realized that the potential of NTFPs is quite large and it could improve the welfare of the community especially those living around the forest estate.

Based on the explanation above, strategic steps that should be done to encourage the creation of NTFPs management policy are:

- a. There need to be a Working Group that involves some lawmakers whose function is to prepare and accelerate NTFPs management planning, determining local potential NTFPs, and escorting the implementation of NTFPs management. The Working Groups roles and structure are provided by Forestry Service. The legal umbrella for Working Group establishment is the regency's decision.
- b. There need to be NTFPs development management planning that later on becomes a reference among the technical institutions.
- c. The content of NTFPs management policy regulation should cover:

- Aspects of planning
- The mechanism of incentives and disincentives provision
- NTFPs permit and administration from the top to the bottom of the bureaucracy
- The implementation of environmentally friendly technology
- Coordination mechanism and role division between local agency and the local vertical institution
- Community institution empowerment through the implementation of awiq-awiq (local norms)

5.2.3. Timur Tengah Selatan Regency (TTSR)

Mutis region is a conservative forest that takes the form of a nature reserve area. Inside the region there are some NTFP commodities that could possibly be utilized by the community, but they need to have a permit. The community rely their life on NTFPs, but the access to NTFPs utilization in that region is quite restricted because the community is not allowed to plant, add, and modify the physical form of that region.

There are four types of NTFPs that could benefit the community and provide foreign exchange for the local government. The four types of NTFPs are honey, bamboo, pecan, and empon-empon and they all have the potential to be the local potential commodities. Therefore, in the future, there need to be the establishment of potential commodities so that there is a legal reference for stakeholders managing NTFPs.

Like in LUR and LTR, there are some commodities developed by the community but are not accommodated in the Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs. Therefore, a solution is needed that could provide legal certainty over the commodities that have been developed by the community by taking into account the physical characteristic, value, and area function.

In relation with the initiative to push NTFPs management regulation, the response of stakeholders (local government, the executive, universities, NGOs, and the community) is quite supportive. However, before formulation the policy, there should be NTFPs potential identification and inventory, both for inside and outside the region. It is used as a basis to synchronize the data from related SKPD.

Based on the findings, there are two schools growing. The first one wants NTFPs management policy to be included in the Local Regulation No.6 of 2012 concerning Environmental Service, formulation that local regulation needed to be revised. The second one suggests NTFPs management policy stipulated in its own local regulation so that the scope of the regulation is wider, starting from planning, managing, to trading system. Besides that, in the content of NTFPs regulation, it should be clearly stated regarding the involvement of the community including their institutional capacity building. It is no less important to involve a wider audience in the formulation process like the community and members of the parliament. This is important to gain political support.

Several strategic steps that should be done to push NTFPs management policy are:

- a. Accelerating the establishment of local potential NTFPs
- b. Involving the stakeholders to decide whether to include the policy in the existing local regulation or to make its own local regulation. However, based on the analysis, the right decision is to push NTFPs regulation to be its own regulation.
- c. The content of NTFPs management policy regulation should cover:
 - Aspects of planning by involving stakeholders including members of the parliament
 - Community access regulation in utilizing NTFPs in protected, production, and conservation forest
 - Regulation of NTFPs marketing network
 - Coordination mechanism and role division between local agency and the local vertical institution
 - Community institution empowerment

6. NTFPs MANAGEMENT POLICY ALTERNATIVES

From legal perspective, the function of law can be defined as a guideline or directive towards community development (Sjachran Basah, 2002). Law is also meant to structure the whole process which its substance is within and being carried out by other disciplines (Mochtar Kusumaatmadja, 1978). Those functions make law seen not only as a tool to control or to repress, but also as a guideline and legal frame over the dynamics of scientific development so that it has normative characteristic. In the context of NTFPs development, the law has a legal framework over the analysis result of the disciplines of forestry, agriculture,

environment, social, and economy. The analysis result from various disciplines regarding NTFPs turns out to only have an indicative value. That means the analysis result can only be used as a technical and academic guidelines that do not have legal power over anybody. Therefore, for the analysis result to have a normative value (binding), the analysis result should be poured into a clear and binding legal product that needs to be obeyed and followed.

In Indonesia positive law, the attitudes and behaviors of the state government/administration in carrying out its actions should be in accordance with the existing laws. Meanwhile, the legal system itself has to be adhered to the principal of law that is the law in the lower hierarchy should not contradict with the law in the higher hierarchy. Strictly speaking, there is a hierarchy in the legal system that should be considered along with the content that being regulated in the hierarchy.

Meanwhile, related to the policy options in NTFPs development in the research locations, there are some legal product recommendations that can be proposed regarding the content regulated in it, starting from the concrete norm that is a decision or determination (*Beschikking*) like Regent Decision. to general regulating norm (*Regelling*) like Regent Regulation and Local Regulation. Besides putting forward policy options through local regulation, there is also a recommendation to revise Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs.

6.1. Policy Option I : Regional Head (Regent) Decision

Regional Head or Regent Decision is a type of local laws. It is not firmly stipulated in Law No.12 of 2011 concerning Establishment of Laws and Regulations, but the existence of Regional Head or Regent Decision should still be recognized as having a binding legal power as long as it is originated from a higher law.

This Regent Decision is an official legal product that is obtained from the free authority of the Government or State Administration in carrying out its action in performing governmental affairs. Regional Head or Regent Decision in the context of legal system cannot actually be categorized as a law that has the characteristics of controlling and general binding. It is more appropriate if Regional Head Decision is categorized as State Administrative Decree (*Beschikking*). The characteristics of a decree are concrete, individual, and final.

The provision of Article 146 Law No.32 of 2004 regarding Regional Administration states that:

- (1) To conduct Local Regulation and in regard of the law, Regional Head establishes Local Regulation and/or Regional Head Decision
- (2) Regional Head Regulation and/or Regional Head Decision referred to in Paragraph (1) should not contradict with the public interest, local regulation, and higher law

Regarding NTFPs management in regional level, at least there are two substances that should be poured in the Regional Head/Regent Decision. The first one is regarding the urgency of the establishment of NTFPs Working Group. Secondly, it is necessary to establish local potential NTFPs commodity.

The establishment of NTFPs Working Group requires to be escorted by all relevant stakeholders, starting from the idea initiation stage to the creation of the legal product. Besides that, Working Group establishment is meant to accelerate the creation of NTFPs management policy including accelerating the establishment of local potential commodities. Meanwhile, the establishment of local potential NTFPs commodities is based on the fact that there are some potential commodities, inside and outside of the forest estate, that have been developed by the community. However, not all of local potential NTFPs commodities have been regulated in the form of legal product that has legal power over all stakeholders. Moreover, the establishment of local potential commodities could be used as a reference by the stakeholders in NTFPs development and as a basis in proposing post-budgeting (nomenclature) in local forestry sector.

6.2. Policy Option II : Regional Head (Regent) Regulation

Terminologically, Regional Head Regulation is a law in the regional level that has the characteristics of controlling (*regelling*) and general binding. But in practice, starting from the formulation to enactment of the regulation, the term “regional head regulation” has never been used. Instead, another term based on the scope area if the regulation is used, like Governor Regulation and Regent/Mayor Regulation.

As one of the local laws, the position of Regional Head Regulation is equal and/or under with Local Regulation. It is said equal because this legal product is independent, means that as long as there is no Local Regulation that regulates a certain issue in the community, Regional Head Regulation can be used as a means to regulate the public interest and it has a general binding power. On the other hand, it is said under the Local Regulation because Regional Head Regulation is issued to implement the provisions stipulated in the Local Regulation further.

The existence of Regional Head Regulation is stipulated in Article 146 Paragraph (1) Law No.32 of 2004 concerning Regional Administration that states that to conduct Local Regulation and in regard of the law; Regional Head establishes Local Regulation and/or Regional Head Decision. If the provision in Article 146 Paragraph (1) is associated with Law Theory, then the existence of Regional Head Regulation originates from authority attribution or delegation. Therefore, Regional Head Regulation is either autonomous regulation or executive regulation.

In relation to the NTFPs management, there is no blueprint in almost every research location regarding NTFPs that suits the local condition. In the national level, there is already Forestry Ministry No. P.19/Menhut-II/2009 concerning NTFPs Development Strategy that becomes the guideline for NTFPs development strategy formulation in regional level. Even though there is already national NTFPs strategy, often its implementation in the regional level faces some difficulties. There need to be a comprehensive and participatory NTFPs development strategy in the regional level which involves various concerned stakeholders in its formulation process. In order to make NTFPs development strategy has a binding power and becomes a reference for every concerned stakeholder, it is not sufficient to just make a technical and academic study of NTFPs development strategy in regional level. NTFPs development in the regional level should be poured into a clear legal product that has appropriate substances.

6.3. Policy Option III : Local Regulation

In accordance with the existence of Local Regulation as a type of law in the regional level, there is also Provincial Regulation and Regent/Mayor Regulation that exist as the consequence of regional autonomy implementation, either in the provincial level or regency/municipal level. Article 136 Paragraph (2) Law No.32 of 2004 concerning Regional Administration states that "local regulation is formulated in the framework of regional autonomy in the provincial /regency /municipal level and assistance."

Regional autonomy, according to Article 1 No.5 Law No.32 of 2004 concerning Regional Administration, is rights, authorities, and responsibilities of the autonomous region to regulate and manage their own government affairs and public interests according to the law. Meanwhile, what is meant by government affair is the functions of the government that become rights and responsibilities for every level and/or government hierarchy to regulate and manage those functions

which are their authorities in order to protect, serve, empower, and improve the welfare of the community.

From that definition, the substance of local regulation (either provincial or regency/municipal regulation) is essentially regulations regarding government affairs that are delegated to the region, except for government affairs that are strategically still managed by the central government, like foreign policy, defense and security, justice, national monetary and fiscal affair, and religion. Government affairs cover obligatory affair and optional affair. Soehino said that the substances regulated in the local regulation are:

1. Those which charged the community, such as tax and regional levy
2. Those which limit the freedom of the community, such as prohibitions and responsibilities accompanied with criminal penalty or sanctions
3. Those which limit the rights of the community, such as controlling the demarcation line
4. Those which have been regulated in the equal or higher law but should be regulated in the local regulation

Besides the substances mentioned above, according to Article 136 Paragraph (3) Law No.32 of 2004 concerning Regional Administration, Local Regulation is also a further explanation of a higher law in accordance with the characteristic of each region. Law No.32 of 2004 concerning Regional Administration regarding the existence of said regulation is aligned with the provision in Law No.12 of 2011 concerning Establishment of Laws and Regulations that states that *local regulation substances are all substances in the implementation of the autonomy and assistance that cover the region particular condition and further explanation of a higher law*. Specifically, substances of local regulation are two things. The first thing is concerning the rights and responsibilities of every stakeholder (subject and object) in said regulation. Secondly, it covers duties, authorities, and responsibilities of the executive institution that will implement and enforce said regulation.

Regarding NTFPs management in the regional level, there are some findings needed to be poured into local regulation, i.e. The idea that there need to be a norm of the stakeholders in NTFPs administration, starting from the top to the bottom of the bureaucracy in the research locations; Regulation of rights, obligations, authorities, duties, and responsibilities of every stakeholder; Regulation of the mechanism of incentives and disincentives provision; Regulation of the mechanism of coordination and partnership stakeholders; Regulation of NTFPs marketing

network, Regulation of NTFPs permit and administration. All of those substances are what should be poured into local regulation.

The choice in using the laws, whether issuing Regional Head Decision or Regional Head Regulation, depends heavily on the scope of the respected regulations. If a local regulation or law authorizes a further elaboration within the executive regulation in the regional level which has a specific or even small scope, then it is recommended to choose Regional Head Decision. However, if what is needed is a wider scope covering various sectors, then it is more appropriate to choose Regional Head Regulation.

Based on the legal framework of the law, on point 6.1 – 6.3, the empirical condition of NTFPs in the research locations is associated with the several NTFPs management policy options, as can be seen on the table below:

No	Policy Option	Argumentation(s)	Recommendation(s)	Objective(s)	Legal Product
1	Working Group establishment	NTFPs management needs to be escorted by all related stakeholders, starting from the idea initiation stage to the creation of its legal product	The establishment of the Working Group should involve related SKPD, members of the parliament, NGOs, universities, and the community	Accelerating the creation of NTFPs management policy including accelerating the establishment of local potential commodities	Regent Decision concerning the establishment of NTFPs Working Group
2	The establishment of potential commodities in each research location	There are some potential commodities inside and outside the forest estate that are developed by the community while have not been established in any legal products that has a legal power over all stakeholders	<ul style="list-style-type: none"> The establishment of potential commodities is based on local characteristic The process of the establishment of local potential commodity through rounding up the community aspirations, preceded by comprehensive review 	<ul style="list-style-type: none"> Creating a guideline for stakeholders in managing NTFPs Having a basis in proposing post-budgeting (nomenclature) of local forestry sector 	Regent Decision concerning the establishment of potential NTFPs commodity
3	NTFPs grand strategy regulation in the regional level	<ul style="list-style-type: none"> Forestry Ministry Regulation No. P.19/Menhut-II/2009 concerning National NTFPs Development Strategy is still too general and less operational There is a juridicial oppportunity in the form of local legal product as a mandate of a higher law to make NTFPs strategy in the regional level 	<ul style="list-style-type: none"> In NTFPs development, various stakeholders in the regional level should be integrated The substances of local grand strategy regulation are vision and mission statement, policy, strategy, and NTFPs development program in the regional level 	Becoming a reference for stakeholders in NTFPs development in regional level	Regent Regulation concerning NTFPs strategy in the regional level
4	NTFPs partnership and administration management	<ul style="list-style-type: none"> The potential of NTFPs inside and outside of the forest estate is quite large. Currently it becomes the community's livelihood The potential of NTFPs is so complex that there need to be a partnership involving various stakeholders that in turns requires 	Academic journal preparation of NTFPs management which cover aspect of planning, NTFPs permit and administration, The mechanism of incentives and disincentives provision, The implementation of enviromentally friendly technology, Coordination	<ul style="list-style-type: none"> Providing legal and business certainty for the community in NTFPs development Becoming a basis in proposing post-budgeting (nomenclature) coming from APBD and other 	Local Regulation

No	Policy Option	Argumentation(s)	Recommendation(s)	Objective(s)	Legal Product
		<p>norms regarding the duty and responsibility, task division, and right of every stakeholder.</p> <ul style="list-style-type: none"> • NTFPs regulation is hoped to be a solution that could increase the poverty rate in the community living around the forest estate 	<p>mechanism and role division between local agency and the local vertical institution, Community institution empowerment through the implementation of awiq-awiq, and Regulation of NTFPs marketing network</p>	<p>sources</p>	
5	<p>Revision Proposal of Forestry Ministry Regulation No. P.35/Menhut-II/2007 concerning NTFPs</p>	<ul style="list-style-type: none"> • Several local potential commodities have not been accomodated in the annex of Forestry Ministry Regulation No. P.35/Menhut-II/2007 while empirically becoming local potential commodities • There is a juridicial opportunity to revise the annex of said regulation by revising its basis regulation because said regulation is an integral part of its basis regulation 	<ul style="list-style-type: none"> • Revision Proposal of Forestry Ministry Regulation No. P.35/Menhut-II/2007 can be done through executive review process • To encourage executive review process against Forestry Ministry Regulation No. P.35/Menhut-II/2007, there could be a proposal concerning local potential commodities which have not been accomodated in the Forestry Ministry mentioned earlier 	<p>Creating a responsive and populist policy</p>	<p>Forestry Ministry Regulation</p>

7. CONCLUSIONS

The findings of normative and empirical studies could be summarized as follows:

- a. Until now NTFPs has yet become a concern in the research locations although it is realized that the potential of NTFPs is quite large and NTFPs could provide the community its greatest benefits especially for those living in the forest estate. This indicates that NTFPs policy has yet been set forth in the form of local legislation and/or regency/municipality strategic plan.
- b. An alternative policy in NTFPs development could be done in stages starting from the most concrete norm to the most general and abstract norm. Legal norm that is concrete can be realized in the form of decision or determination (*Beschikking*) like Regent Decision. An abstract and general regulation can be realized in the form of regulation (Regelling) like Regent Regulation and Local Regulation.
- c. The community is proactive in pushing the creation of a responsive NTFPs management policy. Besides due to a high awareness of the economic value and benefit of NTFPs for the community, NTFPs policy is needed as an assurance regarding legal certainty and business certainty.

8. RECOMMENDATIONS

Based on the conclusion above, several follow-up activities that can be done in the future are:

- a. Initiating and facilitating a Working Group establishment of NTFPs development that includes roles and duties for each stakeholder
- b. Facilitating potential commodity product establishment that meet each local characteristic
- c. Facilitating the formulation of Regent Regulation concerning direction, strategy, policy, and program of NTFPs development in regional level
- d. Facilitating local regulation formulation concerning NTFPs development which substantially regulate the norm of the stakeholders involved in NTFPs development

- e. Escorting the implementation of local regulation concerning NTFPs development
- f. Formulating partnership mechanism and coordination between vertical institution and horizontal institution in implementing NTFPs management.

9. PRACTICAL IMPLICATION

In the future, this activity could become a learning process for stakeholders in pushing local natural resources development policy. Apart from the need of understanding the substantial aspect in the field of forestry, there need to be an understanding from other field of studies, including legal understanding, since it correlates with the mechanism and procedures of legal product formulation and revising if there is a mistake in the policy and regulation.

Bibliography

- Basah, Sjachran, Tiga Tulisan Tentang Hukum, Alumni, Bandung, 1992
- Wibowo, Gatot Dwi Hendro, Identifikasi Pemetaan Konflik Sumberdaya Hutan di NTB, Kerjasama Pusat Penelitian Pengembangan Perdesaan (P3P) Unram dengan Badan Perencanaan Pembangunan Nasional (Bappeda) Propinsi NTB, 2002no,
- , Sinkronisasi Kewenangan Penyelenggaraan Urusan di bidang Kehutanan di Propinsi NTB, Kerjasama Fakultas Hukum Universitas Mataram dengan Badan Perencanaan Pembangunan Daerah (Bappeda) Propinsi NTB, 2003
- , Pendayagunaan Nilai-Nilai Kearifan Lokal dalam Penyelesaian Sengketa Hutan (Studi Kasus Implementasi Hutan Kemasyarakatan di Kawasan Hutan Lindung Sesaot Lombok Barat (Ketua Tim Peneliti), Dibiayai dana DIPA PNPB Universitas Mataram Tahun 2010, Tanggal 31 Desember 2009
- , Fungsi Hukum dalam Pengelolaan Sengketa Sumberdaya Hutan, ISSN : 1410 – 3648 Kajian Masalah Hukum dan Pembangunan PERSPEKTIF Publish or Perish. Majalah Ilmiah Fak Hukum Universitas Wijaya Kusuma Surabaya Vol VI Nomor 1 Tahun 2001;
- , Cita Hukum Pancasila untuk Pengelolaan Sumberdaya Alam, Orasi Ilmiah dalam rangka Dies Natalis Universitas Mataram, Tahun 2008
- Kusumaatmadja, Mochtar, Fungsi Hukum dalam Pembangunan, Bina Cipta Bandung 1978
- Muktasam, A., *“Regulating The Commons: Participatory And Multistakeholder Approaches?”*, a paper presented at “Seminar Nasional dan Pameran Hasil-hasil Penelitian” pada Lembaga Penelitian – Universitas Mataram, Mataram, 29 – 30 September, 2009.
- Philipus M. Hadjon, *Administration Law in Indonesia*, Airlangga University Press, 2000
- Soekanto Soerjono dan Sri Mamoedji, Penelitian Hukum Normatif, Rajawali Press, 1999
- Syafrudinya, Ateng, Penataan R uang dan Lingkungan Hidup, Kaitannya dengan Wewenang Pemerintah Daerah dalam hal Perizinan, Bandung, 1995