Working paper

The Terpercaya Initiative

An assessment of roles, authority and capacity of district governments in solving tenurial conflicts in the forest area

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Executive Summary

This report presents an assessment of the roles, authorities and capacities of district-level governments in resolving land conflicts in the forest area. The assessment is part of the Terpercaya initiative, which aims to support the jurisdictional sustainable approach in the production of plantation commodities, especially palm oil. Considering the multidimensional impacts of tenurial conflict and its link with deforestation, attending to this issue is a high priority of the jurisdictional sustainability approach. This approach encourages an active role of the government at the jurisdiction level – that is, district governments in the context of Terpercaya – to prevent and solve issues that hinder sustainable production.

This assessment uses a combination of desk review of relevant regulatory framework with fieldwork. The first part of the research assesses the roles and authorities of local governments in conflict resolution in the forest area. Using the typologies of conflicts identified in previous research, this assessment discusses the roles of local governments under regulations of tenurial conflict resolution in the forest area, particularly those under Presidential Regulation No. 88 of 2017 on Settlement of Land Tenure in the Forest Area (Perpres 88) and regulations related to agrarian reform and social forestry to solve tenurial conflict in the forest area. Regulatory assessment finds that while local governments have no decision-making power, they do play an instrumental role in conflict settlement. The assessment shows that the following roles of district-level governments make instrumental contributions to the settlement of tenurial conflict in forest area:

1. Drawing-up inventories of land ownership and possession in the forest area. Authority over the forest area is beyond the authority of district-level governments. However, local governments can still try to identify claims by establishing mechanisms to receive submissions of land claims from the public. This enables the first stage of data collection on claims.
2. Establishing an Agrarian Reform Task Force (Gugus Tugas Reforma Agraria or GTRA) at district level and making sure it is equipped to carry out its duties.
3. Processing recognition of Adat community as the first stage to recognise Adat land/Adat forest.

This regulatory assessment is complemented with interviews of relevant stakeholders in four districts (Kotawaringin Barat and Seruyan in Central Kalimantan; Rokan Hulu in Riau Province; and Morowali Utara in Central Sulawesi Province) to understand the capacity of local governments in carrying out their mandates. Fieldwork shows that district-level governments lack capacity to deal with tenurial conflicts. This is evidenced by the absence of a unit to process the GTRA conflicts and/or technical operational guidelines at district level for dealing with complaints generally, including tenurial conflicts. District-level government representatives interviewed also indicated that budgets are not allocated to process claims by indigenous communities.

To create a regulatory environment that will encourage district-level governments to prioritise these duties, some national level regulations should be revised. For example, Permendagri 86/2017, which provides technical guidance to evaluate local government performance, should be amended to include duties relevant to conflict resolution (for example, planning and

allocating budget for conflict resolution activities) as part of evaluation indicators. Furthermore, some regulations that create uncertainty and confusion for local governments in carrying out their duties in the forest area will also need to be revisited.

1. Background

This report presents an assessment of the roles, authorities and capacities of district-level governments in resolving land conflicts in the forest area.[1] The assessment is part of the Terpercaya initiative, which aims to support a jurisdictional approach in promoting the production of sustainable plantation commodities, especially palm oil. Based on this assessment, guidance for local governments to help prevent and resolve tenurial conflicts will be developed.

Acknowledging the potential of the jurisdictional approach, the Indonesian Government has introduced the sustainable jurisdictional approach in the Mid-Term National Development Plan 2020–2024.[2] Terpercaya is one of the initiatives whose implementation is being tested by the National Development Agency.

Preventing and solving tenurial conflicts in the forest area is an important part of jurisdictional sustainability in the Indonesian context. Land-forest conflicts in Indonesia are prevalent. USAID (2006) finds that between 1999 and 2000, it affected between 12.3 to 16.9 million people.[3] Further, data by the BPS (2018) shows that there are 2,768 villages in the forest area (around 3%) and 18,617 (22.18%) on its periphery or surrounding forest area. These villages are those that already have the formal recognition from the Ministry of Home Affairs (MoHA) through a Decree on a Forest Area.[4]

Widespread unresolved tenurial conflict has economic, social and environmental impacts, including deforestation. For example, the occurrence of conflicts has a significant economic impact on palm oil production. Barreiro et al. (2016) calculated that the tangible costs of dealing with conflicts in each plantation range between USD 70,000–2,500,000 (around 51 to 88% of operational costs). Intangible costs are estimated to be even higher, ranging from USD 600,000 – 9,000,000.[5] Failure to address this issue risks companies' reputation in some markets and creates a serious possibility of market rejection. Conflicts resulting from tenurial uncertainties in the forest area also contribute to social and environmental problems by deterring investment, undermining local livelihoods and promoting short-term profit maximisation. Tenure insecurity is underpinned by weak governance and weak law enforcement, which further exacerbate deforestation and forest degradation.

Considering this substantial impact, attending to these issues is a high priority in the context of the jurisdictional approach. This approach encourages all stakeholders to create an enabling policy and regulatory environment for the production of sustainable products in a jurisdiction.[6] It encourages an active role of the government to prevent and solve issues that

[1] The forest area in Indonesia is defined as part of spatial function. In the forest area, certain rules and limitations applied. For example, it cannot be owned by non-state actors, activities in the forest area require state permissions, etc. The main law governing the forest area is the 1999 Forestry Law.
[2] See RPJMN, Narrative, II.28 (Perpres 18/2020)
[3] See also Abram et.al, 'Oil Palm-Community Conflict Mapping in Indonesia: A Case for Better Community Liaison in Planning for Development Initiatives' *Applied Geography* 78, 2017, 33–44, 34.
[4] BPS, Identifikasi dan Analisis Desa di Sekitar Kawasan Hutan Berbasis Spasial, 2018.
[5] Virginia Barreiro, Mohiburrahman Iqbal, Godwin Limberg, Rauf Prasodjo, Aisyah Sileuw and Jim Schweithelm, 'The Cost of Conflict in Oil Palm in Indonesia' (IBCSD, 2016).
[6] See for example Buchanan et .al. *Exploring the Reality of Jurisdictional Approach*, Conservation International, 2019 accessed through https://www.conservation.org/docs/default-source/publication-pdfs/jurisdictional_approach_full_report_march2019_published.pdf?Status=Master&sfvrsn=23c977ae_3

hinder sustainable production. In this context, this report presents research on the role of district-level governments in preventing and resolving tenurial conflicts, particularly those in the forest area.

The Terpercaya initiative aims to track local performance toward sustainable plantation commodity production in Indonesia. Research questions answered by this study are:

1. How can local governments contribute to solving tenurial conflict in the forest area?
2. What is their current performance related to solving tenurial conflicts in the forest area?

To answer the questions, the legal landscape related to tenurial conflict resolution in the forest area was first assessed, then interviews were conducted with stakeholders at the local level.

This report is divided into three sections. The first section starts with a discussion of the typology of problematic activities in the forest area by corporations and communities. It mainly relies on the work of Kehati (2019) and ICEL (2018), which identifies typologies of problematic or illegal activities within the forest area. It is followed with a summary of conflict resolutions or proposed actions to solve the problems, and the legal framework relevant to each. As identified by the two reports, these remedial actions include administrative law enforcement, criminal prosecutions and recognition of rights.

The second section discusses regulations of tenurial conflict resolution in the forest area, particularly those under Presidential Regulation No. 88 of 2017 on Settlement of Land Tenure in the Forest Area (hereafter Perpres 88), the main legal reference for this study. This discussion is followed by the description of two main models of reorganisation of forest area, namely the agrarian reform (under Presidential Regulation No. 86 of 2018 on Agrarian Reform) and the social forestry (among others, under the Minister of Environment and Forestry Regulation No. 83 of 2016 on Social Forestry (hereafter PerMenLHK 83/2016) and Minister of Environment and Forestry Regulation No. 21 of 2019 on Adat Forest and Private Forest (hereafter PerMenLHK 21/2019)). As the Omnibus Law or the Law on Job Creation No. 11/2020 was recently enacted, it is discussed in a special section, focusing on how it amends the pre-existing legal framework.

The third section focuses on local governments' roles and authorities in solving tenurial conflicts in the forest area and their capacity to exercise this power. It starts with the identification of district governments' authorities in the procedure introduced in the national legal framework discussed in the previous section vis-à-vis the legal framework on local governments' authority. Based on this discussion, a set of research questions was developed to assess district governments' capacity in exercising their power. This section also reports on the fieldwork conducted in four districts: Kotawaringin Barat and Seruyan in Central Kalimantan; Rokan Hulu in Riau Province; and Morowali Utara in Central Sulawesi Province.

2. Typology of problematic activities in the forest area

Conflicts in the forest area are associated with activities without formal recognition and/or activities with conflicting tenurial claims, which mostly involve corporations and individuals.[7]

There are many types of problematic activities in the forest area. As widely acknowledged, the absence of formal state recognition of activities in a forest area does not always confer illegality in a straightforward way. This paper therefore refers to these situations as 'problematic activities.' They are caused by a mix of problematic forest gazettement process, uncoordinated spatial planning process and the reluctance to acknowledge the existence of indigenous communities in the forest area. These problematic activities have led to the recent issuance by the Government of several policies that are discussed in this report. These policies relate to social forestry, Adat forests and the process to legalise business in the forest area.

Both the ICEL study (2018) and Kehati (2019) identify a typology of problematic activities in the forest area and suggest how they can be resolved. This report uses these two studies and the suggested remedial actions as a guide to identify the substantive role of local governments in resolving conflicts in the forest area.

The ICEL and Kehati reports cover different types of actors. As part of its licence review of plantation activities, ICEL (2018) developed a typology of problematic activities carried out by corporations inside and outside the forest area. Only those inside the forest area are relevant to this report. In the research, ICEL identified legal consequences of the problematic activities, with a focus on administrative and criminal law enforcement. On the other hand, Kehati (2019) published a report titled, 'Palm Inside: Resolving the Oil Palm Invasion Inside Forest Zone'. In contrast with ICEL's report, Kehati also covers activities conducted by actors other than corporations, namely smallholders and communities. Thus, the two reports cover all types of problematic activities in the forest area involving individuals, communities and corporations.

Table 1 in the following page shows a simplified and non-exhaustive typology of problematic activities that plantation corporations and communities in the forest area are engaged in and suggested resolutions. The typology aims to provide an overview of the type of resolution available for each type of problematic activity. The two reports provide a complete picture of problematic activities.

[7] Problematic activities in the forest area also involve public institutions. For example, in Central Kalimantan, some government institutions' offices are located in the designated forest area.

Table 1. Typology of problematic activities in the forest area relevant to tenurial conflicts

No.	Problematic Activities	Special Condition	Suggested Resolution	Notes
1.	Plantation Business Permit (or IUP in Bahasa Indonesia) is granted without a release decree of forest area for other uses	Spatial plan documents are different to forest designation/stipulation	**Administrative process:** Processing the permit through PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area. **Policy reform:** Expedite the harmonisation of spatial plan (RTRW) and Stipulation of Forest Area	The resolution under PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area was only allowed until 21 December 2016.[8] Thus, resolution through the administrative process should be considered unavailable.
		Spatial plan documents match the forest designation/stipulation	**Criminal sanctions:** Law No. 41/1999 on Forestry and Law No. 18/2013 on Prevention and Eradication of Forest Destruction	
2.	Plantation Business Permit (IUP) without a release decree of forest area from the Minister of Environment and Forestry, no ongoing activity yet.	Spatial plan documents are different to the forest designation/stipulation.	**Administrative process:** Processing the permit through PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area **Policy reform:** Expedite the harmonisation of spatial plan (RTRW) and Forest Area Stipulation	The resolution under PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area was only allowed until 21 December 2016.[9] Thus, resolution through the administrative process should be considered unavailable.

[8] ICEL (2018), typology under Forestry Law
[9] ICEL (2018), typology under Forestry Law

No.	Problematic Activities	Special Condition	Suggested Resolution	Notes
		Spatial plan documents match the forest designation/stipulation.	**Administrative:** The IUP and environmental licences should be reviewed. If the environmental impact assessment (EIA) is proven to be incorrect for not recognising the area as a forest area, then the Environmental Licence and the IUP should be revoked (article 40 of the 2009 Environmental Law).	In principle, a plantation cannot be operational before the release decree from the forest area is obtained. If the activities have taken place without such a decree to release, then it falls under criminal provisions of activities without a permit in the forest area, regulated by Laws No. 41/1999 on Forestry and No. 18/2013 Prevention and Eradication of Forest Destruction.
3.	Communities/smallholders, with claim, no formal recognition	See details in: Perpres 88/2017 Perpres 86/2018	**Social forestry and agrarian reform**	See: Perpres 88/2017 Perpres 86/2018
4.	Communities/smallholders, no claims, no formal recognition		**Criminal sanctions –** with focus on financiers	

The simplification of the typology of problematic activities involving corporations and communities above shows that relevant resolutions can be divided into three types:

1. **Social forestry and agrarian reform** for communities. This type of resolution relies on the following legal framework: Presidential Regulation No. 88 of 2017 on Settlement of Land Tenure in Forest Area (hereafter Perpres 88); Presidential Regulation No. 86 of 2018 on Agrarian Reform; Minister of Environment and Forestry Regulation No. 83 of 2016 on Social Forestry (hereafter PerMenLHK 83/2016); Minister of Environment and Forestry Regulation No. 21 of 2019 on Adat Forest and Private Forest (hereafter PerMenLHK 21/2019).
   In its implementation, social forestry and agrarian reform procedures will have to be followed by releasing the forest area for other uses or converting non-forest areas or production forests to permanent forest areas. This is technically regulated in Minister of Environment and Forestry Regulation No. 17/2018 as amended by the Minister of Environment and Forestry Regulation No. 42/2019 on Procedures for the Release of Forest Area and the Changing of Forest Delineation for Land Reform Object. The activities to release or exchange forest area then fall under the category of policy actions, which are described below as the third type of resolution.
2. **Law enforcement**, which mainly relates to the enforcement of criminal provisions under Law No. 41 of 1999 on Forestry and Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction.
3. **Policy actions**, including expediting harmonisation of forest area planning documents and processing the alignment of forest boundaries under PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area.[10]

As will be shown later, the three types of resolutions for problematic activities in the forest area hardly fall under local governments' authority. The completion of these resolutions depends on other government entities. For example, the authority to pursue criminal sanctions lies with the national police and prosecutor office. While local governments can initiate an investigation through their civil servant investigators for the breach of certain laws, such as the plantation or spatial plan laws, they do not hold the power to determine whether a case should be continued or not. Furthermore, local governments face difficulties in initiating investigation in the forest area because they cannot enter the area without permission from the forestry authority. Similarly, harmonisation of forest area planning and regional spatial plan requires the cooperation of the Ministry of Environment and Forestry (MEF).[11]

The next section will further discuss this issue, unpacking each of the suggested resolution and identifying the role of local governments. Based on this analysis, one can also identify priority areas for local governments to develop relevant conflict resolution capacities.

[10] Other suggested policy action in Kehati report (p. 75–80) are less relevant for local governments' roles, because they are specifically designed for central government institutions. For example, for the Coordinating Minister for Economic Affairs to develop standards for licensing evaluation.
[11] Article 34 of Government Regulation No. 15/2010 on the Administration of Spatial Plan implicitly states that the only required actual approval is from the MEF.

3. Relevant regulations for settlement of tenurial conflicts in the forest area

This section is divided according to the three types of resolutions identified above. For each type, the main legal framework governing the suggested resolution is described. Since all these elements of the legal framework have their limitations, their analysis is helpful to later identify the authority of local governments for their application.

3.1 Social forestry and agrarian reform programme

As mentioned, there are three main regulations that govern the issues discussed in this section. For each regulation, three subsections address: the function of the regulation, its content and its implications.

3.1.1 Perpres 88/2017

3.1.1.1 Function of Perpres 88

Perpres 88 provides the main regulatory framework to resolve conflicts in the forest area. It is the first reference for conflict resolution underpinning the agrarian reform (TORA) and social forestry, which will be discussed in more detail separately. As explained above, it provides the institutional set-up and the options to resolve tenurial conflicts within the boundary of the forest area.

3.1.1.2 Relevant content of Perpres 88/2017

The issuance of Perpres 88 is part of the systematic effort to reduce deforestation and forest degradation in Indonesia, planned under the moratorium policy. Having admitted that poor forest and land-use governance are driving deforestation and forest degradation, the Government issued Presidential Instruction Moratoria in 2011, 2013, 2015, 2017, and made it permanent in 2019. The instructions to stop issuing licences to use forest and peatland area were issued to improve forests and peatlands governance. Many programmes to improve governance have been launched under this policy. Among them are: the One Map Policy, the multi-door approach to improve law enforcement in the moratorium area; policy amendments to restrict the excessive possession of plantation land by companies; and efforts to ensure coordination among various relevant government agencies to resolve tenurial conflicts in the forest area.[12]

Before the adoption of PerPres 88, the first policy to solve tenurial conflicts in the forest area was introduced as a Joint Regulation of the Minister of Home Affairs, the Minister of Forestry, the Minister of Public Works and the Head of Land Agency on Settlement of Land Tenure in the Forest Area.[13] This Joint Regulation was then elevated to a higher level, that is Perpres 88.

[12] Mas Achmad Santosa, Josi Khatarina, and Aldilla Suwana, 'The Progress of Governing REDD+ in Indonesia', *International Journal of Rural Law and Policy*, July 2013.
[13] Joint Regulation of Minister of Home Affairs, Minister of Forestry, Minister of Public Works and Head of Land Agency on Settlement of Land Tenure in Forest Area No. 79 of 2014; No, PB.3/Menhut-II/2014; 17/PRT/M/2014; 8/SKB/2014

The policy aims to ensure other agencies, such as the National Land Agency, have formal access to exercise their authority in the forest area. Before the Joint Regulation, the general understanding was that agencies other than the ministry responsible for forestry were required to obtain permission from this ministry to enter the forest area. Consequently, if the Land Agency entered the forest area without permission from the minister responsible for forestry, it would be considered a breach of the Forestry Law and subject to criminal sanctions. This understanding has deterred the Land Agency in verifying claims in the forest area. This in turn hindered those with claims in the forest area to seek a land title.

To understand the scope of Perpres 88, this section outlines all relevant elements of Perpres 88 namely: the scope of the forest area, legal subjects and type of tenurial conflicts that qualify for processing under this regulation. It then discusses the regulation's institutional set-up and procedure for conflict resolution, as well as options to resolve conflicts.

Scope of the forest area

Perpres 88 applies to the forest area as designated.[14] The forest area included under Perpres 88 is the area where there is no tenurial clarity. The 'stipulated' areas are those clear from any claims. As per 2017, the size of the Indonesian designated forest area was 120,390,100 ha. In 2018, about 88 million ha of this area had been officially mapped and stipulated.[15] As a result, around 32 million hectares are included under Perpres 88.

Scope of tenurial conflict

Articles 2, 4 and 5 of Perpres 88 limit the scope of tenurial conflicts that can be processed under the mechanism introduced in the Perpres.

The criteria for claims that can be processed under the Perpres are the following:

1. The land in conflict has been physically occupied openly and with good intention.
2. The land in conflict has no competing claims or is inviolable.
3. The land in conflict is acknowledged by Adat communities or Head of villages/sub-districts and is supported by trustworthy witness statements.
4. The land has been either possessed, utilised and/or rights on the land have been granted before the area was designated as the forest area.
5. The land in conflict is possessed and used for housing, social facilities, farmland or cultivation land, and/or Adat forest.

Legal subjects that are qualified to use the mechanisms

According to articles 1.2 and 6, those that can access the mechanism under Perpres 88 are individuals, governmental units, social or religious entities and Adat communities. This means

[14] Article 3 (1) Perpres 88/2017

[15] Kementerian Kehutanan, 'Data dan Informasi Pemetaan Tematik Kehutanan Indonesia', accessed through <http://appgis.dephut.go.id/appgis/download/1.2.%20Buku%20DEFORESTASI/BOOKLET_PEMETAAN%20TEMATIK%20KEHUTANAN%20INDONESIA.pdf>; Kementerian Kehutanan, 'Status Hutan dan Kehutanan Indonesia, 2018', 33; Article 15 of the 1999 Forestry Law regulates the four stages to determine the forest area: designation, boundary arrangements, mapping and stipulation.

that business entities such as corporations and cooperatives are not allowed to use this mechanism.

Institutional set-up

The regulation introduces the following new institutional set up to resolve conflicts:

a) Team to expedite tenurial conflict resolution (Tim Percepatan Penyelesaian Penguasaan Tanah dalam Kawasan Hutan – Tim Percepatan PPTKH). This is the national government team, at ministerial level, coordinated by the Coordinating Minister for Economic Affairs. PPTKH is assisted by an operational team, which also consists of national-level officials. PPTKH and its operational team are responsible for expediting the resolution of tenurial conflicts in the forest area. In doing so, the team is to coordinate with various stakeholders, including local governments.
b) At the local level, the governor is tasked with establishing a government Team of Inventory and Verification of Land Possession in the Forest Area (Tim Inventarisasi dan Verifikasi Penguasaaan Tanah dalam Kawasan Hutan - Tim Inver PTKH/IPTKH). An IPTKH Team is headed by the Head of forestry agencies at the provincial level. The Head of agencies responsible for spatial planning from the district-level government is a member of the team. It does not include CSO representatives. The team is tasked with four responsibilities:

    i. Receiving requests to register and verify, which are collected by the Head of the district-level government
    ii. Conducting field inventories
    iii. Conducting analysis of the physical, legal and environmental aspects of the claimed land
    iv. Developing recommendations based on the analysis and submitting them to the governor

As will be shown in the next section, the new institutional set-up lengthens the process, while the authority to decide on the resolution stays with the Minister of Environment and Forestry. The regulation contains no provision guiding and/or mandating the MEF to follow the recommendations developed based on the new institutional set-up.

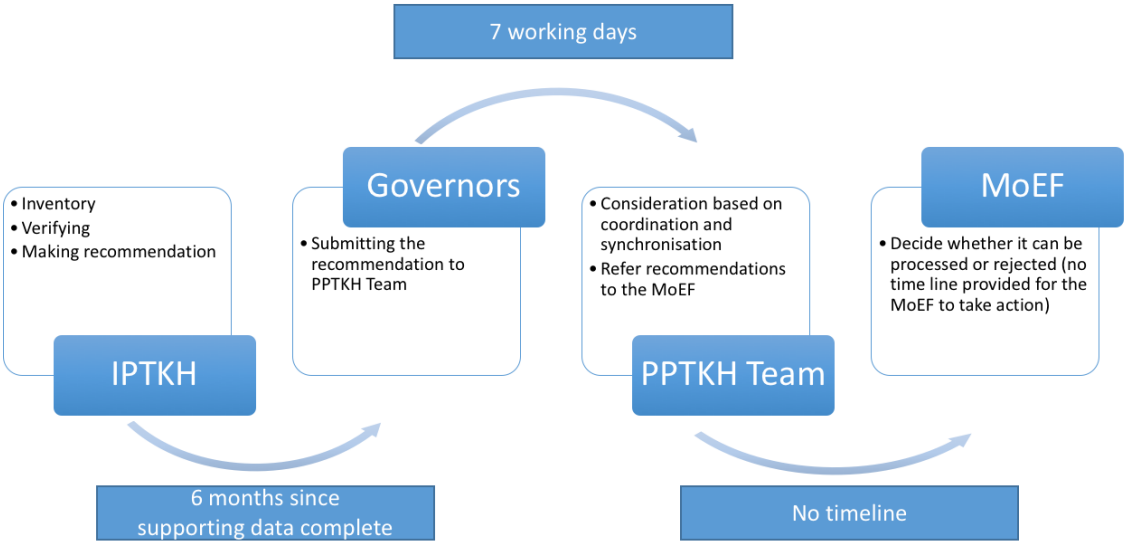
Conflict resolution procedure

Perpres 88 introduces a five-stage procedure of tenurial conflict resolution. The responsibility for each stage goes across different institutions at different levels of government, which increases management complexity. In addition, each level has no structural power over others to ensure the process is being followed. The five-stage procedure is as follows:

a. Conducting an inventory of land possession in the forest area
b. Verifying land possession and proposing a recommendation
c. Specifying the steps for resolving land possession and land-use issues in the forest area
d. Issuing a decision on land possession and land use in the forest area
e. Issuing a land title

Diagram 1 below describes the conflict resolution procedure under Perpres 88.

Diagram 1. Conflict resolution procedure under Perpres 88



Available options for conflict resolution

The regulation also provides several options for resolution of tenurial conflict depending on the use of the claimed land, the type of forest area and the size of the forest in the province. It is summarised in table 2 below.

Table 2. Conflict resolution options based on the use of the claimed land

Type of current land use	Type and Condition of the Forest Area[16] Protected – Less than 30% (Art 10)	Protected – More than 30% (Art 11)	Production Less than 30% (Art 12)	Production More than 30% (Art 13)
Housing, social and religious	**Resettlement.** If the area is qualified as protected. **Exchange of forest area.** If the area is not qualified as protected.	**Resettlement.** If the area is qualified as protected. **Exchange of forest area.** If the area is not qualified as protected.	**Exchange of forest area or resettlement.**	**Release from the forest area** and modification of the delineation of the forest area.
Farmland	**Social forestry**	**Release from the forest area** and modification of the delineation of the forest area so long as it is within the object of agrarian reform within the forest area (if possessed for more than 20 years). **Social forestry** (if possessed for less than 20 years).	**Social forestry**	**Release from the forest area** and modification of the delineation of the forest area so long it is within the object of agrarian reform within the forest area (if possessed for more than 20 years) **Social forestry** (if possessed for less than 20 years).

[16] 30% refers to the size of the forest area in a province. See article 18 of the Forestry Law, which obligated at minimum 30% of the forest area in a river basin (DAS)/island to be protected, which then translated into limitation per province. This limitation is abolished in Law No. 11/2020 on Job Creation.

3.1.1.3 Implications of Perpres 88

Discussion on elements of Perpres 88 above reveals issues and limitations, which potentially hinder its use to fully resolve tenurial conflicts in the forest area. These limitations are first examined, before addressing local governments' authority to support conflict resolution under Perpres 88.

The first limitation is the scope of proponents or subjects included within the scope of Perpres 88. Corporations cannot make claims under Perpres 88. As discussed below, corporations are accommodated in another regulation, namely PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area. However, this scheme has practically ceased functioning although conflicts involving corporations are far from being resolved.[17] Many tenurial conflicts in the forest area are due to conflicting land claims with licences/permits. Omitting one of the main actors in the conflict resolution process hinders the comprehensive resolution of conflicts.

The other important limitation of Perpres 88 is that district-level governments do not have conclusive authority in the conflict resolution process. The institutional set-up for the implementation of the regulation grants power to the national and provincial level governments, from the start of the process until the final decision. The Head of the plantation agency of the district-level government, for example, is only one of the many members of the Provincial Team of Inventory and Verification of Land Possession in the Forest Area. This lack of authority will impede the initiation by the district-level government of the conflict resolution process because they do not have the authority to do so. As a result, it is difficult for local governments to create a budget line for such activities under Perpres 88.

At the technical level, PermenLHK 17/2018 as amended by PermenLHK 42/2019 governs the process to release HPK (convertible production forest) from the forest area for agrarian reform or TORA. In this regulation, a Head of District can propose the release from the forest area when the area is entirely within the district (article 13). This proposal should be in line with the unproductive convertible production forest area map (*Keputusan Pencadangan HPK tidak produktif,* issued by the MEF. The requirements for the proposal are outlined in article 13 (2) and (4). Among the requirements is the list of the possible beneficiaries of the agrarian reform. The released forest area can be used for plantations, fish farming, farming, etc. This means that the Head of the district should first draw the list of TORA recipients, which is part of the inventory process.

3.1.2 Presidential Regulation 86/2018 on Agrarian Reform (TORA)

Agrarian reform is carried out through two schemes, namely asset arrangement and access arrangement. Asset arrangement is the rearrangement of tenure, ownership, use and utilisation of land to create justice in land tenure and ownership. Access arrangement is the provision of opportunity to access capital and other assistance to the Agrarian Reform Subject to improve land utilisation-based welfare, which is also called community empowerment. To sum up, asset management is an effort to redistribute and legalise land. Access arrangement

[17] Similar regulation is re-introduced in the 2020 Job Creation Law, this aspect is discussed separately below.

relates to efforts to increase economies of scale, added value and encourage entrepreneurial innovation from land that has been distributed or legalised.

3.1.2.1 Function of Perpres 86/2018

This Presidential Regulation is a critical milestone in the implementation of the long overdue agrarian reform. It does so by establishing a new institutional set up to implement agrarian reform and guide the relevant public authorities to carry out their mandates.

In the context of our discussion, the problem is the limited power of local government authorities in the forest area, as one of the agrarian reform objects. This becomes an issue because in Perpres 86, local governments are to conduct an inventory of land ownership, possession, utilisation and use of land as a first step to decide whether a piece of land could be the object of TORA (Article 7 (2) and (3)). However, since local governments cannot exercise this authority in the forest area, they face difficulties in implementing this regulation in the forest area.

3.1.2.2 Relevant content of Perpres 86/2018

Rightful subject

Presidential Regulation 86 includes wider subjects than Perpres 88, namely:

a. Individuals
b. Community groups with joint ownership rights
c. Legal entities[18]

These three subjects depend on different criteria. Criteria of Agrarian Reform Subjects for individuals include: (1) must be an Indonesian citizen; (2) at least 18 years old or married; and (3) resides or be willing to settle in the land redistribution object. There are also additional job-related criteria. Eligible individuals include those who have a job as a smallholder, or who own 0.25 ha or smaller land, or who leases land not more than two hectares as his/her livelihood, or is a sharecropper who manages or works on land that is not his/her own, or is a farm labourer who manages or works on other peoples' land for wages.

Several other categories include fishermen, fish farmers, honorary teachers, freelance daily labourers, informal traders, non-permanent employees, private employees, civil servants, members of the military/police, who all must be categorised as low-income individuals.

Criteria for Agrarian Reform Subjects for community groups with joint ownership rights are a combination of individuals who form groups, domiciled in one area and are eligible to receive land redistribution object. Lastly, criteria for Agrarian Reform Subjects for legal entities are: (1) cooperatives, foundations or limited liability companies formed by agrarian reform subjects, both individuals and community groups with joint ownership rights; and (2) village-owned enterprises. Therefore, general corporations are not subjects of this regulation.

[18] Article 12 Presidential Regulation 86/2018

Land that is object of TORA

By the Presidential Regulation, there are 11 types of land that may be redistributed. But when explored further, these 11 types of land can be divided into two main categories, namely land controlled by the state and land on which rights have been issued, such as Cultivation Rights (HGU).

First, land that is directly controlled by the state consists of, among other things:

a) Land originating from the release of the forest area and/or the result of modification in forest area boundaries stipulated by the Minister of Environment and Forestry. This plot of land can be under two legal situations, namely: (a) land in a forest area that has been released to become TORA in accordance with the law; or (b) land in a forest area that has been controlled by the community and whose tenure has been settled in accordance with the prevailing law.
b) Formerly abandoned land that becomes state land.
c) Ex-mining land outside the forest area.
d) Land from agrarian disputes and conflicts.
e) Naturally emerging land due to natural phenomena.
f) Ex-erfpacht land (land with cultivation rights/HGU during Dutch colony), ex-partikelir land (private land during the Dutch colony), and ex-eigendom land (land with freehold right during the Dutch colony) with an area of more than 10 bouw (+80 hectares) that still remains and adheres to the law as a redistribution object.
g) State land that has been acquired by the community.

Second, land from company acquisitions or other non-state legal entities, consists of:

a) Land subject to Cultivation Right (HGU) and Building Utilisation Right (HGB) that have expired and for which no extension and/or renewal have been requested within a year after expiration
b) Land acquired from the obligation of HGU holders to surrender at least 20% of the total area of HGU land that has been changed to HGB due to designation changes in the spatial plan
c) Land obtained from the obligation to provide at least 20% of the total area of state land given to HGU holders in the process of granting, extending or renewing their rights
d) Land granted by the company in the form of corporate social and/or environmental responsibility

From these various types of land that become the object of agrarian reform, the only one that is relevant to this report and could be used for Perpres 88 is the first type, which is directly controlled by the state: land originating from the release of the forest area and/or the result of modifications in forest area boundaries stipulated by the Minister of Environment and Forestry. This type of land can fall under two legal situations, namely: (a) land in the forest area that has been released to become TORA in accordance with the law; (b) land in the forest area that has been controlled by the community and whose tenure has been settled in accordance with relevant laws and regulations (art 7 (1) d). In the context of tenurial conflict resolution, the second situation will be considered as the area without conflict, which is correct.

Institutional set up to implement Perpres 86/2018

The new institutional set-up introduced by the regulation is the National Agrarian Reform Team (TRAN). The team is led by the Coordinating Minister for Economic Affairs. Its members involve 16 representatives, including ministers, representatives of institutions, state-owned enterprises, the Prosecutor's office, the Commander of the Indonesian National Armed Forces and the Chief of Indonesian National Police. The TRAN acts as a regulator, coordinator and supervisor. As a regulator, TRAN establishes policies and plans for agrarian reform. Therefore, the operational policy to implement this Presidential Regulation should be issued by this team. Likewise, the target achievement plan will also be set by the team. As coordinator, TRAN coordinates the resolution of issues that might hinder the achievement of TORA targets, such as deadlocks in the release of the forest area or difficulties in obtaining valid data related to abandoned land. As supervisor, TRAN oversees the implementation of the regulation and reports to the President. In its operation, TRAN can also involve academics and other stakeholders. So, while legally there is no obligation to involve non-governmental organisations, the regulation provides the opportunity for TRAN to involve communities in its operations.

In carrying its duties, TRAN is supported by the task force on agrarian reform (Gugus Tugas Reforma Agraria – or GTRA). GTRA consists of three sub-structures, namely the central agrarian reform task force, the provincial agrarian reform task force, and the district/city agrarian reform task force.

At the central level, the Task Force is chaired by the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. Its daily operations are led by the Director General of Agrarian Management of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.[19] At the provincial level, the Task Force is chaired by the Governor, with the daily operations led by the Head of the Regional Office of the National Land Agency. The same structure applies at the district/city level. The chairperson is the regent/mayor and the daily operations are led by the Head of the Land Office at the district level.

The GTRA at each central and provincial level shares the following tasks, as follows:

a. Coordinating the availability of TORA in the context of Asset Arrangements at each level of government: central and provincial levels
b. Coordinating the implementation of Asset Arrangements at each level of government: central and provincial levels
c. Coordinating the implementation of integrating Asset and Access Arrangements
d. Submitting reports on the results TORA implementation in stages (central level to TRAN, provincial level to central level)
e. Coordinating and facilitating dispute resolution and agrarian conflicts
f. Monitoring by stages (central to provincial, provincial to district level)

At the district level, the GTRA's tasks consist in:

a. Coordinating the availability of TORA in the context of Asset Arrangements

[19] If the Minister of Agrarian Affairs is the CEO of the taskforce, the Director General is the COO.

b. Formulating proposals and recommendations to the Minister or other appointed official on land that could be allocated for TORA and that should be kept as state land
c. Carrying arrangements of possession and ownership of TORA
d. Ensuring legal certainty and legalisation of rights over TORA
e. Implementing Access Arrangement
f. Conducting integration of Asset and Access Arrangement at district level
g. Strengthening capacity of agrarian reform implementation at district level
h. Submitting reports on agrarian reform implementation at the district level to the provincial level task force
i. Coordinating and facilitating dispute resolution at district level
j. Monitoring the implementation of asset legalisation and land redistribution at the district level

Clearly, the district-level task force spearheads agrarian reform. It consists of officials from the district-level government. They carry various duties, from identifying potential TORA to overseeing its legalisation. However, at the practical level, they rely on the technical and administrative leadership of the Land Agency, which acts as the Head of the task force at the national level and the daily executive chief at the provincial and district levels. This was also confirmed during interviews.

3.1.2.3 Implications of the Presidential Regulation

Similarly to the settlement of land claims in the forest area regulated by Perpres 88, Presidential Regulation 86 arguably has the status of a guideline for relevant agencies and is not binding. There are no rights for the subjects to stake their claims on the TORA objects included in the regulation. Consequently, the regulation does not oblige the government to respond to certain requests/claims from the public. Hence the implementation of this regulation depends entirely on the willingness of the relevant institutions, in addition to the availability of adequate funding.

Moreover, this agrarian reform scheme does not take into account environmental considerations. For example, some CSOs have argued that for TORA objects, the critical (i.e. degraded) or cleared land in the forest area should be considered as a substitute for natural forests or forests in good condition that is situated in other purposes areas (APL). Nevertheless, the current TORA object does not indicate such consideration. It allows various kinds of land to be the object of TORA without taking into account the biophysical aspects or the quality of forest cover of the land (either it is a primary forest or critical land/tanah kritis). Thus, it allows the release of the forest area without considering sustainability parameters. Under the regulation, the release of intact forest would be allowed. However, this risk is mitigated by safeguards contained in other pieces of regulations, particularly under the PP No. 104/2015 on the Procedure to Alter the Use and Function of the Forest Area.

Furthermore, the TORA objects do not cover plantation licences that exceed the maximum size of land that can be given location permits (and thus HGU), as stipulated in Minister of Agrarian Regulation No. 17/2019.[20] Under the 2014 Plantation Law for example (or in

[20] The Regulation No. 17/2019 on Location Permit is the latest revision of Minister of Agrarian Regulation No. 2/1999 on the same matter. It was first replaced in 2015 (regulation No. 5/2015 which was then amended in 2017), replaced by the regulation No. 14/2018.

agrarian regulation), a regulation specifies the maximum extent of licensing permitted for plantations. KPK study/TUK shows that many companies have exceeded this limitation. As this is clearly in breach of regulation, the government should have considered to include the excess from this limitation as the object of TORA.

3.1.3 PerMenLHK 83/2016 on Social Forestry

The aim of the regulation is to ensure sustainable forest management in state forest and private/Adat forest by involving local and Adat communities as the main actors in managing the forest. Further, article 1(1) of the regulation states that through social forestry, it is expected that local and Adat communities can improve their welfare, environmental balance, and social and cultural dynamics. The regulation provides two main means of achieving these goals (article 2):

1. By providing guidance on management rights, permits, partnership and Adat forest in the context of social forestry
2. By resolving tenurial conflicts for local and Adat communities situated inside or in the surroundings of the forest area

3.1.3.1 Relevant content of PerMenLHK 83

Scope of social forestry permits

The regulation stipulates the technical details of the social forestry scheme with different tenure. The five schemes are:[21]

a. Village forest (*Hutan Desa*/HD) with the village forest management rights (HPHD) permit
b. Community Forest (*Hutan Kemasyarakatan*/HKm), with the community forest utilisation business licence (IUPHKm)
c. Community Plantation Forest (*Hutan Tanaman Rakyat*/HTR), with the business licence for timber forest product utilisation in community plantation forest (IUPHHK-HTR)
d. Adat Forest (*Hutan Adat*/HA), with the recognition of rights through the Stipulation of Adat Forest
e. Forestry Partnership (*Kemitraan Kehutanan*/KK), where permits are differentiated based on whether the forest area is located in or outside Java. In Java, the permit is known as Permit to Use Social Forestry in Java (IPHPS). Outside Java, it is known as Recognition of Protection on Forestry Partnership (KULIN KK).

Details for each of the schemes along with their conditions are outlined in the regulations.

Table 3 summarises the different schemes, the type of forest area it can be applied to, and the conditions attached to it.

[21] http://pkps.menlhk.go.id

Table 3. Social forestry schemes and use of the forest area

Social forestry scheme	Forest area and use	Conditions
Village forest	**Protected forest:** Use of the forest area; environmental services; collection of non-timber products	a. Granted to village institutions b. Valid for 35 years and cannot be inherited c. Routine five-year evaluation d. The utilisation of timber products is based on village forest management plans submitted by village Heads and subject to the approval from the 'forest educator officers' (*penyuluh*) and Head of forest management units (KPH) – art. 52 (1) & (6) e. Subject to administrative sanctions in accordance with statutory provisions
	Production Forest: Use of the forest area; environmental services; utilisation of timber and non-timber forest products; collection of timber and non-timber products	
Community forest	**Protected forest:** Use of the forest area; environmental services; collection of non-timber products	a. Granted to groups combining local community groups b. Valid for 35 years and cannot be inherited c. Routine five-year evaluation d. The utilisation of timber products is based on business plans, subject to an approval from the 'forest educator officers' (*penyuluh*) and Head of forest management units (KPH) or Head of forestry agencies at provincial level e. Subject to administrative sanctions in accordance with statutory provisions
	Production forest: Use of the forest area; environmental services; utilisation of timber and non-timber forest products; collection of timber and non-timber products	
Community plantation forest	**Production forest:** Utilisation of timber products from plantation forest and old shrubs	a. Granted to community groups or individuals b. Valid for 35 years and cannot be inherited c. A routine five-year evaluation d. Applying specific silviculture techniques e. Subject to administrative sanctions in accordance with statutory provisions
Forestry partnership	**Protected forest:**	a. A cooperation between a local community and a forest manager, or holder of forestry permit holders

Social forestry scheme	Forest area and use	Conditions
	Environmental services; utilisation of timber and non-timber forest products; collection of timber and non-timber products	b. Conditions also depend on the contractual terms c. The Forestry partnership contract should cover a location of, and plan for, the partnership activities, the partnership period, the agreed sharing of benefits, the dispute resolution available and sanctions for violations of the agreement, as well as rights and obligations of the parties to the forestry partnership, article 40(3)(g) d. The forestry partnership is approved by the Minister through the Director General, article 44(2)
	Production forest: Environmental services and collection of timber and non-timber products	
Adat forest	**Conservation and protected forest:** Traditional knowledge in utilisation of genetic resources; environmental services; non-timber products	Regulated by PerMenLHK 21/2019
	Production Forest: Environmental services; utilisation of timber and non-timber forest products; collection of timber and non-timber products	

Apart from the Adat forest, the rights and licences for social forestry, such as village forests, community plantation forests and forestry partnerships, are not ownership rights to the forest area (article 56(1)). However, certain conditions are imposed in the Adat forest, similar to that of other schemes. For example, in Adat forest, like in other schemes, planting palm oil trees is prohibited (article 56(5)).[22]

Procedure for granting social forestry permits

Below is a description of the application procedure for social forestry permits (village forest, community forest and community plantation forest). As will be explained later, the authority to grant social forestry permits can be delegated from the Minister of Environment and Forestry to the governor. Therefore, to make it easier for the reader, the procedure will be explained by combining the two processes. The text in brackets refers to the procedure when the authority is delegated to the governor.

a. Proponents submit a permit application (any type of social forestry permits) to the Minister of Environment and Forestry (Governor). The application is copied to the governor (minister), the Head of the district-level government, the Head of technical unit in the MEF responsible for social forestry (UPT), and the Head of relevant forest management units.
b. The Minister (Governor) forwards the application to the Director General on Social Forestry (Forestry Units at the Provincial Level), which conducts the verification on administrative requirements. The working group on social forestry introduced in the regulation (known as Pokja PPS) can assist proponents in completing the administrative requirements.
c. If the application fulfils the administrative requirements, the UPT will conduct a technical assessment.
d. The technical assessment is conducted by the Verification Team, an *ad hoc* team established by the Head of UPT. The Verification Team may consist of the forestry agency at provincial or district level, relevant technical units, forest management units and members of Pokja PPS (articles 11, 22 and 33).
e. The Minister (Governor) issues his/her decision/permits based on verification results (articles 12, 23 and 34).

Role of local governments

In social forestry programmes, local governments have a role in relation to the Indicative Map of Social Forestry (known as PIAPS) and in granting social forestry permits.

In the development of PIAPS, local governments are consulted by the MEF (article 5 (2)).

On the granting of social forestry permits, the regulation specifies that the authority to grant social forestry permits that include Village Forests, Community Forests or Community Plantation forests can be delegated to the Governor as Head of the provincial government (articles 7 (2), 18 (2) and 29 (2)). Such a delegation is subject to the following conditions: the

[22] There is an exception for oil palm plantations planted prior to 2016 (when the regulation was enacted), which can be kept for 12 years since the plantation was planted. Further, it is stipulated that 100 hardwood trees per ha should be planted between the oil palms (article 65(h)).

social forestry programme is part of the Midterm Provincial Development Plan (RPJMD-P) or there is a specific governor regulation concerning social forestry; and there is a specific budget allocated by the provincial government for managing and regulating the social forestry programme. District-level governments are often only involved in the granting process of permits for social forestry through the Verification Team (articles 11, 22 and 33).

3.1.3.2 Function of PerMenLHK 83/2016

The regulation provides guidelines for issuance of management rights, permits, and partnerships for local and customary communities. It provides criteria for application of these rights and sets out the rights and duties for each type of permits and rights of forest management.

3.1.3.3 Implications of PerMenLHK 83/2016

The regulation consolidates various ministerial regulations on social forestry. It simplifies the procedure, in line with the spirit of Law No. 32 of 2014 on Local Governments. Another breakthrough is the introduction of PIAPS as a point of reference, which improves certainty for the community and encourages government institutions to grant the permits if the area under PIAPS has been clearly designated for that purpose.

3.2 Law enforcement

3.2.1 Criminal enforcement

As identified in the typology section, law enforcement discussed here focuses on criminal enforcement. Consistent and effective use of criminal sanctions is highly recommended to have a deterrent effect.[23] In particular, this powerful instrument should be used against activities that have clearly violated the law with a clear intention to damage the forest. Based on the typology offered earlier in this report, it should target plantation corporations that have cultivated land inside the forest area, where there is no conflicting land use.[24]

The Laws No. 41 of 1999 and No 18/2013 regulate the enforcement of plantation activities inside the forest area.[25] Both rely on civil servant investigators from the MEF, rather than local governments' investigators. Therefore, these instruments cannot be effectively utilised by local governments. Consequently, they are not further discussed in this study.

3.2.2 Administrative approach/enforcement

The administrative approach offers greater opportunities to ensure enforcement of the law. A plausible resolution for corporations that have been issued licences in the forest area that do not conflict with the spatial plan is the revocation of IUPs by local governments. Regrettably, the existing regulation does not allow this to take place without a judicial decision.

[23] Kehati, 2019: 31.
[24] See also Kehati, 2019: 78, 97.
[25] As discussed in the section on the Omnibus Law, the two laws were amended by the 2020 Job Creation Law. The changes, however, do not bring consequences to the present discussion because investigation in the forest area under the two laws do not fall under local governments' authority.

Administrative sanctions can be very effective to avoid larger problems and are only applied to activities carried out by corporations. In terms of plantation activities, revocation of IUPs that are situated in the non-conflicted forest area is the easiest way to resolve the tenurial issue. Unfortunately, the plantation legal framework (Law No. 18/2014 and its technical regulation) does not envisage such sanction in case the plantation is located in the forest area. Logically, the authority to revoke IUPs should be handed to local governments, since they have the authority to issue IUPs. However, they do not have this authority under the law.

The Presidential Instruction No. 8 of 2018 on Postponement and Evaluation of Licensing of Palm Oil and Increase Productivity of Palm Oil that was issued to evaluate the licensing system does not provide a sufficient legal basis for the revocation of IUPs for the type of aforementioned problems as it is not binding.

However, the amendment of Law 18/2013 by Law No. 11/2020 on Job Creation (Omnibus Law) changes the legal landscape for a grace period of three years. Through the 2020 Law, lawmakers allow plantation permits that are located in the forest area to obtain the required forestry-related licences within the grace period (until 2 November 2023). Article 110A of the 2020 Law allows plantation corporations to obtain forestry-related licences, wherever their location, be it in problematic areas, or in an area that is clearly within the forest area. This contrasts with the earlier PP 104/2015 and PP 60/2012 that only allowed corporations that were located in the problematic areas to process/apply for a forestry licence, while those which were not were to be prosecuted. By creating this grace period, the criminal enforcement is postponed by three years.

Further, as elaborated in discussion on Law 11/2020 below, article 110A of the Law also states that corporations that fail to obtain the relevant licences shall be sanctioned administratively and criminally.

Local governments have the authority to revoke corporations' business licences, including plantation licences, which is an administrative sanction. However, this administrative sanction is currently under revision and will be regulated by a government regulation. Therefore, it is currently unclear what the role of local governments is in the application of administrative sanctions. The least that local governments can do is identify plantation corporations that are operating in the forest area in their jurisdiction and issue a reminder for them to start the process of obtaining the relevant forestry-related licences.

3.3 Alignment of forest area under PP 104/2015

Alignment of forest area under PP 104/2015 on the Procedure to Alter the Use and Function of the Forest Area

PP 10/2010 on the Procedure to Alter the Use and Function of the Forest Area was amended by PP No. 60/2012 and then by PP 104/2015. The 2012 amendment mainly aimed to allow corporations with plantation licences that were obtained prior to the Law No. 26/2007 on Spatial Plan and located in the forest area according to the Law No. 41/1999, to seek proper forestry licences from the forestry authority. The required forestry licences are those to release

the plantation area from the forest area and/or to swap the released forest area to other lands, which are then used as forest area.[26]

PP 60/2012 grants a grace period to resolve issues with plantation activities located where there is a mismatch between spatial plan documents and the gazetted forestry area. PP 60/2012 grants corporations in such a situation with a six-month period to request the necessary forestry permits.

Little has occurred during this grace period. Many corporations still do not have proper licences from the forestry authority. This is one of the reasons why PP 104/2015 introduced another grace period of one year, that is until 22 December 2016 (one year after the Law was enacted on 22 December 2015).

Again, little happened during this second grace period. Lawmakers once again allowed these violations to be pardoned in Law No. 11/2020, discussed above. During this three-year grace period (until 2 November 2023), corporations have to fulfil all the requirements to obtain the relevant forestry licences, meaning the requirements under PP 104 are to be applied. PP 104 introduces two instruments that can be used by corporations to obtain relevant licences: by requesting the government to release their area from the forest area; or by exchanging or swapping their area with other areas outside the forest area. The regulation further stipulates that the choice between the two instruments depends on the forest function.[27] The authority to process the issuance of this forestry-related licence lies with the forestry authority. As mentioned, district-level governments that issue plantation licences can identify corporations that might be in this situation and send them a reminder to start the process of obtaining the licences.

3.4 Omnibus Law

3.4.1 Introduction to the Omnibus Law

The new Law No. 11/2020 on Job Creation, known as the Omnibus Law, amends several relevant laws. These are Law No. 41/1999 on Forestry, Law No. 18/2013 on the Prevention and Eradication of Forest Degradation, and Law No. 39/2014 on Plantation.

Specifically, the Omnibus law amends the Law No. 18/2013 as it provides an exemption from administrative sanctions for individuals or community groups that have resided inside or surrounding the forest area and have conducted cultivation activities uninterruptedly for five years.

Another amendment relates to corporations that have not obtained relevant permits from the MEF to operate in the forest area. As discussed earlier, the time to process the required permit introduced in PP 104 has been exhausted. However, article 110A of the 2020 Law revives this provision, granting corporations another three years after the Law was enacted on 2 November 2020 to obtain the necessary permit (the permit of borrow-to-use or leasehold for mining, and the release from the forest area for plantations).

[26] Article 51A and 51B PP 60/2012
[27] Article 51 PP 104/2015

Local governments could assist by mapping the presence of people in their jurisdiction, the area they reside in, and the time spent cultivating the land. Because, as outlined below, this is the information required to exempt these people from administrative sanctions and benefit from the agrarian reform, have their rights acknowledged, or access social forestry programmes.

3.4.2 Description of key provisions of the Omnibus Law

Below is a complete description of the 2020 Law, which focuses on articles 17, 17A, 18, 110A and 110B of the amended Law No. 18/2013.

Article 17: Article 17, paragraph 2 letter b, c, d and e of the 11/2020 Law states that:

Everyone is prohibited from:

a) Conducting cultivation activities without Business Licences from the Central Government in the forest area
b) Transporting and/or accepting plantation products originating from plantation activities in the forest area without Business Licences from the Central Government
c) Selling, possessing, owning and/or storing plantation products originating from plantation activities in the forest area without a business licence from the Central Government
d) Purchasing, marketing and/or processing plantation products from plantations that are situated in the forest area without a Business Permit from the Central Government

Article 17A: Article 17 A of the 11/2020 Law states that:

(1) Individuals who reside inside and/or around the forest area for at least five consecutive years who commit a violation of Article 17 paragraph (2) letters b, c, and/or d are subject to administrative sanctions.
(2) Are exempt from administrative sanctions as referred to in paragraph (1):
    a. Individuals or community groups who have resided in and/or around the forest area for at least five years continuously and registered in the forest area reorganising policy (i.e. TORA and social forestry)
    b. Individuals who have been imposed social or customary sanctions

Article 18:

(1) Apart from being subject to criminal sanctions, legal institutions or corporations that violate Article 12 letters a, b or c, Article 17 paragraph (1) letters b, c or e, or Article 17 paragraph (2) letters b, c or e, or carry out other activities in the forest area without Business Licences, are subject to the following administrative sanctions:
    a. Written warning
    b. Government coercive measures
    c. Administrative fines
    d. Freeze of Business Licences
    e. Revocation of Business Licences

(2) Further provisions regarding the criteria, types, fine amounts and procedure for the imposition of administrative sanctions as referred to in paragraph (1) are further regulated in Government Regulations.

Article 110A:

(1) Anyone who carries out business activities that have been established and has obtained a business licence in the forest area [that was obtained] before the enactment of this law, [but] has not met the appropriate legal requirements in the forestry sector, must complete the requirements no later than three years after this Law comes into force.
(2) If three years after the entry into force of this law [persons referred to in paragraph 1] do not complete the requirements as referred to in paragraph (1), will be liable to the following administrative sanctions:
    a. Payment of administrative fines; and/or
    b. Revocation of undertaking licence.
(3) The procedure for the imposition of administrative sanctions and procedures for non-tax state revenue originating from administrative fines as referred to in paragraph (2) are further regulated in Government regulations.

Article 110B:

Article 110B stipulates the transition period for the application of article 17 to individuals. Anyone who commits an offence referred to in Article 17 paragraph (1) letters b, c, and/or e, and f, or Article 17 paragraph (2) letters b, c and/or e, or other activities in the forest area without Business Licences before this Law enters into force, is subject to the following administrative sanctions:

a. Temporary suspension of business activities
b. Payment of administrative fines
c. Government coercive measure

3.4.3. Analysis of the Omnibus Law

The above description highlights the inconsistencies in the Law. For example, Article 110B refers to letter ‘e’ and not ‘d’ in Article 17 paragraph (1) and (2), as opposed with Article 17A, which only covers letters ‘b’, ‘c’ and ’d’. Thus, it is unclear what is meant by the regulator to be exempted. Another example relates to subjects of the Law. Article 17A refers to individuals as the generic subjects, but then mentions community groups when exemptions are described. These problems can make the implementation of the Law problematic because the lawmakers’ intent is unclear.

Despite the inconsistencies and incoherent language, several interpretations can safely be made:

a. According to Article 110B, criminal sanctions for plantation activities conducted prior to the entrance into force of the Law shall not be applied. Offenders shall be disciplined with administrative sanctions instead.
   This interpretation should be read together with Article 110, which states that cases that are already being investigated, prosecuted and or/tried, should be continued.

Consequently, the application of this article only clears an activity that completely occurred before the entrance into force of the 2020 Law and discontinued, and that only started to be investigated afterwards. For activities that started prior to the entrance into force of the 2020 Law and continue afterwards, it is unclear whether they should exclusively be prosecuted under criminal or administrative law. Thus, there is a possibility that both – criminal and administrative sanctions – be applied.

b. Apart from the transitional provisions, plantation activities conducted by individuals are subject to two types of sanctions:

    i. administrative sanctions introduced in Article 17A. However, activities that have been conducted for five consecutive years by those who reside inside and in the surroundings of the forest area are exempted. To benefit from the exemption, the perpetrators must:
        1. have registered in the forest area reorganising policy (e.g. TORA or social forestry); or
        2. social/customary sanctions have been imposed.
    ii. criminal sanctions introduced in Articles 92 and 93.

    It should be noted that the Law does not clarify the order in which administrative and criminal proceedings should be carried out, or whether they can be carried out simultaneously. Therefore, since it is possible for two different sanctions to be applied together, individuals can be processed criminally and administratively.

c. Similarly, if in breach of the law, corporations are also subject to the following administrative and criminal sanctions:

    i. Administrative sanctions for corporations are introduced in Article 18 of the Law, without any exemption
    ii. Criminal sanctions introduced in Articles 92 and 93

    The provisions related to administrative and criminal sanctions are clearer for corporations than for individuals. Article 18 specifically states that, apart from the criminal sanctions, the violations of Article 17 (2) b, c or e, are subject to administrative sanctions, which include the revocation of Business Licences. These sanctions are suspended for three years, since article 110A allows corporations with certain qualifications to obtain their forestry-related licences.

Based on the above discussion, for the purpose of this research, the relevant aspect of the law is the possibility of registering local communities in a policy programme of the MEF to ‘rearrange or reorganise the forest area’. There is no further explanation of what is meant by the term ‘forest area reorganising policy’ mentioned in art. 17A of Law 11/2020, but this term has been understood as encompassing TORA and social forestry.

However, presumably it relates to the policy or initiative to settle tenurial conflicts in the forest area, an ongoing initiative of the MEF. As for the enforcement of administrative and criminal sanctions, it lies mainly outside of local governments’ authority.

4. Local governments' authority in settlement of tenurial conflict

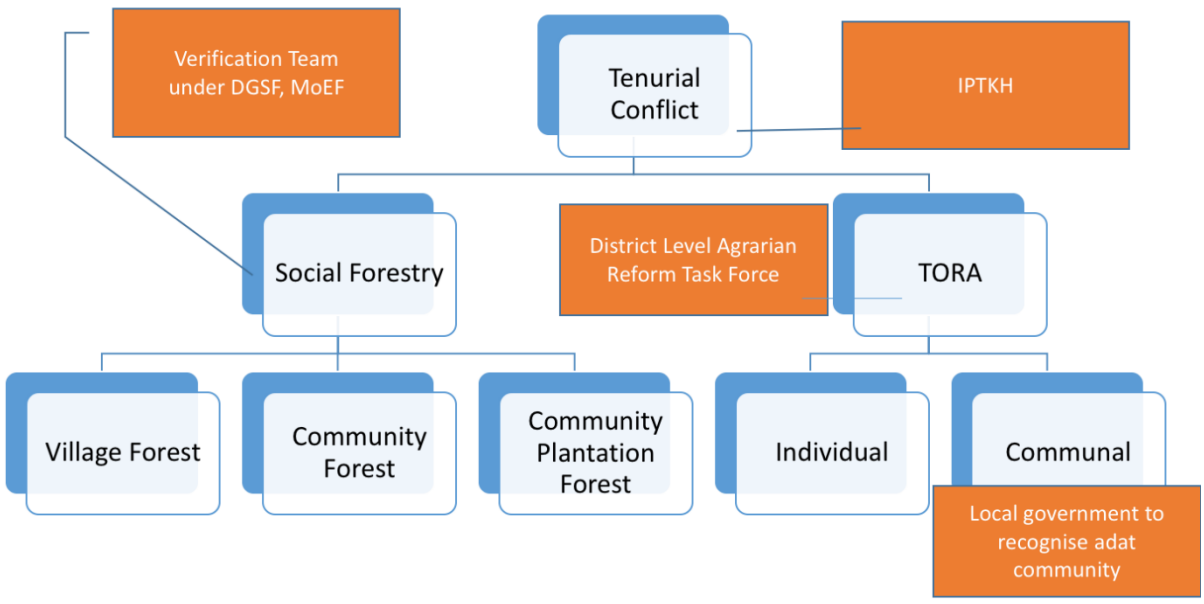
This section identifies and analyses local governments' role and authority within the legal framework on local government. The two main legal instruments in this respect are Law No. 23 of 2014 on Local Government and Ministry of Home Affair Regulation No. 86/2017.

The analysis of this legal framework will determine whether local governments have relevant mandates in relation to tenurial conflict resolution, whether it allows the proposed activities to take place, and if not, identify the gap/conflicting regulations and propose remedial actions. Clear identification of the relevant authorities will ensure optimal allocation of resources to quickly fill the gap in local government capacity. It also provides an effective input to policy reform aimed at strengthening the role of local governments in conflict resolution in the forest area.

4.1 Social Forestry and TORA

The three regulations Perpres 88/2017 (Settlement of Land Tenure), Perpres 86/2018 (Agrarian Reform) and PerMenLHK 83/2016 (Social Forestry) are closely connected. The relation among the three instruments along with the identified role of district governments are described in diagram 2 below.

Diagram 2. Identification of local governments' role in the settlement of tenurial conflict in the Forest Area



4.1.1 Perpres 88

Within the limitations of Perpres 88 in terms of resolving tenurial conflicts, the regulation identifies several roles of district-level governments within the Team of Inventory and Verification of Land Possession in the Forest Area or IPTKH. These roles can be divided into the following streams:

1. Preparing the verification task of the IPTKH. This could be done by conducting an inventory on land ownership, possession, utilisation and use of the land.
2. Preparing the mechanism to receive submission of land claims from the public, proactively conducting an inventory and assisting the public in submitting their claims.
3. Recognising legal claims as part of the verification process.
4. Assisting and completing the settlement process:
    a. On the object of agrarian reform: following the procedure under Perpres 86/2018
    b. On social forestry: following the procedure under PerMenLHK 83
    c. On Adat forest: recognise the existence of the Adat Community (Article 5)
    d. On the release from the forest area and its alignment with spatial plan documents: issue relevant spatial planning documents.

While these local governments roles logically flow from Perpres 88, they should be matched in the legal framework on the authorities of local governments. Based on the analysis of Local Government Law of 23/2014 and relevant technical regulation (Permendagri 86/2017), local governments have very little, if not, no authority to carry out the roles identified under Perpres 88. Therefore, there is a need to amend Permendagri 86/2017 to update relevant mandates.

Further, independently conducting an inventory of land ownership and possession in the forest area might be difficult for local governments. This is because formally, no one is to access the forest area without permission from the forestry authority. For this reason, Perpres 88 specifies and authorises a special team, IPTKH, to conduct the field inventory. Therefore, district-level governments can only access the area as members of the IPTKH team.

Villages in the forest area, however, are not uncommon. A BPS survey carried out in 2018 shows that there are 2768 villages in the forest area (around 3%) and 18,617 (22.18%) on the periphery or surrounding the forest area. These villages are those that have already been formally recognised by the Ministry of Home Affairs through a Decree on the Forest Area.[28]

Therefore, it is important for IPTKH to identify these villages to clarify and strengthen their legal basis through the procedure available under Perpres 88. The detailed guidance to conduct the inventory and verify the claims is regulated in the Regulation of the Coordinating Minister of Economic Affairs No. 3/2018 on Guidance for the Inventory and Verification Team of Possession of Land in the Forest Area.

[28] BPS, Identifikasi dan Analisis Desa di Sekitar Kawasan Hutan Berbasis Spasial, 2018.

4.1.2 Perpres 86/2018

This regulation provides the strongest role for local governments. As discussed above, Perpres 86/2018 introduces the Gugus Tugas Reforma Agraria (GTRA) at district level with a very strong mandate to carry out the agrarian reform programme.

According to the regulation, GTRA should be established at the latest three months after the Regulation is enacted. Since it was enacted on 24 September 2018, the GTRA should have been in place since 24 December 2018. Therefore, to ensure local governments play their role, one should check whether the GTRA team is in place and has all the necessary tools to carry its duties.

4.1.3 PerMenLHK 83/2016

In this regulation, the role of district-level governments is limited. In Perpres 88, district-level governments are formally involved in the verification team to conduct technical verification on the social forestry application. But, in PerMenLHK 83/2016, their involvement is not mandatory. It is at the discretion of the Director General on Social Forestry of the MEF (Social Forestry DG).[29]

In practice, however, district-level governments' contribution in the Verification Team will be very valuable. Considering the limited timeframe for the verification team to do the technical assessment (only seven working days), some of the data should be available ahead of time. This required data relates for example to the existence of the community, its socioeconomic situation and the situation of the land. This can only be provided if district-level governments have conducted a socioeconomic mapping and are part of the team established by the Social Forestry DG.

4.1.4 Roles of Local Governments – Summary

The above analysis of regulations on social forestry and TORA shows that local governments can optimise the use of the following roles to contribute to the settlement of tenurial conflict in the forest area:

1. Conducting an inventory of land ownership and possession in the forest area. While this may be difficult because district-level governments have no authority over the forest area, they can still identify claims by establishing the mechanisms to receive submission of land claims from the public. This will facilitate the first stage of data collection.
2. Establishing the GTRA at the district-level and making sure the task force is equipped to carry out its duties.
3. Processing the recognition of Adat community as the first stage of the recognition of Adat land/Adat Forest.

[29] Article 11 PermeLHK 83/2016 uses the word 'may' and thus, the Social Forestry DG can further choose between forestry agency at the provincial or district-level government.

4.2 Law enforcement

As mentioned above, the role of district-level governments in law enforcement for illegal plantation activities in the forest area is relatively small, if not non-existent. For criminal law enforcement, the MEF has to investigate in the forest area. And under administrative law, there is no administrative sanction for the wrongful acts of issuing IUPs in the forest area. Therefore, local governments will not consider law enforcement as a priority. Local governments could play a more significant role if the legal framework was amended to introduce the possibility for local governments to revoke IUPs wrongly issued in the forest area, whether intentionally or not.

5. Means of measuring progress

Social Forestry – TORA

The following questions are proposed to identify the three priority authorities of local governments to contribute to tenurial conflict resolution in the forest area:

1. Has the GRTA been established (to receive submission of land claims as part of Perpres 86/2018)?
2. If not, does the local government have a system in place to receive grievances that can accept submissions on tenurial conflicts?
3. What standard operating procedures (SOPs) are in place to manage tenurial complaints? Have they been sufficient to handle all agricultural complaints thus far? If not, why not?
4. If such SOPs are not in place, what is? How are tenurial conflicts handled in practice?
5. How many cases are received, if any?
6. What is the current district-level government policy in recognising the customary land in their district?
7. Is there a specific procedure to receive proposals for recognition of customary land?
8. Is there a budget line for processing the request of Adat land recognition?
9. How many proposals from the Adat community for recognition of customary land have been received? How many have been processed? What are the results? (Indicator 9. Recognition of customary land)
10. Does the district government have a mechanism to consult local communities with claims over the lands prior to issuing plantation licences?

6. Findings from fieldwork

Based on the guiding questions, interviews were conducted with relevant government officials in four districts: Kotawaringin Barat and Seruyan in Central Kalimantan; Rokan Hulu in Riau; and Morowali Utara in Central Sulawesi (see the list of interviews in annex 1).

In general, all districts lack capacity to deal with tenurial conflicts. This is evidenced by the absence of a GTRA and SOPs for dealing with complaints in general, including tenurial conflicts. There is no mechanism or budget to process claims by indigenous communities. The situation is even more critical regarding the right to free, prior and informed consent (FPIC). FPIC principles are embedded in the environmental impact assessment (EIA) requirements, which apply to obtain environmental licences for plantation activities. As widely criticised, the Omnibus Law abolishes requirements for low- and medium-risk activities to have environmental permits prior to the issuance of business permits.[30] This means that there would be no legal obligation to respect the right to FPIC of local communities in these cases.

Interviews show that Rokan Hulu is the only of the four districts to have established a GTRA at the district level. As discussed, GTRA is the main institutional set-up introduced under Perpres 88 to resolve tenurial conflicts through the agrarian reform approach. As explained by the official from Rokan Hulu, the district GTRA also serves as the IPTKH team under Perpres 88.

As mentioned above, GTRAs play crucial coordinating and implementing roles. As part of the IPTKH team, the district-level team is authorised to receive registration of request of inventory and verification made through bupati/walikota (Articles 21 and 22 of Perpres 88). Then as the district-level GTRA, the team has the authority to implement the reorganisation of land ownership and possession under TORA. This includes facilitating conflicts and supervising the resolution agreed. The absence of this team is a first sign of lack of capacity. Even when the team exists, like that in Rokan Hulu, no SOPs for conflict resolution are in place.

The absence of SOPs for dealing with tenurial complaints is another clear indication of the gaps in capacity in dealing with tenurial conflicts. Without such SOPs, there is no reference to ensure officials have a standardised capacity to facilitate the negotiation and/or mediation of tenurial conflict. In Seruyan districts, complaints can go directly to Bupati by phone. In Kotawaringin Barat, there is a ‘centralised’ online system connected to the national government through e-LAPOR (managed by the Presidential Staff Office/KSP). In practice, other units, such as the plantation agency, still receive complaints, which are not reported through e-LAPOR. None of the units in the district governments maintain a centralised and well-structured complaints reporting system. This is mainly because there is no obligation to report this aspect of governmental authority to the higher-level government or to the local house of representative. Recently, however, the Ombudsman Republic of Indonesia (ORI) started to report the performance for this aspect. In the future, one can expect the capacity to

[30] https://news.mongabay.com/2020/11/indonesia-omnibus-law-global-investor-letter/; https://thediplomat.com/2020/10/indonesias-new-omnibus-law-trades-green-growth-for-environmental-ruin/; https://www.thejakartapost.com/news/2020/10/21/exclusive-imf-raises-concern-over-environmental-standards-in-job-creation-law.html

deal with complaints, including on tenurial issues, will draw greater attention from local governments.

Similarly, district government capacity to process recognition of indigenous communities is far from sufficient. Kotawaringin Barat and Rokan Hulu have recognised Adat institutions, such as Kelembagaan Dayak Adat in Kobar and Lembaga Adat Melayu in Rokan Hulu. However, SOPs and budgets are not in place. Further, all four districts indicated that they had not received any proposal from indigenous communities. In Kotawaringin Barat, this statement was contested by other sources. Some informants for example said that indigenous communities do exist in the district. There are many possible explanations for this situation. First, it could mean that local governments do not understand what constitutes an indigenous community. This seems to be the case of Kotawaringin Barat, where the district government understands that indigenous community are isolated communities, which is not the case of indigenous communities in this district.[31] Second, there could be a lack of awareness among indigenous communities in relation to the opportunity for them to claim their rights. This could be explained by the lack of a budget for activities related to the recognition of indigenous communities, as acknowledged by all district governments interviewed.

Capacity for conflict prevention is also weak. FPIC is the main conflict prevention instrument. It will be weakened with the elimination of the requirement to obtain an environmental licence in the new Law 11/2020. Interviewees stated that in principle, FPIC has been embedded in the obligation to conduct an EIA to obtain an environmental licence, required under the 2009 Environmental Law. Unfortunately, Law No. 11/2020 only requires an EIA for certain high-risk activities. It is unclear whether plantation licences will be categorised as high risk and therefore subject to an EIA. It is doubtful, however, since in the past, plantations were considered as low risk in the EIA category.[32] There is a high possibility that the obligation to conduct EIA will be replaced by certification of standard for plantations,[33] effectively removing the obligation to obtain FPIC associated with the application for environmental permits. Nevertheless, since the 2020 Law will have to be implemented through government regulations, it remains to be seen whether the FPIC principle will still be applied for plantation activities.

Detailed findings from the interviews are contained in annex 2.

[31] Discussion with B. Steni, Inobu.
[32] PermenLHK 38/2019 categorised plantation as category C EIA as it is considered as not complex and does not require environmental baseline information (*rona awal lingkungan hidup*).
[33] Article 9 Job Creation Law No. 11/2020

7. Conclusions and recommendations

It is widely acknowledged that the root cause of land-forest conflicts rests in poor land and forestry governance. It includes the absence of: recognition of communal land tenure; certainty in the delimitation of the forest area; equal access to natural resources; harmonised maps; genuine public consultation prior to licensing; and law enforcement of legal violations on spatial plans. Without a systematic approach to resolve these various fundamental issues, land tenure conflicts will persist in Indonesia.

Developing a typology of conflicts based on actors and possible remedial options helps framing the discussion on the role of local governments. As shown, local governments mostly play a role in the social forestry and agrarian reforms. This role ranges from preparing data on social conditions of forest-dependent communities to issuing recognition of indigenous communities' rights. This study suggests that the local governments' main role be the mapping of the social situation of the communities in their area, as it feeds into the other stream of conflict resolution mechanisms. To allow local governments to effectively play this role, some regulations need to be improved. For example, Permendagri 86/2017 should be updated to allow local governments to conduct their authority related to the identification of local people in forest area to effectively assist the national government in the process of conflict resolution and agrarian reform.

Bibliography

Journals, Articles, News

- Peraturan Presiden No. 18 tahun 2020 tentang Rencana Pembangunan Jangka Menengah Nasional
- Buchanan et. al. *Exploring the Reality of Jurisdictional Approach*, Conservation International, 2019 accessed through https://www.conservation.org/docs/default-source/publication-pdfs/jurisdictional_approach_full_report_march2019_published.pdf?Status=Master&sfvrsn=23c977ae_3
- Kehati, *Palm Inside: Resolving the Palm Oil Invasion Inside Forest Zone*, 2019
- ICEL, Tipologi Pelanggaran di Bidang Usaha Perkebunan, 2018 (unpublished)
- Kementerian Lingkungan Hidup dan Kehutanan, 'Data dan Informasi Pemetaan Tematik Kehutanan Indonesia', accessed through http://appgis.dephut.go.id/appgis/download/1.2.%20Buku%20DEFORESTASI/BOOKLET_PEMETAAN%20TEMATIK%20KEHUTANAN%20INDONESIA.pdf, 2018
- Kementerian Lingkungan Hidup dan Kehutanan, 'Status Hutan dan Kehutanan Indonesia, 2018
- Abram et.al, 'Oil Palm-Community Conflict Mapping in Indonesia: A Case for Better Community Liason in Planning for Development Initiatives' *Applied Geography* 78, 2017
- Virginia Barreiro, Mohiburrahman Iqbal, Godwin Limberg, Rauf Prasodjo, Aisyah Sileuw and Jim Schweithelm, 'The Cost of Conflict in Oil Palm in Indonesia' *The Cost of Conflict in Oil Palm in Indonesia* (IBCSD, 2016)
- Mas Achmad Santosa, Josi Khatarina, and Aldilla Suwana, 'The Progress of Governing REDD+ in Indonesia', *International Journal of Rural Law and Policy*, July 2013

Laws and Regulations

- UU No. 11 tahun 2020 tentang Cipta Kerja
- Peraturan Menteri Agraria No. 17 tahun 2019 tentang Izin Lokasi
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 38 tahun 2019 tentang Jenis Rencana Usaha dan/atau Kegiatan yang Wajib Memiliki Analisis Mengenai Dampak Lingkungan Hidup
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 37 tahun 2019 tentang Perhutanan Sosial pada Gambut
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 21 tahun 2019 tentang Hutan Adat dan Hutan Hak
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 17 tahun 2018 tentang Tata Cara Pelepasan dan Perubahan Batas KH utk Tanah Obyek Reforma Agraria

- Peraturan Menteri Koordinator Bidang Perekonomian No. 3 tahun 2018 Pelaksanaan Tugas Tim Inventarisasi dan Verifikasi Penguasaan Tanah dalam KH
- Peraturan Menteri Agraria No. 4 tahun 2018 tentang Izin Lokasi
- Peraturan Presiden No. 86 tahun 2018 tentang Reforma Agraria
- Peraturan Presiden No. 88 tahun 2017 tentang Penyelesaian Penguasaan Tanah dalam Kawasan Hutan
- Peraturan Menteri Dalam Negeri No. 86 tahun 2017 Tata Cara Perencanaan, Pengendalian Dan Evaluasi Pembangunan Daerah, Tata Cara Evaluasi Rancangan Peraturan Daerah Tentang Rencana Pembangunan Jangka Panjang Daerah Dan Rencana Pembangunan Jangka Menengah Daerah, Serta Tata Cara Perubahan Rencana Pembangunan Jangka Panjang Daerah, Rencana Pembangunan Jangka Menengah Daerah, Dan Rencana Kerja Pemerintah Daerah
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 39 tahun 2017 tentang Perhutanan Sosial di Perhutani
- Peraturan Menteri Lingkungan Hidup dan Kehutanan No. 83 tahun 2016 tentang Perhutanan Sosial
- Peraturan Menteri Agraria No. 5 tahun 2015 tentang Izin Lokasi
- PP No. 104 tahun 2015 tentang Tata Cara Perubahan Peruntukan dan Fungsi Kawasan Hutan
- Peraturan Menteri Dalam Negeri No. 52 tahun 2014 tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat
- Peraturan Bersama Menteri Dalam Negeri, Menteri Kehutanan, Menteri Pekerjaan Umum, dan Kepala Badan Pertanahan Nasional No. 79/2014; PB.3/Menhut-II/2014; 17/PRT/M/2014; 8/SKB/2014 tentang Penyelesaian Penguasaan Tanah yang Berada di dalam Kawasan Hutan
- PP No. 60 tahun 2012 tentang Perubahan Atas PP 10 tahun 2010 tentang Tata Cara Perubahan Peruntukan dan Fungsi Kawasan Hutan
- PP No. 15 tahun 2010 tentang Penyelenggaraan Penataan Ruang
- Peraturan Menteri Agraria No. 2 tahun 1999 tentang Izin Lokasi
- UU No. 41 tahun 1999 tentang Kehutanan

Annexes

Annex 1. List of Interviews

Districts	Interviewees	Title	Date	Interviewers
Kotawaringin Barat	Ir. Kusmiyatun Nedik	Kepala Bidang Ekonomi Bappeda	30 July 2020	Inobu (Diani)
	Amir Hadi	Kepala Bappeda	30 July 2020	Inobu (Diani)
	John Goro, S. Hut.,M.M.	Bagian Pengendalian dan Pencemaran DLH	27 July 2020	Inobu (Diani)
	Syahyani	Sekda DLH	27 July 2020	Inobu (Diani)
	Astrid	Bagian Pemantauan DLH	27 July 2020	Inobu (Diani)
	Rodi Iskandar	Kepala Dinas Komisi Informasi Publik	23 July 2020	Inobu (Josi, Diani)
	Irfan	Kepala Bagian Tata Pemerintahan	5 August 2020	Inobu (Diani)
	Kamaludin	Kepala Dinas Tanaman Pangan Hortikultur dan Pertanian	21 July 2020	Inobu (Josi, Diani)
Seruyan	Albidin	Kepala Dinas Ketahanan Pangan dan Pertanian	11 August 2020	Inobu (Diani)
	Priyo Widgado	Kepala Dinas Lingkungan Hidup	6 August 2020	Inobu (Diani)
	Budi Purwanto	Kepala Bappeda	14 August 2020	Inobu (Diani)
Rokan Hulu	Opan	Administrasi Wilayah III		SPKS (Andry)
	Zaki	Bappeda	5 August 2020	SPKS (Sofy dan Andri)

Districts	Interviewees	Title	Date	Interviewers
	Azhar	Bidang Perencanaan Pengendalian dan Evaluasi Pembangunan Daerah Bappeda	8 August 2020	SPKS (Sofy dan Andri)
	Rafid	Bappeda	11 August 2020	SPKS (Sofy dan Andri)
	Pak Enhad	Disnakbun		SPKS (Sofy dan Andri)
	Pak Nur Ikhlas	Disnakbun	12 August 2020	SPKS (Sofy dan Andri)
	Pak Samsul	Bidang Sarana dan Prasarana, Dinas Lingkungan Hidup	10 August 2020	SPKS (Sofy dan Andri)
	Ibu Elviana	Bidang Sarana dan Prasarana, Dinas Lingkungan Hidup	10 August 2020	SPKS (Sofy dan Andri)
	Pak Dedy, Bu Elfitri, Pak Muzainul	DLH	10 August 2020	SPKS (Sofy dan Andri)
Morowali Utara	Sigit,S.Sos.MM Ormanius Garetan Pabuang, S. Hut	Kepala Bagian Perencanaan Kajian LH, DLH Kepala Bidang Pemberdayaan, Pembinaan dan Pengawasan Lingkungan Hidup	14 Sept 2020	SPKS (Andre & Gifvents)
	Krispen H. Masu	Kepala Bagian Administrasi Setda	15 Sept 2020	SPKS (Andre & Gifvents)
	Gunawan	Kepala Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu	17 Sept 2020	SPKS (Andre & Gifvents)

Districts	Interviewees	Title	Date	Interviewers
	I KD Wisnuada Wilson	Kepala Bidang Perkebunan DPP Admin Simhultan Dinas DPP	15 Sept 2020	SPKS (Andre & Gifvents)
	Adolf Severlianus Buhadi	Kepala Pertanahan/BPN	16 Sept 2020	SPKS (Andre & Gifvents)
	Syarif	Kepala Bidang Penataan Ruang Dinas PUR	11 Sept 2020	SPKS (Andre & Gifvents)
	Ibu Kepala Biro Hukum Pak Buce	Kepala Biro Hukum Staf Biro Hukum	16 Sept 2020	SPKS (Andre & Gifvents)
	Aries Widjodjo	Kepala KPH	17 Sept 2020	SPKS (Andre & Gifvents)
	Kris	Kepala Bidang Perencanaan Bappeda	16 Sept 2020	SPKS (Andre & Gifvents)
	Fersony Langahi, SE	Kepala Bidang Pemadam Kebakaran Penata III/c Satpol PP dan Damkar	16 Sept 2020	SPKS (Andre & Gifvents)
	Andhika	Yayasan Kompas Peduli Hutan Sulawesi Tengah	21 Sept 2020	SPKS (Andre & Gifvents)
	IVAN Amiruddin Roe	Kepala Dinas Kominfo Kepala Bidang informasi dan komunikasi publik	16 Sept 2020	SPKS (Andre & Gifvents)
	  Pak. Bamba	Kepala Sekda Asisten II	18 Sept 2020	SPKS (Andre & Gifvents)

Annex 2. Summary of responses from fieldwork carried out in four districts

Questions	Responses from Morowali Utara (Morut) District	Responses from Seruyan District	Responses from Kotawaringin Barat (Kobar) District	Responses from Rokan Hulu (Rohul) District
1. Has the GRTA (to receive submission of land claims as part of the Perpres 86/2018) been established?	Dinas Lingkungan Hidup/Environmental Agency (DLH) and Administrasi Pemerintahan Umum in office of District Government Secretariat (Adpum): the district has not established GTRA. Adpum: There is SK Bupati Nomor: 188.45/Kep.B-MU/0085/VI/2020 on Establishment of Committee on Land reform Consideration of Morowali Utara (Pembentukan Panitia Pertimbangan Landreform Kabupaten Morowali Utara).	Dinas Ketahanan Pangan dan Pertanian (DKPP): No GTRA	Tata Pemerintahan a unit in Bappeda (Tapem): There is one at the provincial level, not at the district level.	Administrasi Wilayah (Adwil): GTRA has been established for two years initiated by BPN and technically is under BPN line of work. Headed by Sekda and Bupati is the advisor (SK Bupati Rokan Hulu No. Kpts.592.1/Setda-kak/164/2020).
2. If not, does the local government have any system in place to receive grievances that can accept submission on tenurial conflicts?	DLH: tenurial conflicts are processed through Tim Terpadu Penanganan Konflik established by SK Bupati Morowali Utara Adpum: to process land conflicts, Bupati forms a team to manage social conflict (Surat	DKPP: The practice is as follows: 1. Registration 2. Verification to checking administrative completion (e.g. land certificate) 3. Verification – field level	Tapem: Facilitating meeting between complainant with relevant agencies at local level.	N/A

Questions	Responses from Morowali Utara (Morut) District	Responses from Seruyan District	Responses from Kotawaringin Barat (Kobar) District	Responses from Rokan Hulu (Rohul) District
	Keputusan Bupati Nomor: 118.45/Kep-B.MU/0075/V/2020 Tentang Pembentukan Tim Terpadu Penanganan Konflik Sosial Di Kabupaten Morowali Utara). This team is headed by Bupati and its membership consists of relevant units in the district, including police and military	4. Further mediation by facilitating meeting between conflicting parties		
3. What SOPs are in place to manage tenurial complaints? Is it sufficient to handle all agricultural complaints thus far? If not, why?	DLH and Adpum: There is no specific SOPs in place for this.	DKPP: No SOPs in place	Tapem: No SOPs in place	Adwil and Bapeda: Mechanism for conflict resolution is not in place.
4. If such SOPs are not in place, what is? And how in practice are tenurial conflicts handled?	Adpum: in practice, tenurial conflicts are processed by the social conflict team (mentioned earlier). When a complaint comes through or a conflict is identified, Bupati will conduct a team meeting. It will be decided in the meeting whether mediation or (administrative or criminal) law enforcement will be carried out.	DKPP: Report is received through a staging process, from village level, camat, then Bupati. It is then processed by the unit related to conflict in forest area.	Tapem: Usually complaint goes to Bupati and some local government agencies such as Bappeda, which is then processed by the Conflict Resolution Team. Report is stored at Tata Pemerintahan.	Adwil: resolving plantation in forest area is done through the GTRA and IPTKH mechanisms. Thus far has not reached the stage of TORA. To do so, it requires the release of the forest area by BPKH. It will be used for housing and social facilities. To do so, village representatives shall contact Adwil and they will be informed of

Questions	Responses from Morowali Utara (Morut) District	Responses from Seruyan District	Responses from Kotawaringin Barat (Kobar) District	Responses from Rokan Hulu (Rohul) District
				the inventory process. Afterwards, the communities will delimit the land by installing the signposts, Adwill will only take the coordinate (for the inventory).
5. How many cases are received, if any?	DLH: None Adpum: Conflicts are being inventoried a the kecamatan level, but there is no data on number of cases.	DKPP and Bupati: No data available	Two cases received in 2019. They consist of overlapping claims between HTR and HGU; and a complaint from Dayak Misik farmers group to a HGU in Kecamatan Arut Utara.	Bappeda: around 3500 cases
6. What is the current district-level government policy in recognising the customary land in their district?	DLH and Adpum: There is none currently, but there is a plan to formulate a Perbup regarding recognition of Adat communities. There is also a plan to make a profile of indigenous communities involving Pemdes, Dinsos, Adpum, DLH and BKSDA. Adpum: Tidak ada	DLH: Not available. The authority is assigned to DLH but this has not been effectively implemented.	Tapem: Surat Bupati on Kelembagaan Adat Dayak and Election of Kepala Damang/Kepala Adat (Surat Bupati Kotawaringin Barat No. 130/37/Pem) Example of SK on the appointment of Damang Kepala Adat: SK Bupati Kotawaringin Barat No. 140/03/Pemdes.2015 tentang Pemberhentian dan Pengesahan Pengangkatan Demang Kepala Adat Kecamatan Arut Utara	Adwil and Bappeda: there is no specific policy. There is recognition of the community and its institution, such as Lembaga Adat Melayu, but there are no cases of recognition of Adat land.

Questions	Responses from Morowali Utara (Morut) District	Responses from Seruyan District	Responses from Kotawaringin Barat (Kobar) District	Responses from Rokan Hulu (Rohul) District
			Kabupaten Kotawaringin Barat Periode 2015-2021.	
7. Is there a specific procedure in place to receive proposals for recognition of customary land?	DLH and Adpum: No specific mechanism yet. If a mechanism were to be developed, likely guidance from P.32/Menlhk-Setjen/2015 will be used.	DLH: No procedure in place	Tapem: Yes. Such complaint will go to a specific team consisting of Bagian Pemerintahan, Badan Kesbangpol, Dinas Pendidikan dan Kebudayaan, Dinas Pemberdayaan Masyarakat dan Desa, and relevant camat.	Adwil and Bappeda: No procedure in place
8. Is there a budget line for processing the request of Adat land recognition?	DLH: Activities that are conducted include dissemination of information about indigenous communities and training for the communities.	DLH: Not specific budget	Tapem: It is part of budget lines of relevant unit.	Adwil and Bappeda: No procedure in place, therefore no budget line.
9. How many proposals from Adat communities for recognition of customary land have been received? How many have been processed? What are the results? (Indicator 9. Recognition of customary land)	Adpum: proposals for recognition usually come from civil society organisations, which accompanied the community. One already received recognition from the MEF, that is in SK: 6747/MENLHK-PSKL/KUM.1/12/2016	DLH: No proposal	Tapem: No proposal received	Adwil: The district government never receives requests or proposals from communities to get recognition of indigenous customary land.

Questions	Responses from Morowali Utara (Morut) District	Responses from Seruyan District	Responses from Kotawaringin Barat (Kobar) District	Responses from Rokan Hulu (Rohul) District
10. Does the district government have a mechanism to consult local communities having claims over the lands prior to issuing plantation licences?	DLH; while the concept of FPIC or *padiatapa* was never heard of, the public is consulted prior to the issuance of plantation licences through environmental licences/permits. This is because carrying out an EIA is required to obtain environmental permits. The followed procedure is Permenlh No. 17/2012. Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu (DPMPTSP): dissemination of information is part of the EIA process and in their opinion, once it is disseminated and there is no objection, the project is accepted (*Kalau masalah sosialsiasi itu bagian dari materi AMDAL, artinya apa, ketika amdal itu sudah diterima proses sosialisasi, dan segalanya itu sudah selesai*). Adpum and Dinas Pertanian dan Pangan (DPP): public participation has been accommodated in the EIA,	DKPP: consent from communities has been practiced but there is no written SOP. There is, however, Perda Provinsi No. 5/2011 on Guidance of Plantation Licences (Pedoman Perijinan Perkebunan). The Perda regulates rights and obligations of parties and accommodating communities' rights. On the land claim, there is an on – going discussion to develop a Perbup to register land claim at the village level with a team to inventory communities rights/claims and their consent prior to issuance of plantation licences. This will be developed based on Permen Agraria No. 5/2015 and Permen Agraria No.17/2019. Bappeda: the FPIC principle has been	Tanaman Pangan Hortikultur dan Pertanian (TPHP): In practice, the process to inform communities has been done even though no specific SOPs to regulate it. Tapem: There is no specific SOP for PADIATAPA/FPIC. In practice, it is only up to the stage of awareness raising and does not fully ensure consent from the communities, which is part of the plantation licensing process. The legal reference is Plantation Lawa dn Pergub No. 41/Th.2015.	DLH: implementation of FPIC is accommodated through EIA. Therefore, the implementation of the principle is started since the plantation is planned. This process determines the issuance of plantation licences. Dinas Peternakan dan Perkebunan (Disnakbun): Conceptually, it has been implemented, but there are no written SOPs about it. It is accommodated by the EIA.

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	because the first stage is awareness raising/dissemination of information to the communities to resolve community-related rights, and this is usually facilitated by district government because under the 2014 Local Government Law, agriculture is still under the authority of district governments. The main guidance (NSPK) for the licensing process is contained in Permentan 98 tahun 2013, which lists 13 items that need to be done before IUP can be issued, including awareness raising of communities.	implemented, however, evidence showing communities approved or not in practice is not kept because it is not legally required. If this in the future it will be required, there is a need to insert this as part of the licensing requirements. Further, the requirement to conduct awareness raising of communities have not been regulated in a specific SOP or Perda.		

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