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Forest tenure in Indonesia : the socio-legal challenges of securing communities' rights

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3. COMMUNITY-BASED FOREST MANAGEMENT IN INDONESIA: SOLVING TWO CENTURIES OF SOCIAL AND ENVIRONMENTAL INJUSTICE?

3.1 INTRODUCTION

This study's major objective is analysing community forest tenure in order to assess how policies and laws could contribute to social & environmental justice (see 1.1). Others have often studied, advocated or designed community forest tenure and its security with a single purpose in mind. Some have aimed for the ecological goal of preserving the forest environment. Others strive for national economic growth through forest exploitation and economic empowerment of forest communities. There are others again whose primary objective is the protection of human rights and the application of the principles of the rule of law in the making and implementation of land and forestry law. This study, in pursuing the objective of social & environmental justice brings the various goals together, and looks at how policy, law and their implementation are able to balance economic and social interests of forest communities to environmental preservation and to the interests of the majority of people.

The history of Indonesian forestry management indicates that this objective is not completely new. Since colonial times until the present the government has expressed similar goals. The recent climate change provisions as implemented through REDD/REDD+ (see 1.1) suggests a concern for social & environmental justice. In reality, however, so far governments have only seen few moments of success. Forest destruction, poverty and conflicts have continued both under colonial as well as national governments.

This chapter aims to expand our knowledge about the historical background of current social and environmental problems of Indonesian forestry and about the solutions Indonesian government has tried. It consists of three major parts. The first part – consisting of two sections – describes the problems of forest destruction, poverty and conflicts and how they have evolved since colonial to present times (3.2). This is followed by a section describing the situation of forest tenure; how Forest Areas have been allocated and to whom (3.3). In the second part, I take account of the policies of the colonial and national governments which have allowed people to use Forest Areas. These policies have been implemented through different models that later became known as community-based forest management. A discussion of the different usages of terms denoting community-based forest management will be found in 3.4. The next

section describes the policy models of community-based forest management since colonial times to the present Indonesia (3.5). The last part discusses the model of 'Social Forest' (*Hutan Kemasyarakatan*), the focus of this study. Questions that will be addressed include how Social Forest has emerged, developed and influenced by social, political and legal factors (3.6).

3.2 FOREST DESTRUCTION, POVERTY AND CONFLICT IN COLONIAL AND PRESENT INDONESIA

A report from Indonesian Ministry of Environment in 2007, Indonesian State of Environment, states that between 1990 and 1997 the national rate of deforestation was 1.8 million hectares per year. This figure more than doubled to 2.83 million hectares between 1997 and 2000, but decreased to 1.09 million hectares per year between 2003 and 2006 (Ministry of Environment 2008:110-1). Certainly, the nature and choice of these figures, definitions and indicators are debatable. Different institutions using different data set and methods have come up with different conclusions. Nevertheless, it appears that deforestation has been the major source of forest destruction in this country, and thus a recurring theme in the recent history of Indonesian forestry.

In addition to deforestation, forest destruction also has occurred due to forest degradation.¹ In the late eighteenth century, the process of forest degradation began on Java and Madura – the most populous islands in Indonesia. It was mainly on account of excessive teak felling carried out by the East India Company (*Vereenigde Oost-Indische Compagnie, VOC*) and Javanese enterprises (Peluso 1990:29).

The most destructive period on Java was the nineteenth century. Using data collected by the Dutch colonial administration, Boomgaard estimates that Java lost many of its forests in this century. In 1840, 9.6 % of Java and Madura consisted of teak forest and 38.7 % of jungle wood forest.² These figures declined to 5.3 % for teak forest and 21.5 % for jungle wood forest in 1895 (table 3–1). At this time, most regions outside of Java and Madura, the 'Outer Provinces', were well-forested, with the exception of major areas in Sumatra where pressure on forest increased mostly due to the development of European-owned rubber, tobacco, palm oil and coconut plantations in addition to the conversion of forest into pepper gardens by locals (Boomgaard 1996:26-7).

¹ See footnote 2 of chapter 1 for the definition of deforestation and forest degradation and the reason of including them into a general term of forest destruction.

² Boomgaard explains that the term jungle wood forest following the British administration's term for wild forest. This sort of forest was the opposite of teak (*jati*) forest that pointed to planted forest (Boomgaard 1994:119).

Massive forest destruction on colonial Java took place predominantly during the first period of the Cultivation System (1830–1870).³ The expansion of large-scale agro-industries in this period required more land, timber and firewood for planting crops and establishing factories. As a result, forest land clearings and wood cutting became widespread. In addition, Java's growing population also accounted for the clearing of forest, as more land was required for subsistence agriculture (Boomgaard 1994:120-2). This loss of forest brought about greater environmental degradation.

Attempts to reduce forest destruction in Java had already been carried out by the Dutch. Peluso notes that in 1796, the VOC established a commission to investigate the causes of loss of Java's teak regions. The commission recommended a halt on teak cutting and reducing logging quotas. However, this recommendation was never implemented due to a conflict of interests among VOC officials who expected to profit from teak logging (Peluso 1990:29).

Overexploitation of forest, particularly teak forest on Java and Madura, continued. During the first two decades of the Cultivation System, the Dutch colonial administration eventually came to believe that the harmful ways in which forest was managed on Java needed to be ended. In an effort to resolve this issue, the Dutch established professional forestry service during the early 1850s. German foresters were invited to assist Dutch colonial forestry officials in setting up a modern-scientific forest management on Java (Boomgaard 1994:124-5; Peluso 1992:52). In addition to this, a series of legislation were enacted to confirm the state's control over forest. This included the Regulation for Forest Management and Exploitation of 1865, the Clearing Ordinance of 1874 and the Police and Penal Regulation on Forest of 1875.⁴ The latter forbade the clearing of forest for subsistence agriculture or plantations without government permission (Boomgaard 1994:125,128). Forest planting was also carried out on Java as a way of rehabilitating land from prior destruction, both in teak and non-teak forest. During the 1930s, nature and wildlife reserves were established on Java and other islands (Boomgaard 1996:18-23; 28; Arnscheidt 2009:92-105).

The abovementioned efforts may have protected Java and Madura's teak forest from even more devastating losses. As table 3–1 shows, teak planting programs led to a small increase in the areas covered by teak forest. However, destruction continued in

³ Cultivation System was the Dutch colonial policy (known in Dutch as *Cultuurstelsel*) for systematically transforming traditional agricultural practices into state and later private companies-led commercial agro-industries by forcing Javanese farmers to plant commercial commodities such as sugar and coffee. For an extensive historical study on Cultivation System see Van Niel (1992).

⁴ Staatsblad van Nederlandsch-Indië 1865, no. 97 for teak exploitation; Staatsblad van Nederlandsch-Indië 1874, nos 78-79 for clearing ordinance; Staatsblad van Nederlandsch-Indië 1875, no. 216 for police and penal regulation.

jungle wood forest. By the end of the Dutch colonial period, Java had still lost half of its forest. Only 24 % of the island was forest in 1941 compared to 48 % in 1840 (Boomgaard 1996:26).

Table 3-1
Forest-covered areas and its percentage of the total land area of Java and Madura
1840–1940

Forest type	1840	% of total land	1895	% of total land	1940	% of total land
Teak forest	1,273,000	9.6	706,000	5.3	824,000	6.2
Jungle wood forest	5,105,000 ⁵	38.7	2,833,000	21.5	2,366,000	17.9
Total	6,378,000	48.3	3,539,000	26.8	3,190,000	24.1

Source: Boomgaard 1996.

During the Japanese occupation from 1942 to 1945, forest cutting and clearing became less controlled. The Ministry of Forestry in *The History of Indonesian Forestry* (1986:31) estimates that some 100,000 hectares of state forest were destroyed, either with the Japanese rulers' permission or without. However, Peluso found that this forest destruction, mainly occurring in Java, had already started right before the Japanese landed in 1942. In an effort to thwart Japanese invaders, Dutch foresters carried out a scorched-earth policy by destroying all infrastructure and documents that could later be used against them. Following this, Indonesian forestry officials began allowing villagers to fell trees. During three years of Japanese occupation, timber cutting doubled. The Japanese not only allowed people to enter protected forest, but also created new forest villages to be inhabited by workers instructed to convert forest into agricultural land (Peluso 1990:39-41).

Deforestation and forest degradation continued under the newly established state of Indonesia. From 1945 to 1950, the new government was faced with a number of conflicts, defending its independence against the Dutch and suppressing a number of internal revolts. During this period, state forest management was neglected. As a result, 220,000 hectares of state forest were razed and another 110,000 hectares of the forest became occupied by people (Peluso 1990:43). The Ministry of Forestry (1986:62) estimates that in the early 1950s only 17 % of Java's original Forest Areas remained intact.

⁵ This figure was an estimation of jungle wood forest in Java (Boomgaard 1996:24).

A systematic forestry development plan was launched in the 1960s under the aegis of President Soekarno's national development plan, '*Pola Pembangunan Nasional Semesta Berencana 1960–1969*.'⁶ Rather than focusing on recovering forest, this Plan aimed at exploiting the forest to earn US \$ 5.2 million. For this purpose, state-owned forestry corporations – known as *Perhutani* – were established, and agreements with foreign companies were made (Ministry of Forestry 1986:77-9). A preliminary agreement regarding a forest exploitation project in East Kalimantan was signed with the Japanese government in Tokyo in 1962. Similar agreements were also set up with Japanese private companies to exploit forest in Central and South Kalimantan. In other regions such as Aceh, North Sumatra and Riau, forest was exploited by small private companies, mostly owned by Indonesian Chinese (Simon 2004:5). Meanwhile, in an effort to support the central government Trans-Sumatra Road project, the Ministry of Forestry planned to set up forestry projects and industries in the region (Ministry of Forestry 1986:83-7).

The forestry exploitation projects initiated under the 1960 National Development Plan had not yet been carried out when Soekarno was replaced by Suharto. It was during Suharto's administration – known as *Orde Baru* (New Order)⁷ – that forest exploitation was carried out more intensively on Java and the outer islands. The enactment of Law 5/1967 on Basic Provisions on Forestry, Government Regulation (GR) 21/1970 on Forest Logging Concessions and Rights of Collecting Forest Produces, Law 1/1967 on Foreign Investment and Law 6/1968 on Domestic Investment provided a legal basis for forest exploitation by foreign and domestic private corporations.

Studies on Indonesian forestry have generally concluded that the New Order's logging concessions led to deforestation and forest degradation (Forest Watch Indonesia, FWI 2002:24-7; Simon 2004:29-36). Notably outside of Java the introduction of a logging concession system contributed to a significant decline in forest cover. In 1985, a survey carried out by a project named Regional Physical Planning Project for Transmigration (RePPProT)⁸ stated that land covered by forest (forest cover) decreased to 119 million hectares or 62.7 % of all Forest Areas. Then, in 1997, the Ministry of

⁶ The Plan was legalized by Decree of the Provisional People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat Sementara-MPRS*) number II/MPRS/1960.

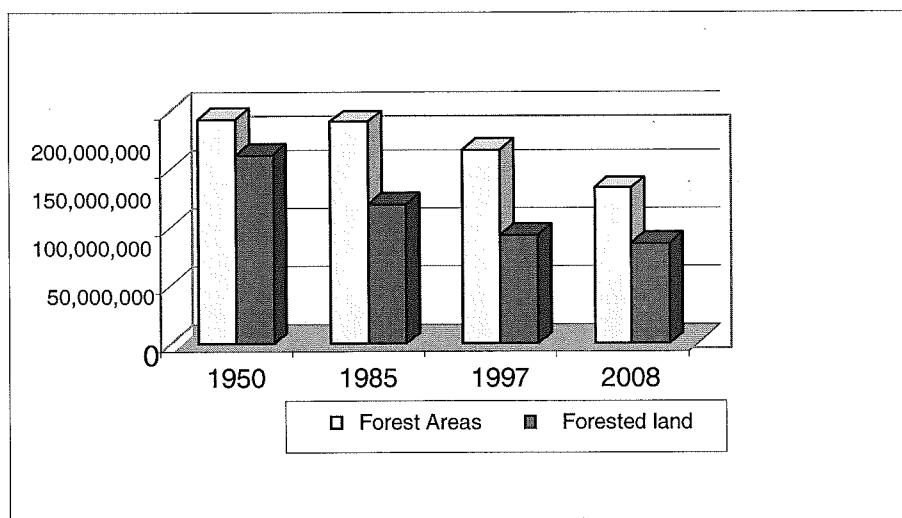
⁷ The name New Order is used in Indonesian political discourse to mention a period of Suharto's administration (1966-1998). It is mostly used to mark a difference to the period in which President Soekarno has strongly run his administration (1950-1966). For the latter, Indonesian uses the term Old Order (*Orde Lama*).

⁸ RePPProT was the first systematic survey and mapping of land use, including those found in Forest Areas, carried out in the New Order period. Most of the Ministry of Forestry's statistics refers to the RePPProT's documents.

Forestry reported that the forest cover was 93.4 million hectares or 55.9 % of all Forest Areas. This means that Indonesia lost over 20 million hectares of forest during extensive exploitation during the New Order era. The 2008 national forestry statistics show that within 133.7 million hectares of land designated as Forest Areas, forest cover was only 90 million hectares.⁹ If in the 1950s, forested land covered 162 million hectares (Hannibal cited in FWI 2002:7-8), it means that forest cover was reduced to around 55 % over the course of the 60 years since Indonesian independence (figure 3–1).

In figure 3–1 below, we see the gap between the territory named Forest Areas and the land within this territory which is actually covered with forest. The fact that the legal concept of Forest Areas (*Kawasan Hutan*) varies with the ecological concept of forest cover of forested land explains this gap. As Law 41/1999 defined, Forest Areas refer to land the Ministry of Forestry designated and/or enacted as permanent forest (footnote 11 of chapter 1). It is not necessarily land actually covered with forest. To avoid confusion, those who want to study Indonesian forestry must be aware of the different use of this concept.

Figure 3–1
Indonesian Forest Areas and forested land 1950–2008



Source: Forest Watch Indonesia 2002; Ministry of Forestry 2001; 2008.

Let us return to the issue of forest destruction in the New Order period. Logging concessions were not the only cause of deforestation and forest degradation during this period. Converting forest for resettlement (*Transmigrasi*) programs – part of the New Order plan to reduce population density in Java and Bali by sending people to

⁹ http://www.dephut.go.id/files/Statistik_Kehutanan_2008_Planologi.pdf (accessed 26-5-2010).

Sumatra, Kalimantan, Sulawesi and Papua – destroyed much forest.¹⁰ The expansion of plantations is another cause of ecological distress to forest.¹¹ In addition to the above, uncontrolled forest fires in Sumatra and Kalimantan led to further significant loss of forest cover.¹²

The Ministry of Forestry asserts that it has reduced the number of logging concessions granted to private companies because of the decline of forest covered areas. This led to a dent in the forestry sector's contribution to the Gross Domestic Product (GDP) in which logging was a major source of revenues (Ministry of Forestry 2007b:68; 2008b:6-7). Data from Indonesian Central Agency of Statistics (*Badan Pusat Statistik, BPS*) as cited by the Ministry of Forestry states that the contribution of forestry sector to the national GDP was 3.5 % between 1992 and 1997, mainly from logging and other forest produce exploitation. However, this figure declined to 2.4 % in 2003 (Ministry of Forestry 2005) and continued to decrease in the following years. These figures indicate that Indonesian 'golden age of forestry', which had started in the late 1960s, was almost over.

The loss of forest covered areas as a result of deforestation and forest degradation has indeed influenced economic security at a national level. At the same time forest loss has affected the quality of life of many, particularly poor forest communities living in or nearby Forest Areas. Scarce forest resources and bad environmental conditions have been major factors in decreasing forest-based livelihoods,¹³ although they are not the only causes of poverty in the forest. Limited access to land and forest resources for the poor in Forest Areas has been another factor. The closing of Java's teak forest to villagers due to colonial and national policy regarding timber exploitation and forest conservation has trapped forest communities into a cycle of poverty for centuries (Peluso 1992:72-5; 166-85).

Since independence, little progress has occurred for these poor communities. A trickle-down effect of forest exploitation as assumed by the New Order government barely occurred in practice. There is consensus among scholars, with their varying

¹⁰ For the history and implementation of transmigration policy in Indonesia see Levang (2003). Further readings concerning the impact of the transmigration program on deforestation see Rich (1994:36).

¹¹ For studies concerning the ecological impact of plantation, notably palm oil plantation, on forests see Casson (1999:42-50) and Glastra, Wakker, Richet (2002:20-2).

¹² For studies concerning the impact of forest fires on deforestation and forest degradation in Indonesia see Applegate et al. (2002); Chokkalingam and Suyanto (2004); for the economic impact see Ruitenbeek (2006:86-129); for the social impact on forest communities, particularly indigenous communities see Down to Earth (1997).

¹³ For studies on forest's contribution to the poor's livelihood see e.g., Wollenberg and Ingles (1999); World Bank (2006).

perspectives,¹⁴ that there is widespread poverty – or as some prefer ‘impoverishment’¹⁵ – in many Forest Areas.

Even though poverty alleviation has been one of the major development goals of the Indonesian government, official data concerning the number of people living in or nearby Forest Areas is unavailable. Since poverty has been conceptualized and measured in different ways, it is difficult to present a non-contentious figure concerning the number of poor forest communities. Nevertheless, this should not stop researchers from making estimates of the number of poor people. A World Bank report concluded that in 2000, of the 50 to 60 million Indonesian people who lived in the rural areas, particularly in and surrounding the Forest Areas, 20 % can be categorised as poor (World Bank 2006: 99-100). This figure agrees with Brown’s calculation which states that in 2000, 10.2 million of forest inhabitants could be considered poor (cited in Wollenberg 2004:1).

Poverty statistics or definitions are always subject to debate. Nevertheless, if we follow the government’s recent concept of poverty – a situation where individuals or groups of people, male or female, have not adequately obtained basic rights allowing them to make the most of their lives – we may assume that poverty in the Forest Areas is widespread. Such rights-based approach of understanding poverty, as is now used by the government in its document namely the National Strategy on Poverty Alleviation, calls for a state obligation to progressively recognize, protect and fulfil the basic rights of the poor. Included in this approach are the rights to food security, land tenure security and a clean environment (Komite Penanggulangan Kemiskinan 2005:2, 9). In many Forest Areas, people have strained to acquire such rights, but it is obvious that in different periods and places, such rights have not been established, let alone fulfilled, and poverty has remained a profound problem in many Forest Areas.

State claims on forest lands have existed since the pre-colonial (Arnscheidt 2009: 59-66) and colonial periods, and were continued into the post-colonial era. They have diminished and restrained forest communities’ rights and access to the areas. Traditional land rights of some forest communities, notably the indigenous communities, who are known in Indonesia as *adat* or customary-based communities, were neglected. Consequently, conflicts emerged in these areas. In Dutch colonial times, the policy of restricting people’s access to Forest Areas led to social unrest and

¹⁴ For case studies on poverty in the forest in the New Order period see Mubyarto et al. (1991); for forest and poverty in the era of *reformasi* (Asian Development Bank 2002; Wollenberg, et al. 2004; Yuwono, et al. 2005); for an analysis of impoverishment in Forest Areas see Arief (2000:7-10).

¹⁵ Impoverishment as defined by Spicker, Leguizamon and Gordon (2006:97) refers to the process of becoming poor, either through a slow process or sudden shock, faced by individuals, households and communities.

conflict with groups such as the Samin in Central Java and the Syarikat Islam movement in East and Central Java (Peluso 1992:69-72; Boomgaard 1994:133-4, Benda and Castles 1969). Forest conflicts have continued in post-independence Indonesia. There is no official figure for forest-related conflicts, but government officials, logging companies, NGOs, academics, and international organizations agree that such conflicts have been and continue to be both numerous and endemic (Ministry of Forestry 2005; FWI 2002, World Bank 2006). A survey carried out by the Consortium for Agrarian Reform, an Indonesian NGO, found in 2001 that land conflicts occurred mostly in logging concession areas and in conservation areas. Reported land conflicts in areas with logging concessions applied to some 580,000 hectares whereas 21,000 hectares of conservation areas were disputed (Fauzi 2001:104). Then, a study conducted by the Center for International Forestry Research (CIFOR) mentioned that the incidence of such conflicts has steeply risen from 2000 to 2003 (Wulan et al. 2004:4).

The above illustrates how deforestation, forest degradation, poverty and conflicts in the history of Indonesian forestry have caused much environmental and social distress. Deforestation and forest degradation are harmful for the environment, while the ensuing poverty and conflicts in Forest Areas pose threats to social justice and stability. Successful approaches to resolve these problems can only be found after an appropriate diagnosis of the causes. The following section will first address what the author considers to be the main causes of the conflicts, namely the control and distribution of forest resources.

3.3 FOREST AREAS: MALDISTRIBUTION AND INSECURITY

The World Resources Report 2005 states that an abundance of natural resources does not necessarily improve the economic position of the poor. To make natural resources a source of personal prosperity, a society needs laws that include the poor. In many developing countries, domestic and internationally-driven legal reform policies have addressed these issues by implementing laws and pro-poor programs with a variety of different names, approaches and results (Christy et al. 2007). One often-discussed sector of legal reform deals with fair distribution of forest utilization and tenure security in Forest Areas. Both are central in promoting sustainable forest management, reducing poverty, resolving conflicts and eliminating human rights violations, as is confirmed by researchers and donor institutions (FAO 2007; Ellsworth and White, 2004; United Kingdom Department for International Development, DfID 2007).

One of the challenges facing Indonesian forestry is the unfair distribution of forest utilization both between the government and the people and between private companies and forest communities. In 2008, the Ministry of Forestry stated that Forest Areas that of 133.7 million hectares of designated Forest Areas, the Ministry allocated some 300 logging concessions covering 26.16 million hectares, mainly in natural forest.

Another 10.04 million hectares were assigned to forestry plantation companies¹⁶ and 2.4 million hectares to state-owned forestry corporations.¹⁷ In addition, mining companies started using some 900,000 hectares of Forest Areas (Ministry of Environment 2008:106-7). Meanwhile, between 2007–2008, the Ministry of Forestry allocated around 320,000 hectares of Forest Areas to forest communities, of which 64,000 hectares was meant for People's Plantation Forest (*Hutan Tanaman Rakyat, HTR*) and 256,000 hectares for Social Forest areas (Rosdiana n.d:9, 16).

This uneven allocation of Forest Areas could be the cause of poverty in Indonesian Forest Areas. To exclude people from the forest means to eliminate their opportunity to benefit from the richness of forest. Interestingly, laws in Indonesia have contributed, intentionally or not, to creating this injustice as they form the very basis of the allocation decisions by the Minister of Forestry.¹⁸

Most of Indonesian Forest Areas have been created through the Forestry Minister's decisions to designate (*menunjuk*) and to enact (*menetapkan*) certain land as Forest Areas without too much consideration for its actual land use. In reality, the term 'Forest Area' represents territory ranging from primary forest, agricultural land, roads, to human settlements. Forest designation in Indonesia has been carried out largely without considering indigenous (*adat*) communities' or other land claims. Since most areas for logging concessions were often created behind desks in the Ministry without accurate field surveys, many of those concession areas overlapped with the traditional lands claimed by *adat* communities.

At the time, neither the Ministry of Forestry nor the logging companies made serious attempts to resolve these problems. In practice, many logging companies evicted *adat* communities from their land without paying compensation. Rather than improving these failures, the Ministry of Forestry designated those concession areas as state 'production forest', that is forest with the function of resource exploitation.¹⁹ Then, one or two decades later some of these production forests were released (*dilepaskan*) from the Ministry of Forestry's control and converted into plantations or transmigration areas. Regarding the ex-forest land, the National Land Agency was to grant private land rights to either plantation companies or migrants.²⁰

¹⁶ http://www.dephut.go.id/files/Statistik_Kehutanan_2008_BPK.pdf (accessed 26-5-2010).

¹⁷ http://www.perumperhutani.com/index.php?option=com_content&task=view&id=12&Itemid=29 (accessed 26-5-2010).

¹⁸ Chapter 4 will detail the legal framework of state and community forest tenure.

¹⁹ See 4.5 (d) for a description regarding forest functions in Indonesian legislation.

²⁰ The release of Forest Area (*pelepasan kawasan hutan*) is the Ministry of Forestry's way of transferring its authority over the Forest Area to the National Land Agency. Once the forest release has taken place, the

Forest communities, especially *adat* communities, have limited opportunities to defend their land rights, against development projects. For decades, their land has been occupied by logging, plantations and mining companies as well as by the government through transmigration projects. Other threats come from conservation projects that were first intensified by the Ministry of Forestry in the 1980s. Like other development projects, many conservation areas have moved into customary land. In such cases members of *adat* communities become victims of development projects that are carried out either for the sake of economic growth or environmental preservation.

What has been described above already shows how unfair distribution of Forest Areas utilization led to limited access of forest communities to land and resources in these areas. In addition, the Ministry of Forestry's designation of 133.7 million hectares of the country's land as Forest Areas had salient legal consequences; it turned those areas into state forest, thus blocking the possibility of forest communities to obtain private land rights.²¹ By considering Forest Areas as directly under the state's control,²² the Ministry of Forestry argues that private land rights for citizens in general and *adat* communities in particular, cannot be granted or recognized, unless the Ministry of Forestry releases its control over the Forest Areas. As noted, forest releases were generally carried out for transmigration or other development projects and private plantation companies rather than for forest communities.

Since 1998, following the resignation of President Suharto, major political changes have also affected the forestry sector. During this period, the Ministry of Forestry has begun to allow forest communities to legally utilize state forest. Therefore it enacted particular forestry legislation and issued a new type of licenses. Whether such legislation and licenses have been successful in providing the communities with legal security for forest tenure as defined in section 2.4 is subject to legal and empirical investigation.

3.4 BREAKING THE LOGJAM THROUGH COMMUNITY-BASED FOREST MANAGEMENT: VARIOUS APPROACHES

"One of the first things that we have to face up to is to admit that forests, till now, have largely served the needs of the rich, the urban few, and in many cases, those with financial and technological power abroad. Simple justice now requires that policies and

status of forest land has changed. It is not anymore the land controlled by the Ministry of Forestry, but state land in general on which the National Land Agency can grant private land rights to citizens.

²¹ See also 4.5 (b) for a legal analysis regarding the state's claim on Forest Areas.

²² See 4.3 for a legal consequence of this term.

programmes be devised to ensure that forests are managed, as a renewable resource, also for the local rural communities..."

The pro-people orientation which took hold after 1998 was not entirely new for Indonesian forestry sector. As early as 1978 the abovementioned statement was made by Indonesian former Vice President, Adam Malik (cited in Barber 1989:ix), in his speech at the Eighth World Forestry Congress held in Jakarta. The speech clearly intended to mark a new direction of forest management under Suharto's regime. For more than one decade, forest management in Indonesia had been focused on timber exploitation carried out by big logging companies, and in many respects it had neglected forest communities. As noted, Law 5/1967 on Basic Provisions of Forestry, Law 1/1967 on Foreign Investment and Law 6/1968 on Domestic Investment had been the major legal instruments of New Order forestry development policies, providing the legal foundation for expansive timber exploitation and forestry investment. Influenced by the ideology of growth-oriented development, the New Order's forestry policies viewed forest, like other natural resources, as essential development capital. High technology and capital-intensive investment were necessary to manage the forest in order to increase the nation's GDP. The Ministry of Forestry granted hundreds of logging concessions to foreign and domestic companies while benefiting from economic rents in return.

Indonesia logging-based forestry in the 1970s–1980s was a replica of forest management in Europe. Since the early years of the industrial revolution in Europe there had been systematic efforts to develop modern forestry science and management. Scholars named it 'scientific forestry' – aimed at efficient timber production based on 'state control' and 'forest management' to ensure that sustainable contributions from forestry for developmental purposes could be achieved (Colchester et al. 2003:4).

In the nineteenth century, European countries transplanted their scientific forestry management to their colonies in Asia. Upon gaining independence, the new national governments adopted this management model into their national forestry legislation and policies. Forestry development in New Order Indonesia, however, while following one of the principles of scientific forestry, i.e. state-based forestry, did seriously neglect another important one, sustainable forest management.

In the 1970s, a concerted international campaign emerged to challenge the dominant paradigms of scientific forestry. The malpractices of scientific forestry-based forest management were evident. States often claimed control over forest for the sake of economic and environmental development. It then utilized and reaped benefits from land and resources in these areas for the sake of its favourite actors. In recent times private companies and state owned-business companies have been primary beneficiaries. In addition, the state determines its preferred models of forest

management. By forest management I mean activities of planning, controlling, utilizing and protecting land and resources in specified Forest Areas. Forest management dominated by the state is known as state-based forest management. It has frequently neglected forest communities.

As it became increasingly clear that state-based forest managements failed to keep the forest intact and to provide for the livelihood of forest communities, and also generated forest conflicts, a paradigmatic shift was advocated, moving away from the dominant role of the state in forest management to the active involvement of forest communities. Hence, community-based forest management becomes a common term for all forms of people-conducted forest management. It is also known as social forestry or community forestry.

The terms social and community forestry have various meanings. In some literature, community forestry and social forestry are used interchangeably. The FAO for example states that since no clear definition of social forestry exists, it can be used in the same way as community forestry that has been defined as 'any situation which intimately involves local people in a forestry activity'.²³ For others, such as Sands, social forestry covers a broader concept than community forestry. He conceptualized social forestry as all 'human interactions with forest' of which community forestry as defined by FAO is a part (Sands 2005:215).

In contrast, for Wiersum (1999:81) social forestry is the narrower concept of the two; he defines it as "a development strategy of professional foresters and other development organizations with the aim of stimulating active involvement of local people in small-scale, diversified forest management activities as a means to improve livelihood conditions of the people", while he regards community forestry as "any forest management activities undertaken by rural people as a part of their livelihood strategies."

Thus, there is no academic consensus regarding the definition of social forestry or community forestry. Different angles and purposes for conceptualizing community-based forest management have resulted in various names and definitions. Yet, it must be noted that these terms have all emerged as a reaction to the traditional approach in forestry science and policies that tended to neglect the human dimension. The following statement of Westoby, a former FAO Director of Forestry and one of the leading actors in promoting social/community forestry, clearly expressed this position: "Forestry is not about trees, it is about people [...]. And it is about trees only insofar as trees can serve the needs of people" (Westoby 1987:ix).

²³ <http://www.fao.org/docrep/u5610e/u5610e04.htm#Social%20forestry>, accessed 23-7-2009.

Proponents of community-based forest management generally agree on placing people at the foreground of forest management. The state-people relation seems to be the most important issue of community-based forest management. The crucial question here is whether we should consider this type of forest management as delegation of forest management by the state to the community (Means 2002:29), or, alternatively, as recognition of forest communities by the state as autonomous units who own land and forest and carry out forest management based on their own social normative system (Lynch and Talbott 1995:23-9).

Government officials generally hold the former view. They consider community-based forest management as their solution to resolve the complex forestry management problems of deforestation, conflict and poverty. A desire to share burden of responsibility in keeping the forest is often behind government's intention of enacting and implementing community-based forest management legislation, rather than a strong wish to strengthen the security of community forest tenure (Colchester et al. 2003:4-6).

Others, who support the latter, including myself, perceive community-based forest management as a tool of power sharing in state forest management between people and government (Lindsay 1998; Wily 1997) and of applying the principles of rule of law to forest tenure legislation and practices (Cass 2006; Ellsworth and White 2004). In this view, the success of community-based forest management will be determined by the existence of clear, complete, sustainable and enforceable property rights of forest communities. Altogether these rights constitute the elements of legal security of forest tenure. In addition to this, community-based forest management also requires the broader autonomy of the communities to determine and carry out forest management on the basis of their social norms as well as their broader participation in state decision-making which potentially impacts their forest tenure and management.

Chapter 5 will review how Indonesian legislation pertaining to community-based forest management fulfils one of these requirements, that is, the legal security of forest tenure. To provide us with sufficient information regarding this legislation, the following section will explain various models of community-based forest management, as applied by the colonial and national governments in Indonesia.

3.5 A SHORT HISTORY OF LEGISLATION AND PROJECTS ON COMMUNITY-BASED FOREST MANAGEMENT

(a) From colonial times until the end of the New-Order period (1800–1998)

The first government-sponsored projects to involve communities in state forest management were reforestation projects in Java in 1873, known as the *taungya* system (*tumpang sari*) in Bahasa Indonesia, literally intercropping timber and agricultural

crops).²⁴ In these projects, forest communities were allowed to practice agro-forestry but at the same time they had to plant commercial timber for the government and to act as the guardians for state forest. After Indonesian independence in 1945, the *tumpang sari* projects continued, particularly in the areas of the State Forestry Corporations (*Perhutani*) in Java. *Perhutani* has developed several models for community involvement in its forest management, such as co-operation between forest rangers and villagers in keeping the forest (*Mantri-Lurah* projects) and social forestry (*Perhutanan Sosial*).²⁵ Both the *mantri-lurah* and the social forestry projects were undertaken in similar model as *tumpang sari*. A later effort of *Perhutani* is 'joint forest management with communities' (*Pengelolaan Hutan Bersama Masyarakat, PHBM*) that allows for profit sharing of forest products between communities and the state company.

Since the 1980s the Ministry of Forestry, has been applying legislation outside Java that obliges logging and forest plantation companies to carry out village development programs within or surrounding their concession areas. Such legislation is known by several names. In the mid-1990s, it used to be named Village Development Program of Forest Concessions (*Hak Pengusahaan Hutan – HPH – Bina Desa*). At present it is Development of Forest Village Communities (*Pembinaan Masyarakat Desa Hutan, PMDH*, Minister of Forestry's Decree 537/1997). This decree provides a legal basis for charity programs of forestry companies for villagers in and surrounding their concession areas. The companies are to devote part of their profits to building houses, schools, and developing agricultural projects; this would supposedly change the people's use of forest land, which is perceived as a nuisance to the company's logging or plantation activities.

In 1995, the Ministry of Forestry firstly introduced a ministerial decree on Social Forest or *Hutan Kemasyarakatan* (Decree 622/1995). This decree aimed at mobilizing forest communities to rehabilitate destructed forest. In post-New Order this decree underwent some revisions as will be described in 3.6.

In 1998, the Forestry Minister, Djamaluddin Suryohadikusumo, issued a decree recognizing forest management carried out by an *adat* community, Krui, in West Lampung, Sumatra. This Decree number 47/1998 concerning the designation of 29,000 hectares as Area with Exceptional Purpose (*Kawasan dengan Tujuan Istimewa, KdTI*) allowed the Krui people to manage this area. This was the first and only formal

²⁴ *Taungya* is a Burmese word that has been adopted by forestry science and policies to explain a model of state timber plantation by using local people as tree planters with the compensation of getting permission to cultivate the land between the rows of tree seedlings to grow agricultural plants (Nair 1993:4).

²⁵ For further reading on *tumpang sari*, social forestry and other *Perhutani* projects of people-based forest management see *Perhutani* 1996, Peluso (1992); Barber (1989); Bratamihardja et al. (2005).

recognition by the Ministry of Forestry of *adat* forest management during the New Order period.²⁶

(b) Post-New Order period (1998–present)

After the end of the New Order, the Ministry of Forestry indicated its enthusiasm for making new legislation for community-based forest management. The Ministry of Forestry (2006:2) indicated three reasons:

- (i) the decreasing success of state-based forest management in enhancing the quality of life of forest communities and preserving the forest;
- (ii) the inability of the state to manage the forest due to high population pressure on Forest Areas;
- (iii) the ministry's view of forest communities as a potential asset to keep, manage and preserve the forest.

Law 41/1999 on Forestry that replaced the New Order Forestry Law (Law 5/1967) is the major legal basis for the community-based forest management policies. Enacted in the euphoria of *reformasi* following the resignation of Suharto, the 1999 Forestry Law emphasises the 'people-siding' aspect. By regarding partnership with people as the key success of forest management, the Law aims to replace the old forest management practices that paid less attention to people's rights and their involvement in forest management with a new model of forest management based upon the empowerment of forest communities (*pemberdayaan masyarakat*).²⁷

Since 1999, Indonesian forestry legislation has introduced no less than nine models of community-based forest management. They cover (i) Customary (*Adat*) Forest, (ii) Forest Area with Special Purpose (*Kawasan Hutan dengan Tujuan Khusus, KHDTK*), (iii) Village Forest (*Hutan Desa*), (iv) new legislation on Social Forest (*Hutan Kemasyarakatan*), (v) Social Forestry (*Perhutanan Sosial*), (vi) People's Plantation Forest (*Hutan Tanaman Rakyat, HTR*), (vii) Company-community partnership in forest management (*Kemitraan*), (viii) Collaboration in managing Conservation Forest (*Kolaborasi Pengelolaan Kawasan Konservasi*), and (ix) Private Forest (*Hutan Hak/Hutan Rakyat*).

Which model is most suitable generally depends on the specific location. Private forest is located outside the Forest Areas, or on land with private rights as regulated according to Law 5/1960 on Basic Provisions of Agraria (*Undang-undang Pokok Agraria*,

²⁶ For details about this policy see 3.5, for its implementation see 7.2 (e).

²⁷ The General Elucidation of Law 41/1999, paragraph 8.

known in English as the Basic Agrarian Law, or in short BAL).²⁸ The other eight models are those located in Forest Areas. Different locations within Forest Areas then determine the models applied. As will be detailed in section 4.5(d) of this book, Forestry Law number 41/1999 divides the whole of Forest Areas according to the main usages of forest. To this end, the Law introduces production, protection and conservation forest. *Adat* forest and *KHDTK* may fulfil all of these three functions. Village and Social Forests can be production and protection forests. In production forest we can also find the models of Company-community partnership and People's Plantation Forest. The partnership model, however, is only situated in production forest granted with commercial forestry licenses both for private and state-owned companies. The model of collaborative management of conservation forest is implemented in conservation forest only.

Each of these models of community-based forest management is to be regulated through specialised lower legislation. Soon after Law 41/1999 was enacted, the Ministry of Forestry started drafting a government regulation on the management of *adat* forest. Law 41/1999 specifically mentions the term '*Adat Forest*' (*Hutan Adat*) as a state forest managed by *adat* communities. Article 67 of Law 41/1999 specifies the criteria for customary-law based communities (*masyarakat hukum adat*, in this book also mentioned as *adat* communities) to be the right holders of *adat* forest management. This article states that the recognition and abolishment of the *adat* communities will be enacted through regional regulations. The way in which such recognition and abolishment is carried out will be regulated through a government regulation.²⁹ The law assumes that only after certain *adat* communities have been legally recognized, the Ministry of Forestry can recognize their *Adat Forest*. However, ten years after Law 41/1999 was enacted, the Ministry of Forestry has not recognized any *Adat Forest*. The absence of the government regulation as mentioned is the Ministry's formal reason. The drafting of this regulation that was started in 1999, has not been completed until now. Nevertheless, some regional legislatures, in Kalimantan, West Sumatra and Banten, recognized *adat* communities, their forest and land. They were inspired by the

²⁸ Article 16 (1) of the BAL recognizes private individual or joint land titlings known as right to own (*hak milik*), right to use land (*hak pakai*), right to construct and possess building (*hak guna bangunan*) and right to commercial land cultivation (*hak guna usaha*). Further discussion regarding the BAL and private forest see 4.5 (a).

²⁹ Article 67 (2) and (3) of Law 41/1999 and their elucidations.

new era of regional autonomy which began after 1998 with the enactment of Law 22/1999 on Regional Government (replaced by Law 32/2004).³⁰

While the drafting of a government regulation on *adat* forest stagnated, several other community-based forest management policies were laid down into legislation. Regarding Village Forest, the Ministry of Forestry issued Ministerial Regulation number P.49/2008. The regulation provides village-based institutions with licenses to manage protection and production of state forests within their village administrative areas. For People's Plantation Forest, the Ministry of Forestry enacted Ministerial Regulation number P.23/2007 concerning the granting of People's Plantation Forest licenses for individuals or groups of citizens. To allow forest communities to use conservation forest, Ministerial Regulation P.19/2004 stipulated provisions concerning collaborative management of conservation forest between conservation offices and communities or private companies (see 5.2 (f)). In several conservation forests, notably in so-called national parks, such agreements have actually been concluded. Meanwhile regulation of Private Forest can be found in Forestry Minister's Regulation P. 26/2005. It regulates how forest on private land must be managed by the land owners (see 4.5 (a)).

The Ministry of Forestry, however, has not yet enacted any ministerial regulation concerning Forest with Special/Exceptional Purpose. Up until now, it is the recognition of *adat* communities in 1998 for the Krui community in West Lampung.³¹ It was the last policy experiment of Area with Exceptional Purpose.

Meanwhile, for the policy model of Company-community partnership (*Kemitraan*), the Ministry of Forestry has been drafting a ministerial regulation. While waiting for this new regulation, both state and private forestry companies have maintained the same partnership models as regulated by the previous New Order legislation.

This section demonstrates that colonial and national governments in Indonesia have been experimenting with policies of community-based forest management. Table 3–2 shows the names of all these policy models, the period of implementation, the main objective of each model, and its location. These governments have introduced various models of forest management with different regulatory regimes. Of these policy models, no one has been more broadly implemented or more dynamic than the Social Forest model. The following section will present the history of Social Forest legislation.

³⁰ For studies concerning regional governments' efforts for recognizing *adat* communities and their forest see Bakker (2010) for a case study in East Kalimantan; Warman (2010) for West Sumatra and Moniaga (2010) for Banten.

³¹ For details about this policy see point viii of 7.2 (e).

It will examine its objectives at the time of enactment, and discuss when and why it was changed by every government, from the Suharto periode until President Susilo Bambang Yudhoyono's administration.

3.6 THE EMERGENCE AND DEVELOPMENT OF SOCIAL FOREST LEGISLATION

Social Forest is defined by the 1999 Forestry Law as 'state forest utilized for empowering communities'. The legislation concerning Social Forest is aimed at transferring the management of state forest to forest communities, whether they are categorized as *adat* communities or not. Social Forest is not to be established in areas with logging concessions, forestry plantation companies, and it cannot be part of *Perhutani's* areas. Social Forest legislation provides for a licensing system that enables forest communities to control certain areas within state forest and to enforce their local norms in those areas.

In 1995, the Minister of Forestry enacted the first ministerial decree on Social Forest (Decree 622/1995). The decree was mainly aimed at rehabilitating degraded state forest by inviting forest communities to plant trees in production and protection forests. The Ministry of Forestry set up Social Forest projects to implement this decree. Participants of Social Forest projects were given four hectares of land each, to be planted with trees without the right to cut them. They were only allowed to harvest the non-timber forest products from the land they managed. The projects were not so successful because they limited people's access to forest products.

In the late New Order period, the Ministry of Forestry seemed keen to revise the 1995 Decree number 622. From 1996 till 1997, a series of meetings were held in the Directorate of Re-greening and Social Forestry at the Ministry of Forestry to discuss policy options for people's participation in state forest management. The Ministry of Forestry officials, academics, NGO activists and representatives of donor agencies participated in those open and intensive discussions. Some of the participants became members of a working group who had the task of formulating the most suitable legislation.

When *reformasi* happened in the middle of 1998, the atmosphere of *reformasi* changed and intensified the discussions of this group. During the *reformasi* period people reclaimed and occupied many Forest Areas, and forestry officials of all levels almost lost their legitimacy and control. This situation put the ministry under pressure to revise their Social Forest legislation. Eventually, in October 1998, Muslimin Nasution, the Minister of Forestry and Plantations³² under President Habibie's

³² During Habibie's administration, plantation affairs were part of the authority of Ministry of Forestry. Thus the name of this ministry was changed into Ministry of Forestry and Plantation.

administration, signed a new Ministerial Decree on Social Forest, Decree 677/ 1998. It gave a new direction to Social Forest policy formulating as its main aim '*giving trust to people to manage the state forest.*' Article 2 of the Decree stated that Social Forest policy shall be carried out on the basis of the following principles:

- (i) the community is the main actor in utilizing forest;
- (ii) the community is the decision maker of forest management and decides on their system of forest utilization;
- (iii) the government is the facilitator and evaluator of Social Forest licenses;
- (iv) the certainty of rights and obligations of all parties;
- (v) the community determines their institution of forest management;
- (vi) approaches of biodiversity and cultural diversity.

Ministerial Decree 677/ 1998 was part of a larger political program of the Minister of Forestry aimed at setting up people-friendly forestry policies. However, in the process of lawmaking there were several changes that obscured the goal. For example, the working group preferred to let the community choose their own institution to conduct forest management. Yet, in the last stage, in which only the highest officials and the legal bureau participated, the decision was made that the only local organizations that could have access to a Social Forest program were cooperatives. However, for many communities cooperatives had been a source of corruption and had never provided real economic benefit for the common people. Certainly, the obligation to set up a cooperative contradicted the principle of self determination of local institutions in forest management.³³

Ministerial Decree 677/1998 introduced a new position for the community as the main actor in forest management through a 35 year Social Forest license. But, there were several downsides. Firstly, the decree forced the forest communities to use a cooperative as the only community institution in forest management. Secondly, the decree treated Social Forest license holders as a holder of a small-scale forest concession. Typical obligations of large forest concessionaires, such as conducting grand and periodical forestry planning, were also imposed on forest communities. This was a difficult task for the local community.

³³ Embedding cooperatives in the Social Forest policy was closely related to the core principles of Habibie's economic policy, that was, people-based economy (*ekonomi kerakyatan*). In this program, the cooperative was the key institution. The program of *ekonomi kerakyatan*, basically, was implemented by the Minister of Cooperatives, but the Minister of Forestry was one of the main proponents of the program.

The lack of success of Ministerial Decree 677/1998 was also caused by inconsistencies and contradictions in the policies implemented by the Ministry of Forestry. For instance, Minister Nasution granted small-scale logging concession rights in production forest. Some people and organizations used forest communities to undertake destructive logging there. The most common example is Central Kalimantan Province.³⁴ This convinced some forestry officials in Jakarta that local people were incapable of undertaking good forest management.

To eliminate further misinterpretation of Social Forest legislation and to revise the weaknesses of the Ministerial Decree 677/1998, the Ministry of Forestry made efforts to replace this decree towards the end of 1999. After the enactment of Law 41/1999 the ministry used the broader legislation changes to revise the Social Forest legislation. Ministerial Decree 677/1998 was revised by Decree 865/1999 to adjust it to Law 41/1999. There were no important new provisions in Decree 865/1999 except a provision stating that Decree 677/1998 must be implemented in accordance with Law 41/1999.

In 2001, Forestry Minister Nur Mahmudi Ismail, during his tenure under President Abdurrahman Wahid, replaced Decree 865/1999 by Decree 31/2001 in order to respond to Law 22/1999 on Regional Government, also known as Regional Autonomy or Decentralization Law). Decree 31/2001 gave the heads of districts (*bupati*) and mayors of towns the authority to grant Social Forest licenses.

In practice, the Ministry of Forestry implemented Decree 31/2001 for about a year. Although the Ministry did not formally annul the decree, meaning that it was still valid, the forestry policy and legislation which the Ministry enacted under the next Minister, Muhammad Prakosa (2002–2004) undermined the implementation of this decree. First, I should mention Government Regulation (GR) 34/2002 on Forest Structure, and the Making of a Plan for Management and Utilization of Forest and Forest Areas (*Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Pemanfaatan Hutan dan Penggunaan Kawasan Hutan*). Article 51 of this regulation and its elucidation state that Social Forest must be placed under community empowerment policies, and all further provisions regarding such empowerment must be regulated through a ministerial regulation.³⁵ This provision convinced many forestry officials in Jakarta that

³⁴ Further reading concerning the failed implementation of Social Forest in Central Kalimantan see forthcoming research report of Yogaswara and myself.

³⁵ According to the hierarchy of legislation in Indonesia, law is detailed by a government regulation, which in turn is detailed by a ministerial regulation. The term 'ministerial regulation' has been used since 2004 under the new lawmaking law (Law 10/2004). Previously, the term was a ministerial decree. Thus the terms ministerial decree and ministerial regulation in this book refer to the same level of legislation. For further explanation regarding this hierarchy and the status of ministerial regulation/decrees in such hierarchy see 4.2.

a ministerial regulation regarding community empowerment had to be enacted before they could continue to implement Social Forest legislation.

Minister Prakosa, during the administration of President Megawati Soekarnoputri, before making any ministerial regulation regarding community empowerment, issued a circular letter (*surat edaran*) addressed to regional governments (governors, heads of districts or *bupati* and mayors or *walikota*) pertaining to Social Forest licenses. In this letter number 722/Menhut-V/2002 dating June 13, Minister Prakosa suggested to the regional governments to act in accordance with Ministerial Decree 31/2001, to evaluate the existing Social Forest licenses, and to prohibit the name of Social Forest for people's proposals of forest utilization that were not in line with Decree 31/2001. The Minister argued that his letter was to put an end to the malpractices of Social Forest licensing in several regions where many district or municipality governments had used the name of Social Forest for timber felling licenses.

This ministerial letter decreased the number of Social Forest licenses granted at the regional level. My study found that regional forestry officials did not grant any Social Forest licenses after receiving this letter.³⁶

Next, Minister Prakosa enacted Ministerial Regulation number P.01/2004 concerning Social Forestry³⁷ to implement the provision of community empowerment of GR 34/2002. By defining social forestry as community empowerment programs that were implemented in both state and/or private forests through local community-based forest management, the Forestry Minister tried to make this regulation the single foundation for all community-based forest management policy. Article 4 of Ministerial Regulation P.01/2004 states that all community empowerment programs and activities that had been set up at the time should refer to this Regulation.

The term social forestry used in this Ministerial Regulation had a different meaning than *Perhutani's* past social forestry projects. The latter, as noted, were implemented only in *Perhutani's* logging concession areas, by conducting agro-forestry activities. The former was based on three strategies, namely forest area management (*kelola kawasan*), institutional management (*kelola kelembagaan*), and business management (*kelola usaha*). Forest area management refers to the technical assistance to forest communities in managing and utilizing the forest sustainably. The institutional management refers to the strengthening of local institutions and capacity building of the community

³⁶ See the impact of this Letter in Lampung in 7.3. My anonymous informants at the Ministry of Forestry also stated that in other regions, district governments ended the license granting of Social Forest after this Letter.

³⁷ The official name of this regulation is Forestry Ministry Regulation number P.01/2004 on the Empowerment of Local Communities Living in and or around Forest in the Framework of Social Forestry (*Pemberdayaan Masyarakat Setempat di dalam dan atau sekitar hutan dalam rangka Social Forestry*).

members. Finally, the business management refers to enhancing the capacity of communities to develop their forestry-based local business through partnerships with forestry companies.

Although Ministerial Regulation P.01/2004 never annulled Ministerial Decree 31/2001 on Social Forest, regional forestry officials generally believed that the social forestry regulation had replaced the Social Forest policy. The perception spread among many regional officials that Social Forest was no longer a priority policy of 'Jakarta'. Minister Prakosa's Circular Letter of 2002 and the Ministerial Regulation P.01/2004 led them to draw this conclusion. In addition, President Megawati Soekarnoputri gave her political support to the policy of social forestry. The President launched social forestry as a national program. Then, the Ministry of Forestry set up several social forestry pilot projects in many districts.

When the regime changed again, so did the policy and law. In 2004, M.S. Kaban became Minister of Forestry under the administration of President Susilo Bambang Yudhoyono. He issued a ministerial regulation regarding five policy priorities in forestry. These priorities covered combating illegal logging and illegal timber trade, revitalizing forestry industries, rehabilitating and conserving forest resources, economic empowerment of forest villagers, and stabilizing Forest Areas. The position of social forestry as well as Social Forest licenses was unclear in the scheme of the five policy priorities. In fact, the Ministry of Forestry had developed three social forestry pilot projects and had granted temporary licenses of Social Forest. Most of those licenses had expired and the communities were now waiting for the extension. Furthermore, eight districts proposed Social Forest Areas for more than 100,000 hectares of state forest land. The Ministry of Forestry did not have a response ready.

To implement GR 34/2002, in 2005, the Ministry of Forestry drafted a ministerial regulation on forest community empowerment replacing the 2004 ministerial regulation regarding social forestry. Yet, this effort was not completed because another legal development took place. The Ministry of Forestry revised GR 34/2002 which had been criticised by academics and NGOs on account of paying less attention to people's rights to the forest. The forestry officials who were the proponents of Social Forest used this opportunity to give Social Forest a stronger legal basis. They successfully inserted a special section on Social Forest in GR 6/2007, replacing the regulation of GR 34/2002. Subsequently, GR 6/2007 served as a basis to make the latest legislation on Social Forest, namely, Ministerial Regulation P.37/2007. This regulation annulled Forestry Minister Regulation P.01/2004 regarding Social Forestry. District governments have started to use this ministerial regulation of 2007 to grant new Social Forest licenses. Up to 2010, there have been two amendments of Ministerial Regulation P.37/2007: Forestry Minister Regulation number P.18/2009 and number P.13/2010. The amendments were largely meant to revise provisions concerning the procedure of license granting.

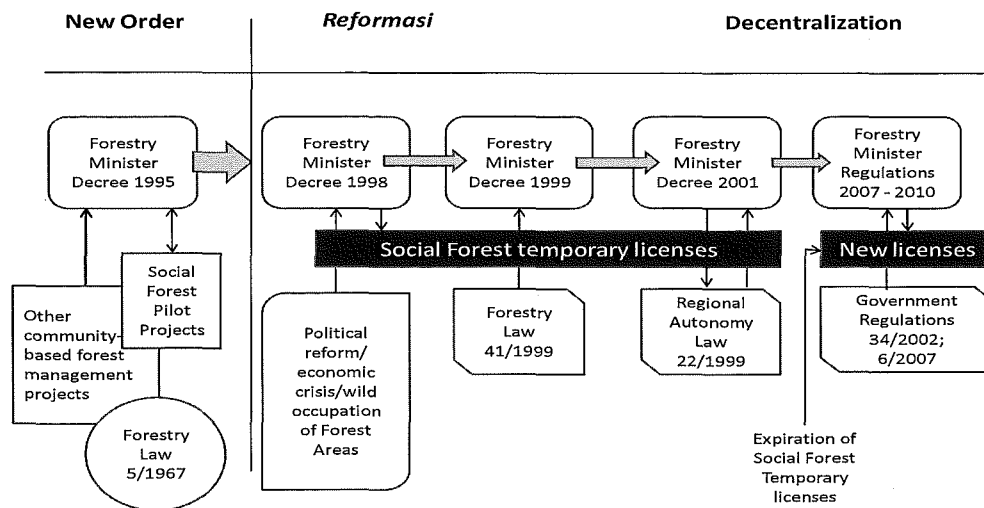
The Ministry of Forestry has continually adjusted its policy and legislation of Social Forest. From the above description it is evident that Social Forest has been more regulated than other models of community-based forest management. This raises the question to which extent Social Forest policy can be an effective solution for redressing the social and environmental problems as set out at the start of this chapter?

Certainly, many aspects must be considered to answer this question. One part of the answer lies, as this book tries to show, in the extent to which the Social Forest legislation, licensing and practices are able to strengthen the security of community forest tenure. We can see the answers in the following chapters. Here, it suffices to say that the development of Social Forest policy has drawn an interesting picture of the dialectic between legislation, political and social forces.

As one of the policy models of community-based forest management, Social Forest legislation was developed and finally applied to respond to the government's failure to manage the Forest Area. In the early period of *reformasi*, most Social Forest legislation was enacted at the same time as the government's inability to control the state forest. However, there have always been attempts of forestry officials to undermine the development of Social Forest legislation, particularly when there was an opportunity to exert stronger control and management of state forest.

The Ministry of Forestry seems to experiment with Social Forest policy endlessly. Recent developments inform us that Minister Zulkifli Hasan, who replaced Kaban in the second term of President Yudhyonono's administration, has agreed to broadly implement Social Forest policies. A strategic plan of the Forestry Ministry for 2010–2014 states that during this period, the Ministry will allocate two million hectares of Forest Areas for the implementation of Social Forest licensing. This would be the largest area where community-based forest management policy has ever been applied in Indonesian history. Will the plan put an end to the unfair distribution of Forest Areas as has been the case in the last two centuries (see again 3.3)? This certainly depends on the consistency of the implementation of the plan by the Forestry Ministry. The answer will be clear at the end of 2014.

Figure 3–2
The development of Social Forest legislation



3.7 CONCLUSION

The history of Indonesian forestry illustrates how forest destruction, poverty and conflicts are recurring themes both in colonial and post-colonial times. National economic development policies that focused on maximizing forest utilization have been one of the major causes of deforestation and forest degradation – the main contributor of forest destruction. The government allocated vast areas of forest land to logging companies who generally undertook massive and destructive loggings. In addition, the government also allowed Forest Areas to be used for plantation and mining. Or, they agreed to convert forest to ‘*kolonisatie*’ or transmigration areas that were regarded as the new zones of economic growth in and outside Java. These have led to a significant reduction of the areas covered by forest and to the degrading quality of forest resources and environmental services from the forest.

By its choice of regarding forest primarily as a source of economic growth, the government has prioritized companies rather than communities in access to the Forest Areas. This chapter has illustrated the unfair distribution of Forest Areas utilization between state and private-owned companies on one side and the forest communities on the other side. This has caused poverty. Exclusion from the forest has minimised the chances of the forest communities to benefit from the richness of forest. In turn, limited or even losing access and their traditional rights to forest have led them to confront the state. Thus, conflicts either latent or manifest have emerged in Forest Areas.

This gives a clear picture of social & environmental injustice. Forest communities have been unfairly treated regarding their rights and access to Forest Areas. Thus, it is difficult for them to achieve a better livelihood; in turn, it has blocked their participation in efforts to preserve forest.

Both colonial and national governments have been aware of this situation. They have sought for different solutions to end this injustice. Applying policies of community-based forest management has been formally aimed at resolving this problem.

This chapter has identified the different models of community-based forest management in colonial and post-colonial times. These models have generally been successful in mobilizing people to manage state forest; however, forest destruction, poverty and conflicts have still increased. I have suggested that a key factor in making these efforts work is the fulfilment of all elements of community forest tenure security(see chapter 2).

Indonesian forestry legislation, particularly regulations enacted in the post-Suharto era, offers a range of models of community-based forest management in Forest Areas. However, we need to know whether and how such legislation has been successful in providing forest communities with forest tenure security. The two following chapters will contribute to this debate by providing legal analyses of national legislation concerning land and forestry in Indonesia, including those under the policy of community-based forest management. This legal analysis should tell us whether the present law is able to meet the requirements of forest tenure security.

Table 3–2
Major community-based forest management models in Indonesia

Period of implementation	Names of legislation/projects	Main Objective	Location
1873–1960s	Intercropping of timber and agricultural crops (<i>tumpang sari</i>)	Mobilizing forest communities and dwellers to plant and protect timber trees in state forest by allowing them to cultivate the forest land for planting agricultural crops upon the condition to not damage the timber planted trees.	State-owned Forestry Corporation (<i>Perhutani</i>) concessions, mainly in Java and Nusa Tenggara; state forest in Sumatra.
1970s	Cooperation between Forest Rangers and Village Heads (<i>Mantri-Lurah Program</i>)	Reducing community intrusion to <i>Perhutani</i> concession areas by establishing forest protection cooperation between forest rangers and village heads.	<i>Perhutani</i> concessions, mainly in Java
1980s	Social Forestry (<i>Perhutanan Sosial</i>) Pilot Projects	Allowing forest communities to cultivate forest land on the condition of planting and maintaining timber trees owned by <i>Perhutani</i> .	<i>Perhutani</i> concessions, mainly in Java
1991 – 1995	Village Development Program of Forest Concessions (<i>Hak Pengusahaan Hutan –HPH – Bina Desa Hutan</i>)	Improving livelihood of forest communities by building public facilities in their village and by changing their traditional shifting cultivation practices to sedentary farming to minimize the disturbance of these agricultural practices to logging activities as perceived by logging companies.	Logging concession areas Outside Java

Since 1995	Forest Villagers Empowerment (<i>Pemberdayaan Masyarakat Desa Hutan, PMDH</i>)	Improving livelihood of forest communities.	Logging concession areas Outside Java
Since 1995	Social Forest (<i>Hutan Kemasyarakatan</i>)	Managing state forest to empower forest communities.	State forest outside logging concessions
1998	Area with Exceptional Purpose (<i>Kawasan dengan Tujuan Istimewa, KdTI</i>)	Recognizing customary-based practices of state forest management in West Lampung, Sumatra	State forest nearby the areas of the Krui <i>adat</i> community in West Lampung, Sumatra.
Since 1999	Adat Forest (draft Government Regulation)	Recognizing <i>adat</i> communities' forest management in state forest.	State forest
	Forest Area with Special Purpose (<i>Kawasan Hutan dengan Tujuan Khusus, KHDTK</i>)	Managing state forest for educational and socio-cultural activities	State forest
	Village Forest (<i>Hutan Desa</i>)	Allowing village institutions to manage state forest.	State forest
	People's Plantation Forest <i>Hutan Tanaman Rakyat, HTR</i>)	Allowing forest communities to carry out and benefit from forest plantations.	State forest
	Private Forest (<i>Hutan Rakyat/Hutan Hak</i>)	Facilitating private land owners to carry out timber planting on their land.	Private land
Since 2001	<i>Perhutani</i> -forest communities Joint Forest Management (<i>Pengelolaan Hutan Bersama Masyarakat, PHBM</i>)	Profit sharing of timber and non-timber forest produces between <i>Perhutani</i> and forest communities	<i>Perhutani</i> concession areas

2004–2007	Social Forestry (<i>Perhutanan Sosial</i>) Areas	Making forest communities the government's partner in forest management to enhance their prosperity and preserve the forest.	State and private forest
Since 2004	Collaborative management of forest conservation (<i>Kolaborasi Pengelolaan Kawasan Konservasi</i>)	Collaboration of conservation offices with private companies or forest communities to manage conservation areas.	State conservation forest
Since 2007	Company-community partnership (<i>Kemitraan</i>) of forest management	Set up collaboration between logging or forest plantation companies with forest communities.	State production forest

Source: Barber 1989; Sunito 1995; Safitri 1995; Subarudi et al. 2003.

