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

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5. SOCIAL FOREST AND COMMUNITY PROPERTY RIGHTS IN NATIONAL LEGISLATION

5.1 INTRODUCTION

Since the mid–1990s the Ministry of Forestry has committed itself to community-based forest management (see 3.5). Social Forest regulations have formed part of that policy. Social Forest policy was most intensely implemented in the first four years after the New Order, namely 1998 to 2001 (see 3.6). During this period, the Ministry of Forestry enacted several regulations on Social Forest, granted forest communities Social Forest licenses and authorised district governments to grant licenses autonomously. In the period 2002–2007 Social Forest policy saw less political attention. The Forestry Minister neither granted new licenses to forest communities nor did he extend the existing ones. New hope, however, emerged in 2007. Between 2007–2010, the Ministry of Forestry enacted new regulations on Social Forest, renewed some expired licenses, and planned to allocate around two million hectares of Forest Areas to Social Forest in the next five years.

Even though Social Forest legislation has recently seen positive developments, it is still important to question the Ministry of Forestry's commitment to strengthening the legal security of community property rights. As has been elaborated in 2.4 (a), this will be determined by the extent to which legislation recognizes the robustness of property rights, the long duration and the strong protection of such rights. This chapter discusses how national legislation on Social Forest regulates these elements. Since Social Forest is part of a community-based forest management policy, I will discuss to which degree this branch of Indonesian community-based forest management legislation in post-New Order Indonesia enables or constrains forest communities in obtaining and maintaining secure property rights.

The following section (5.2) describes the different models of community-based forest management, discussed before (see 3.5) and their potential to provide legal tenure security, i.e. to offer robustness, duration and protection of property rights. Section 5.3 then concludes that these different models contain two main ways of legalizing community property rights, namely through a license, and through an agreement. Section 5.4 will address how the Social Forest legislation from the mid–1990s until the recent regulation of 2007 secure community property rights. At the end of the concluding part, table 5–1 will provide an overview of the main elements and changes in Social Forest legislation.

5.2 Community rights in Forest Areas: Models of community-based forest management

In section 3.5 (b) I mentioned nine models of community-based forest management as found in Indonesian forestry legislation in post–1999. They cover *Adat* Forest (*Hutan Adat*), Forest Area with Special Purpose (*Kawasan Hutan dengan Tujuan Khusus, KHDTK*), Village Forest (*Hutan Desa*), Social Forest (*Hutan Kemasyarakatan*), Social Forestry (*Perhutanan Sosial*), People's Plantation Forest (*Hutan Tanaman Rakyat, HTR*), Company-community partnership in forest management (*Kemitraan),* Collaboration in Managing Conservation Forests (*Kolaborasi Pengelolaan Kawasan Konservasi*), and Private Forest (*Hutan Hak/Hutan Rakyat*). In this section we will analyse how most of these models secure community property rights in Forest Areas. We exclude Private Forest in this discussion since it is applied in non-Forest Areas. We also do not include Social Forest since it will be discussed separately (see 5.4). Meanwhile, for a development of Social Forest as a general policy we can find in 3.6.

(a) Adat Forest

Law 41/1999 defines *Adat* Forest as state forest situated in the territory of a customary law–based community (*masyarakat hukum adat).*[1] Law 41/1999 does not provide a definition of *masyarakat hukum adat,* also widely known as *adat* community (*masyarakat adat*).[2] However, the elucidation of Article 67 (2) of Law 41/1999 lists five conditions, on the basis of which the government will recognize a customary law–based community: (i) in the people's daily life, it still is a communal society (*paguyuban*); (ii) the community has *adat* institutions and *adat* leaders; (iii) the community has clear boundaries; (iv) the community has well–functioning customary law institutions, particularly an *adat* judicial system; and (v) the community still collects forest products for its subsistence.

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[1] Article 1 point 6 of Law 41/1999.

[2] Law 41/1999 and the draft regulation on *Adat* Forest, as well as many other pieces of Indonesian legislation, use the term customary law-based community or *masyarakat hukum adat.* Other laws such as Law 26/2007 on spatial planning and Law 27/2007 concerning coastal management and small islands use the term *'masyarakat adat'* (*adat communities*). For further reading concerning the etymology and political consideration behind the use of the term *masyarakat hukum adat* in legislation, see Moniaga (2007:281-2); Bedner and van Huijs (2008:170). In this book both terms are used interchangeably.

In the 2009 draft GR on *Adat* Forest, that aims to provide detailed provisions concerning the confirmation (*pengukuhan*) of an *adat* community and the management of *Adat* Forest,[3] we find the following definition of a customary law–based community:

> A group of people that constitute a communal society (*paguyuban; rechtsgemeenschap*) with its *adat* institutions (*kelembagaan adat*), its *adat* law territory (*wilayah hukum*), *adat* law norms and *adat* law functionaries that are still complied with (*pranata dan perangkat hukum adat yang masih ditaati*), and who live in a state Forest Area.

This definition is not satisfactory for three reasons. Firstly, it uses the term *paguyuban* without precisely defining it. Indonesian literature of sociology or anthropology mostly uses the term *paguyuban* to translate the classical concept of community, *gemeinschaft*, as introduced by a German social scientist, Ferdinand Tonnies (Sukanto 2002:132; Koentjaraningrat 185:157). Tonnies defined *gemeinschaft* as intimate, private and exclusive social groups that live together (Tonnies 1887/2002:33). However, already four decades ago, studies on villages in Indonesia found that there were no village communities in Indonesia which fulfilled Tonnies' criteria of *gemeinschaft* (Koentjaraningrat 1967/1997:391). Social scientists generally agree that *paguyuban* is an ideal concept with little reflection of reality.[4] Therefore, the draft GR on *Adat* Forest requires a clarification of the term *paguyuban*.

Secondly, the draft regulation uses the term *paguyuban* as a synonym for *rechtsgemeenschap*, also without clarifying the concept. *Rechtsgemeenschap* is a common Dutch legal term, referring to a community (*gemeenschap*) bound by its law (*recht*). This term as applied by Van Vollenhoven to the context of *adat* as '*adatrechtsgemeenschap*'. So the term *rechtsgemeenschap*, which was translated by Holleman as jural community, was specifically used as *adatrechtsgemeenschap* to describe the legally autonomous *adat* communities in the Netherlands East-Indies with their authority and control over its communal property, notably land (Holleman 1981:43). In this sense, the term *(adat)rechtsgemeenschap* differs from *paguyuban* in Indonesian social sciences literature which describes a community in general.

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[3] Article 67 (2) of Law 41/1999 promises more detailed provisions on the concept of *Adat* Forest through a separate government regulation. However, more than ten years later, this regulation has still not been completed, despite the Ministry of Forestry spending considerable time on its drafting in 2009. This book refers to the 13th of May 2009 version of the draft GR on The Procedure of Confirmation of Customary law-based Communities and the Management of *Adat* Forest (*Tata Cara Pengukuhan Masyarakat Hukum Adat dan dan Pengelolaan Hutan Adat).*

[4] See 2.2 for a discussion on the concept of community.

Lastly, the abovementioned definition of a customary law-based community holds that the community must live in state forests. It is understandable that the regulators inserted this clause, because the 1999 Forestry Law determined that *Adat* Forests are located in state forests. However, limiting *adat* communities only to those who live in state forests presents an unrealistic picture. Colonial governments in regions, such as Lampung, and national governments in general evicted most *adat* communities from their land in order to keep state forests empty for logging concessions, protection or conservation (see 11.2 for a case study). In addition, there have been pieces of forestry legislation and administrative decisions that forbade forest communities to live in state forests. As such, in practice, many *adat* communities do not live in state forests strictly speaking but in their vicinity, yet still use the forest to sustain their livelihood. By recognizing an *adat* community merely as those who live in state forests, this draft regulation excludes those who live in the areas surrounding state forest.

Law 41/1999 states that to see their forest confirmed as *Adat* Forest, *adat* communities must be legally recognized by regional governments (*pemerintah daerah)* through regional regulation (*Perda*).[5] However, the law does not state which regulations are required. In 2004, the Forestry Minister, Muhammad Prakosa, issued a policy rule by Circular Letter (*Surat Edaran*) S.75/2004 clarifying that the recognition must be legalized through provincial regulation. This rule is not in line with the Agrarian Minister's Regulation 5/1999 on The Guidelines of Resolving the Problems of *Ulayat* Rights of Customary Law-based Communities. The latter states that such recognition must be carried out through district regulation.[6] The 2004 policy rule was a setback in the whole process of recognizing *Adat* Forest at the local level because at the time several initiatives were conducted to recognize either *adat* communities, *adat* land or *Adat Forests* through district regulations and decree of the district-head (*bupati*). Some of these regulations or decrees refer to Agrarian Minister 5/1999 (Safitri 2006; Simarmata 2007; Bakker 2007; Moniaga 2007).

How has the 2009 Draft of GR on *Adat* Forest responded to this situation? The draft regulation contains several new provisions. The recognition of an *adat* community can be undertaken in two ways: by district regulation (if the location of the *adat* community is within a district administrative area) and by provincial regulation (for cross-district areas). The decision to recognize such communities is based on research carried out by a collaborative team consisting of *adat* law scholars, *adat* leaders, and relevant government institutions.[7] The research is undertaken upon the request of a district-

[5] Article 5 (3) of Law 41/1999.

[6] Article 6 and Article 1 point 4 of Agrarian Ministerial Regulation 5/1999.

[7] Article 6 of draft GR on *Adat* Forest.

head or provincial governor, when he has received an application from an *adat* community or government institution for confirmation of the legal status of a particular *adat* community.

After a district or provincial regulation has recognized the *adat* community, the regional government (governor, head of district or mayor)[8] can propose the enactment of *Adat* Forest to the Forestry Minister. The enactment allows an *adat* community to apply for the right of *Adat* Forest management, which enables an *adat* community to collect forest products for their daily consumption, to carry out forest management based on their *adat* norms in so far as they are not contradictory with the legislation, and to obtain technical and financial assistance from the government to improve their welfare. However, the *adat* community is not allowed to trade forest products, to allow other parties to utilize their *adat* Forest Area or to cooperate with other parties to manage their *Adat Forest*. The *adat* community is also obliged to protect the forest and to allow research and education activities in the Forest Area.[9]

The prohibition of forest trading is discriminatory towards *adat* communities, since non-*adat* communities have received forestry licenses for commercial utilization of state forests. Other community-based forest management legislation such as Village Forest and Social Forest – which will be described later – also do not impose trade limitations. Instead, the legislation allows those licensees to obtain licenses for commercial exploitation of timber products.

Prohibiting an *adat* community to trade forest products is also unrealistic because trading is embedded in the local economy of traditional communities (Boomgaard 2007:145-53). In addition, prohibiting trade but imposing obligations to protect the forest seems unfair. Without sufficient economic benefit, there is little incentive for the community to protect the forest.[10]

The duration of *adat* communities' rights of forest management is not specified. It can be assumed that two conditions determine the duration of the rights: the existence of the *adat* community and the existence of the enacted *Adat Forest*. The Draft GR on *Adat* Forest states that the regional government can end the validity of an *adat* community. Regular evaluation should determine whether a community still fulfils the legal requirements of an *adat* community. If this is no longer the case, the provincial/district council can enact a regional regulation canceling the regulation that confirmed the *adat* community. In addition, the Minister of Forestry has the authority

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[8] See footnote 6 of chapter 1 for the use of the term regional government in Indonesian administrative law.

[9] Articles 19, 20, 21 of draft Government Regulation on *Adat* Forest regulate right, prohibition and obligation of *adat* community.

[10] Chapter 10 provides a case study which confirms this conclusion.

to annul the enactment of *Adat Forests* if (i) *adat* communities are no longer harvesting forest products in ways required by this regulation; (ii) *adat* communities return their rights to the Minister of Forestry; (iii) *adat* communities no longer exist due to regional regulations that abolish their confirmation.

There is one further clause that endangers the legal security of forest tenure. Article 17 (1) of the Draft Government Regulation on *Adat* Forest states that the Forestry Minister can annul his decree on the enactment of *Adat* Forest, if national interest demands that the area of such a forest is to be used for non-forestry development projects. This provision puts the rights of *adat* communities under threat, since the Draft GR on *Adat* Forest does not regulate the mechanisms of such an annulment nor of any compensation.

(b) Forest Area with Special Purpose

The Ministry of Forestry designates certain areas as Forests Area with Special Purpose (*Kawasan Hutan dengan Tujuan Khusus, KHDTK*) for the sake of public interests like research and development, education and training, as well as for religion and cultural activities.[11] Forest Areas with Special Purpose are mostly used for research of the Ministry of Forestry's Research and Development Agency and its partners.

Article 34 of Law 41/1999 states that the Special Purpose model can be used by *adat* communities. In practice, the Ministry of Forestry has only once granted forest management of a Special Purpose area to an *adat* community. Prior to the enactment of Law 41/1999, the Minister of Forestry granted the right to manage a Forest Area with Exceptional Purpose (AEP, *Kawasan dengan Tujuan Istimewa, KdTI*) to an *adat* community in Krui, West Lampung, Sumatra (Ministerial Decree 47/1998) for 29,000 hectare of state forest.[12]

The extent to which a Special Purpose Area bestows *adat* communities with legal security cannot easily be investigated. Law 41/1999 and GR 6/2007 merely contain a few general provisions on the rights of *adat* communities under a Special Purpose regime, but there is no specific legislation on this issue. This leaves the *adat* communities with uncertainty about questions such as which part of Forest Areas they are allowed to manage as Special Purpose Area; what their rights and obligations are; for how long they can hold the rights; and how they can acquire state protection of their rights. It also leaves unclear in what sense the Special Purpose Area is different from an *Adat* Forest.

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[11] Article 8 of Law 41/1999 and Article 11 of GR 6/2007.

[12] See 3.5 (a) for a general description regarding the AEP of Krui people, then for detailed discussion see point viii of 7.2 (e).

Without adequate legislation that regulates the Special Purpose model for *adat* communities, the Forestry Minister holds a broad discretion in determining the rights of *adat* communities. This is also illustrated by the 1998 Ministerial Decree regarding Krui peoples' right to manage forest in an AEP. The decree does not mention an expiry date of the right, however, there is a provision stating that the Minister can withdraw the right any time, if the community is no longer carrying out its sustainable forest management.

(c) Village Forest

The term Village Forest (*Hutan Desa*) can be found in the elucidation of Article 5 (1) of Law 41/1999. Village (*desa)* is a term generally used for the lowest unit of Indonesian local government, in rural areas. It is an administrative concept which in practice often applies to more than one geographical settlement. According to the aforementioned Elucidation, a state forest managed by a village community and used for villagers' welfare is a Village Forest. The Minister of Forestry's Regulation number P.49/2008 on Village Forest limits the application of Village Forest regulation and licensing only to Forest Areas that are not subject to any other forestry rights or licenses. Villages through their village institutions (*lembaga desa*) that are specifically established for this purpose can obtain a right to manage a protection forest or a productions forest. The institutions must prepare a management plan to utilize, rehabilitate and protect these forests.

Article 11 (1) of Ministerial Regulation P.49/2008 states that the right of village institutions to manage their Village Forest does not equal to ownership of a Forest Area. The regulation forbids these institutions to transfer their rights or use them as credit collateral. Similarly, the granting of village forest management rights will not change the state's right of control over the Forest Areas.

The Minister of Forestry, based on the proposal of the district-head or mayor may enact Village Forest areas, on the basis of which the village institutions can apply for the right of village forest management to the governor. The governor can delegate this authority to the district-head/mayor. The right to Village Forest management lasts 35 years and is extendable, according to Article 17 (1) of Ministerial Regulation 49/2008. The regulation does not specify the length or frequency of the extension; but Article 17 (2) states that the extension depends on an evaluation carried out by the *bupati* once in every five years. The right of Village Forest management can thus be abolished if on the basis of the evaluation the district-head considers the village institutions incapable of managing the forest well. There is no mechanism in the 2008 Ministerial Regulation, which would enable village institutions to object against the evaluation results or to the government's decision of abolishing the rights. In this sense, we can see that the regulation does not provide strong protection of rights to the community. This leads to

less secure property rights of the community, unless administrative courts can properly protect these rights.

As noted, the holder of the Village Forest right is a special village institution (*lembaga desa*) for managing the forest that must be established by a village regulation (*Peraturan Desa*). The village institution is allowed to utilize the Forest Area, to collect non-timber forest products and to use environmental services such as water and recreational sites. Commercial exploitation of timber is allowed only in production forests. For this purpose, the village institution has to obtain a license for commercial utilization of timber (*Izin Usaha Pemanfaatan Hasil Hutan Kayu, IUPHHK).*[13] This license is granted by the Forestry Minister, who has delegated the authority to the governor for licenses of timber utilization in natural forests and to the district-head for licenses in planted forests (see table 4–1).

The village institution is obliged to delineate the area of the Village Forest, to make village forestry planning for the protection and rehabilitation of the forest and for increasing the number of plants. To enhance the capacity of village institutions to carry out sustainable forest management, the Ministry of Forestry and regional governments are obliged to facilitate the village institutions. They can be assisted by universities, non-governmental organizations, state and private companies. The facilitation consists of training and technical assistance, including assistance to develop the commercial capacity of village institutions (Articles 9 and 10 of Ministerial Regulation 49/2008).

(d) People's Plantation Forest

People's Plantation Forest (PPF) policy has its legal basis in GR 6/2007 on Forest Management, and not in the 1999 Forestry Law. To regulate the procedure for obtaining PPF licenses, the Minister of Forestry promulgated Ministerial Regulation number P.23/2007.[14] It defines PPF as a forest estate in production forests that is planted by forest communities, either as individuals, Forest User Groups or cooperatives, to improve the quality of production forest.[15]

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[13] See table 4.1 for details about *IUPHHK.*

[14] The official name of the Regulation is the Application Procedure for Licenses of Commercial Utilization of Timber Products in People's Plantation Forest (*Tata Cara Permohonan Izin Usaha Pemanfaatan Hasil Hutan Kayu dalam Hutan Tanaman Rakyat dalam Hutan Tanaman*). This Regulation was amended by Ministerial Regulation P.5/2008 with minor changes.

[15] Article 1 point 1 and Article 10 of Ministerial Regulation P.23/ 2007.

Governors can grant PPF licenses on behalf of the Forestry Minister.[16] The licenses are granted only when the production forests are no longer productive, no longer under forestry licenses, and situated near processing manufacturers.

As with other community-based forest management legislation, the PPF licenses bestow upon their holders the right of utilizing timber in state forests. Moreover, these licenses also give the holders the right to financial support and technical assistance from the Ministry of Forestry for developing their PPF areas. The license holders are under the obligation to make a PPF plan. The Ministerial Regulation also limits community property rights as based on PPF licenses to use rights of forest products without any rights to transfer or to inherit.[17] However, there is no prohibition on using the license as credit collateral.

Article 54 (1) of GR 6/2007 states that PPF licenses are valid for a maximum of 100 years (see table 4.1). This is contradicted by the abovementioned Ministerial Regulation on PPF which reduces the license duration to a maximum of 60 years.[18] This 2007 Regulation states that a license will be abolished when the license holder has died, the license is returned to the government by the holders, the license holder is incapable of making a long-term or annual PPF plan, or when PPF management is lacking. Likewise, the license will be abolished if the holder is sentenced for violating provisions of forest protection in Law 41/1999 or if the District Court declares the insolvency of the holder.

As is the case in other community-based forest management legislation, the 2007 Ministerial Regulation does not have any provisions concerning rights protection of the PPF license holder. There is no opportunity for participatory evaluation before the governor abolishes a license. As such, the PPF legislation confirms the previous conclusion that community-based forest management legislation in general provides limited legal security because of limited property rights and protection.

(e) Company-community partnership in forest management

In chapter 3, we saw that collaboration between forestry companies and forest communities was initiated more than a half century ago (3.5 (a)). The *tumpang sari* projects of the state-owned forestry company *Perhutani*, for example, were the first to experiment with such collaboration. The company allowed forest communities to cultivate the company's logging areas by intercropping timber plant with their agricultural plants. Company-community cooperation was also established outside

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[16] Article 11 (5) of Ministerial Regulation P.23/ 2007 and Article 62 (4) of GR 6/2007.

[17] Article 15 of Ministerial Regulation P.23/ 2007.

[18] Article 14 of Ministerial Regulation P.23/ 2007.

Java through Village Development Programs of Forest Concessions (*HPH Bina Desa Hutan*); later the name of these programs was changed into Forest Villagers Empowerment (*Pembinaan Masyarakat Desa Hutan*).[19] In the 1990s, the Ministry of Forestry made it compulsory for logging companies to set up community development programs (see 3.5 and table 3.2). Unlike the *tumpang sari* model that invited people into the forest, the community development programs provided the people with compensation for not utilizing the forest in logging areas. To this end, the companies focused on programs such as developing sedentary agriculture practices among forest communities or building public facilities.

Law 41/1999 re-emphasises the forestry companies' obligation to cooperate with forest communities (Article 30). GR 6/2007 names such a cooperation or 'Partnership' (*Kemitraan*) of forest management (henceforth Partnership). Without precisely defining what Partnership is, the 2007 Regulation considers it as community-based forest management carried out within the framework of forest community empowerment (Article 84). This means that forestry companies are obliged to undertake empowerment programs as part of their corporate social responsibility. Article 74 (1) of the Limited Company Law (Law 40/1997) and Article 15 b of the Investment Law (Law 25/2007) are the legal basis for the companies' obligation to corporate social responsibility. The way in which this obligation fits in the framework of community-based forest management is unclear since a detailed ministerial regulation has not been enacted yet. For now, logging companies have continued their community development program on the basis of Ministerial Decree 537/1997. The state-owned forestry company, *Perhutani*, has developed its own partnership model through Joint Forest Management with the Community (*Pengelolaan Hutan Bersama Masyarakat, PHBM*).[20]

Agreements between forest communities and the companies have been the legal basis for formalizing community's rights in the logging concession areas. The extent to which such agreements strengthen the property rights of forest communities in the companies' logging areas cannot be predicted. As the agreements fall under private law, the rights are determined by both parties. In practice, however, the *PHBM* model of *Perhutani* allows for a company-community profit-sharing (*bagi hasil*) of tree-felling or other exploitation of forest resources on the company's areas. Meanwhile, in private

[19] Forestry Minister Decree 691/1991 was the legal basis of *HPH Bina Desa Hutan*. It was replaced by Decree 69/1995 for *Pembinaan Masyarakat Desa Hutan*, and the existing legal basis is Decree 537/1997.

[20] Decree of *Perhutani* Director number 268/ 2007 on the Guidelines for Joint Forest Management Plus (*Pedoman Pengelolaan Sumberdaya Hutan Bersama Masyarakat Plus*).

logging concession areas outside Java the agreements usually allow people access to non-timber forest products only.

(f) Collaboration of conservation management

Conservation forests are the most restricted areas for forest communities. The existing legislation limits access to these areas severely (see 4.5 (d)). Most conservation areas are administered by conservation offices. In these areas it is formally prohibited to grant access rights to forest communities. Exception to this rule is regulated by Forestry Minister Regulation P.19/2004, which stipulates that forest communities may access the conservation forests on the basis of collaborative management between the conservation offices and the communities. A similar agreement may exist between these offices and private companies that have an eco tourism business in conservation areas.

Given the fact that legislation on conservation forests does not allow communities to apply their community forest tenure system in such conservation forests the collaborative management agreement seems to be based on condonement. Prohibited actions are legalized through the consent of the formal right holders, in this case the conservation offices.

How can the agreements secure community property rights? As in the case of the Partnership model, the strength of community property rights will be determined by the content of each agreement. The extent to which the agreement offers robustness and the duration of the collaboration are essential elements. For the protection of their rights, the communities as with other models of community-based forest management discussed above depend upon the existence of an accessible, affordable and fair judicial process or other non-court conflict resolution – the third element of legal protection as mentioned in 2.4 (a).

Using the court is the communities' last attempt of protecting their rights. In this respect they must consider the different courts of protecting the license and agreement-based rights. The former, as has already been discussed in this book, must use administrative courts while the latter will be dependent upon general courts.

5.3 WAYS OF LEGALIZING COMMUNITY PROPERTY RIGHTS: LICENCE AND AGREEMENT, INCORPORATION AND INTEGRATION

At this point, we can see that the existing legislation on community-based forest management provides two ways of legalisation of community property rights, namely licensing and agreement. Licensing is applied in the policy models of Village Forests, People's Plantation Forest and Social Forest, as will be recounted in 5.4. The agreement model can be found in Company-community partnership and Collaborative Conservation Management.

So, the present legislation employs both public and private law instruments in regulating community property rights. Licensing, as we know, is part of public law, whilst agreement is a tool of private law. Which of the two ways provides the most secure property rights depends on the fulfilment of the three elements of legal security namely the robustness, duration and protection.

Besides the distinction between licensing-based and agreement-based forestry management models, we also note that the present legislation uses both integration and incorporation models to enable the legalization of community property rights (see 2.3 (b)). The licenses of PPF are an example of integration of community property rights into the state legal framework in the sense that the license does not allow the communities to practise their community forest tenure system. In the case of Village Forest, the legislation applies the incorporation model by granting the right of village forest management to village institutions who independently regulate their community forest tenure systems. Nevertheless, the incorporation model reverts to the integration model when the villagers obtain the commercial timber felling licenses (*IUPHHK*).

In the case of the agreements as applied in Partnership and Collaborative Conservation Management, we can say that they mainly reflect the integration model as the agreements form part of national private law and the way it shapes property rights. Yet, there is also an element of incorporation if the agreement recognize the application of the communities' forest tenure system.

Lastly, the question rises which model plays a role with regard to *Adat* Forest and Forest Area with Special Purpose. The draft GR on *Adat* Forests indeed states that rights of forest management are granted to *adat* communities. Article 19 point b of the draft confirms that the government permits the application of a community forest tenure system in the enacted area of *Adat* Forest. In this respect we can assume that a recognition model has been chosen. Then, Article 16 of the draft states that the *adat* communities have rights and obligation of managing the forest in their *Adat* Forest areas. Will the government grant certain license for legalizing these rights or not is obscure in the draft regulation. We cannot come up with a precise analysis whether the incoproration model will be applied.

5.4 Social Forest legislation, from the 1995 Decree to the 2007 Regulation

In the elucidation of Article 5 (1) regarding state forest, Law 41/1999 states that state forest management directed toward community empowerment is called Social Forest (*Hutan Kemasyarakatan*). As chapter 3 has described, prior to the enactment of Law 41/1999, Social Forest had been regulated through two ministerial decrees, Decree 622/1995 and Decree 677/1998. Both referred to Law 5/1967 even though the Law did not have any provisions concerning people's rights or participation in forest management. After the enactment of the 1999 Forestry Law the old decrees were

revised and adjusted through Forestry Minister Decree 31/2001 and Ministerial Regulation P.37/2007. This section describes how these pieces of Social Forest legislation have regulated legal security of community property rights.

(a) The 1995 Ministerial Decree

Forestry Ministerial Decree 622/1995 regarded communities as forest planters rather than government partners in managing the state forests. The decree limited Social Forest to protection forests that had been degraded and needed rehabilitation, and had no logging concessions and forest estates. Communities living in and around Forest Areas were allowed to participate in Social Forest programs if they had been appointed by their village head and had signed a Social Forest agreement with the Provincial Forestry Service. Individuals, groups and cooperatives were eligible. Each person would have four hectares of forest land to be planted with trees – particularly types of trees which would serve a multiple purpose such as fruit trees – as determined by the Ministry of Forestry. The community could collect non-timber forest products and harvest the fruits without a right to cut the trees. The collection of non-timber forest products (NTFPs) for commercial purposes was sometimes based on a license for collecting NTFPs. The community had to pay taxes on all forest products they collected from the Social Forest land. The participants were obliged to plant and maintain the forest, to delineate its borders, to prevent forest fires, and to pay the levies. The Ministry of Forestry funded the Social Forest activities as central government projects. The Social Forest agreement could be unilaterally annulled by the Ministry of Forestry if the participants performed no activities on their land for a period of two years and/or did not pay the levies. In addition, the Ministry of Forestry could terminate the agreement if the evaluations showed that the Social Forest was neglected. The termination would be preceded by three warnings.

Forestry Minister's Decree 622/1995 regarded Social Forest as a government-led forestry project. The government was the owner of the project; the communities were the participants. The decree used the term 'Social Forest Participants' (*Peserta Hutan Kemasyarakatan*) for those with a forest-dependent livelihood and who voluntarily became involved in Social Forest activities. The participants consisted of individuals, groups or cooperatives who acted under government's instruction. Thus, there was no opportunity to set up or to strengthen local organizations of Forest User Groups in which people shared norms to manage the forest responsibly.

Decree 622/1995 did not state the duration of the Social Forest agreement. An implementing regulation, Decree of the Director General of Reforestation and Land

Rehabilitation Decree number 97/1997[21] that detailed the procedure for determining Social Forest participants, issuance of licenses, and Social Forest agreement, stated the agreement was valid until the head of Provincial Forestry Service annuled his decree of appointing the villagers as the participants of Social Forest management (Article 8 (3)). However, this decree did not regulate upon which condition the head of Forestry Service could annul the appointment of the villagers as the participant. Based on the Social Forest agreement, the Provincial Forestry Service issued licenses for Social Forest utilization *(izin pengusahaan hutan kemasyarakatan)*. However, the licenses did not contain any provisions regarding the duration either. The participants simply had to sign a statement of acceptance, when the license or agreement was annulled on the account of violations of the agreement or forestry legislation.

Clearly, there is a considerable imbalance in the positions of forest communities and the government in the 1995 Social Forest Decree. The former had very limited rights but a whole load of responsibilities. The forest communities were to plant the forest without the right to decide which type of tree they preferred. In fact, they became government planters. In this way, the Ministry of Forestry successfully maintained the Forest Areas in the hand of the communities, but at the same time enjoyed forestry levies.

Furthermore, the duration of Social Forest licenses and agreements was determined solely by the government. The Director General of Reforestation and Land Rehabilitation Decree 95/1997 concerning the procedure of applying the licenses of NTFP collection in Social Forest areas stated that within the area of a Social Forest license, the Social Forest participants could obtain licenses for collecting commercial NTFPs. These licenses would be valid for a maximum period of two years (Article 2 (1) and (2)). The question rises as to how people can gain economically in such a short period. More importantly, how can the NTFPs licenses provide legal certainty, if the duration of Social Forest licenses, which form the basis for granting the NTFPs licenses, is unclear? How can the licenses provide strong legal security of forest tenure if the government could unilaterally end the agreement and annul the license without prior consultation with the communities?

(b) The 1998 Ministerial Decree

Whereas the implementation of the 1995 Social Forest legislation consisted of setting up pilot projects by the Ministry of Forestry rather than granting Social Forest licenses,

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[21] The decree's official name is Decree of Directorate General of Reforestation and Forest Rehabilitation number 97/1997 on the Procedure of appointing participants, license granting, and agreement making of Social Forest utilization (*Tata cara penunjukan peserta, pemberian izin dan pembuatan perjanjian pengusahaan hutan kemasyarakatan).*

Decree of Forestry and Plantation Minister[22] 677/1998 introduced some new ideas. The most important included the principle of regarding the forest communities as the key actors in forest management, the issuance of Social Forest licenses, and expanding the implementation of Social Forest to all forest functions and to all forest products (timber and non-timber).

Ministerial Decree 677/1998 stated that Social Forest Areas would encompass production and protection forests and of certain zones within conservation forests. Within these areas the Ministry of Forestry could grant forest communities a Social Forest utilization right (*hak pengusahaan hutan kemasyarakatan*)[23] on the condition that the area was free from any forestry license. Decree 677/1998 defined the right of Social Forest utilization as a right to utilize Social Forest for 35 years, granted by the Minister of Forestry to the community through their cooperative (*koperasi*).[24] The term 'right of commercial utilization' (*hak pengusahaan*)' should be interpreted as the right to utilize state forest 'based on the principles of forest sustainability and (business) management'.[25] By the principle of (business) management (*azas perusahaan*), the decree meant planting, preserving, harvesting, processing and marketing forest products. In this sense, Social Forest license was no different than small-scale logging concessions. This is no surprise, since the 1998 Ministerial Decree on Social Forest was still based on Law 5/1967 which was directed mostly at facilitating timber exploitation. Because the legal basis for Social Forest policy was limited, the Ministry of Forestry officials at that time had no choice other than following the term used by Law 5/1967 and its operational regulations with a few small alterations such as inserting principles of participatory management, recognition of cultural diversity and biodiversity and the like.

The authority to grant licenses was held by the Forestry Minister. However, the Minister could delegate his authority to the Heads of its Forestry Regional Offices – the representatives of the Ministry of Forestry at the provincial level.[26] Forest communities

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[22] See footnote 32 of chapter 3 for the insertion of Plantation into the name of Ministry of Forestry.

[23] The term used by the Forestry Ministerial Decree 677/1998 was the 'right' of commercial utilization (*hak pengusahaan*). This was consistent with all forestry legislation prior to Law 41/1999 that used the term 'right to commercially utilize forest (*hak pengusahaan hutan*)' to refer to a logging concession. Law 41/1999 changed this tradition by introducing the term 'license' (*izin*) for any allowable forest utilization (see Articles 27, 29, and 35). These provisions are further elaborated through GR 34/2002 and its replacement GR 6/2007.

[24] Article 1 point 5 and Article 5 (4) of Forestry Minister's Decree 677/1998.

[25] Article 1 point 6 of Forestry and Plantation Minister's Decree 677/1998.

[26] See 4.2 for the legal position of the Regional Office before and after the implementation of Law 22/1999 on Regional Government.

applied to the Forestry Minister, through their cooperatives, for Social Forest licenses through the Heads of Regional Offices. The latter asked the district-head for a recommendation before sending the application to the Minister. The Minister then decided whether the application could be approved or not. Once the application had been approved, the Minister, represented by the Head of the Regional Offices granted the Social Forest licenses.

The 1998 Social Forest Decree used the term local communities (*masyarakat setempat*) for describing its target groups. It defined these communities as groups of citizens living in and around the forests who share characteristics as a community due to kinship, forest-dependent livelihood, historical background, residential ties and the like.[27]

The Social Forest license was valid for 35 years, extendable but without an explicit statement clarifying how long such an extension could be. The license expired when the period ended, when the license was returned to the Ministry of Forestry before the duration ended, or if the license was rescinded by the Forestry Minister. The Minister could withdraw the license on the following three grounds: the communities abandoned their Social Forest Areas for two years, they neglected their obligations, or the areas had to be used for the public interest. The license holders of Social Forest were obliged to set up future plans as logging companies did, delineate the border of Social Forest Areas, protect the forests and pay forestry levies. The Social Forest licenses were not transferable.

In comparison with Decree 622/1995, Decree 677/1998 offered more freedom to the communities. The government no longer decided which tree type the communities had to plant. The 1998 Decree even encouraged communities to maintain traditional management in so far it would not harm forest sustainability. There was no maximum land size of a Social Forest area. Whereas Decree 622/1995 allowed a maximum of four hectares, Decree 677/1998 allowed the communities to decide how much land they needed and how they distributed the land to their members. The communities were allowed to use timber and timber forest products.[28] For their subsistence, they were even permitted to run small-scale businesses through their cooperative.

The 1998 Social Forest licensing system was clearly more advanced than that of 1995. Nonetheless, it still had several weak points. Firstly, it did not provide mechanisms for protecting the license holders against the state's decision to rescind the license. As mentioned, Decree 677/1998 specified the conditions on which the Ministry of Forestry based its decision of cancelling the license. Yet, what people could do to

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[27] Article 1 point 7 of Forestry and Plantation Minister's Decree 677/1998.

[28] Cf. Decree 622/1995 only permitted the community to collect non-timber products.

enforce their rights was unclear in this decree. The only way to protect their rights was to go to the administrative courts.

Secondly, the provision concerning communities' obligations was very general and open to multiple interpretations. The obligation to protect the forest, for example, was not clear. The communities could not always know precisely which land, which resources and what kind of activities they could use or perform. Lastly, the licenses did not provide the communities with legal certainty on their plants growing in the Social Forest Areas. Article 14 (3) b of Decree 677/1998 stated that when the Social Forest license expired, the property of all plants would return to the government. However, the decree said nothing about the possibility of trees and other plants in the Social Forest being owned by the communities, or a potential compensation.

(c) The 2001 Ministerial Decree

As I described in 3.6 the implementation of Forestry and Plantation Minister's Decree 677/1998 eventually led to a heated debate within the Ministry of Forestry. To revise some weak provisions in Decree 677/1998 and to adapt the Social Forest legislation with Law 22/1999 on regional government, the Ministry of Forestry enacted Ministerial Decree 31/2001. In this section we will clarify which new provisions the decree entailed and, more importantly, how the provisions regulated a better legal security of communities' rights.

The Forestry Minister's Decree 31/2001 used the term 'Social Forest activity license' *(izin kegiatan hutan kemasyarakatan)* that was defined by Article 1 point 5 as "a license granted by the district-head to a local community to carry out Social Forest management". Article 23 of the decree further explained the term Social Forest management as 'activities of arranging a Social Forest area, forestry planning, forest utilization, rehabilitation and protection'.

Ministerial Decree 31/2001 bolstered Decree 677/1998 in terms of prioritizing forest communities to manage state forests. It empowered communities to become the main forest controllers. Ministerial Decree 31/2001 also welcomed community forest tenure systems.

What exact changes did the 2001 Social Forest Decree introduce? Firstly, licenses were only granted with regards to production and protection forest, so no longer to conservation forests. Secondly, licenses would be granted only after the Ministry of Forestry had stipulated the Social Forest management areas, based on an inventory by the district governments. Thirdly, licenses were issued by the district-head/mayor on the basis of regional autonomy principles. Fourthly, the duration of licenses was reduced from 35 years to 25 years. The forest communities had to be well prepared before definitely acquiring their full licenses.

As part of a preparatory phase, the communities could only obtain a temporary license, valid for three to five years. During this period they had to set up their cooperatives with the help from the district/town government. The temporary licenses were granted to Forest User Groups, but the definitive licenses could only be granted after the Forest User Groups had established cooperatives. Lastly, the 31/2001 Decree warned that a Social Forest license did not equal an ownership right to Forest Area; the license could not be transferred to others or be used as credit collateral.

What did the 2001 Social Forest licensing system offer in terms of legal tenure security? There was the element of robustness, most visible in the clear rights and obligations of the communities. The decree had many well-formulated points, such as the area for which a license could be granted, to whom, for how long, and for what kind of activities. The decree stated that the license holders of Social Forest were allowed to use the forest and land within their designated areas, were to be facilitated – this includes financial support – by central and regional governments, and were to set up cooperation with third parties in forest management as long as this in line with the basic principle of forest communities as the Social Forest's main actor. Forest communities were obliged to preserve the forest and the environment in general, and pay forestry levies.

One aspect of Ministerial Decree 31/2001 which led to more insecurity was the duration of the rights. The temporary license introduced a trial phase of short duration which seriously limited the opportunity of license holders to benefit from the forests; three to five year licenses did not incentivize communities to support sustainable forest management. The Ministry of Forestry aimed the temporary license at providing the communities with a preparatory phase, in which they could establish a cooperative. According to Article 21 (4) of Ministerial Decree 31/2001, the holders of long-term Social Forest licenses should be community's cooperatives. But, it is obscure in the decree whether forest communities were still eligible for a long-term license, if they failed to set up a cooperative during the period of temporary licenses. Likewise, what happened if such failure was partly caused by a lack of facilitation by the district/municipality governments? Could the temporary licenses be extended? If so, for how long and upon which conditions? What could forest communities do when upon expiry of their temporary licenses? Were the temporary licenses immediately converted into definitive licenses or were there certain procedures for applying for definitive licenses? These are noteworthy questions particularly because many Social Forest temporary licenses expired during 2004 to 2006 with no subsequent action from the Ministry of Forestry. Clarifying the tasks of the central and regional governments after issuing the temporary license is essential in order to see whether the licenses are truly aimed at granting legal rights to the people or whether they are merely part of the government's strategy to muffle conflicts with the people.

Ministerial Decree 31/2001 stated that the district-head/mayor could annul a Social Forest license at any time, if the license holder did not follow the terms and conditions of their Social Forest licenses, forestry legislation or Social Forest plans. Nevertheless, before the annulment, the district or town governments had to adhere to certain procedures: they had to provide the license holders with written admonitions, start conciliatory dialogues with the license holders, and established an independent commission when the dialogue failed. The team then had to investigate and assess the implementation of Social Forest and make a recommendation to the district-head who eventually decided whether the license would be continued or not.

The 2001 Decree was thus much more progressive than the 1998 Decree regarding the protection of people's rights against unfair decisions made by the authorities. Nonetheless, the people were still not fully protected because there was no forum available where license holders could object against the recommendation of the independent commission. In addition, the decree stated that the decision of district-head was final and binding.[29] Thus, the only way of protecting communities' rights – as with other models of forest licensing – consisted of going to administrative courts.

(d) The 2007 Ministerial Regulation

In 2007 the Forestry Minister replaced Decree 31/2001 with Ministerial Regulation P.37/2007 (see 3.6). In line with GR 6/2007 which regulates a new forestry licensing system (see table 4–1), the 2007 Ministerial Regulation on Social Forest introduces the Social Forest license with a new name: 'business license for utilization of the Social Forest' (*izin usaha pemanfaatan hutan kemasyarakatan*). Article 1 point 11 of Ministerial Regulation P.37/2007 describes the license as *"a business license for utilizing forest resources in protection forest and/or production forest"*.

This definition differs from the old definition in Decree 31/2001. The 2001 Social Forest Decree used the name: Social Forest activity license (*izin kegiatan hutan kemasyarakatan*) that allowed the license holder to undertake 'Social Forest management.' The term 'managing Social Forest' seems to include a broader role for forest communities than the term 'commercial utilization' used by Ministerial Regulation P. 37/2007. The former allowed forest communities to self-regulate, control, preserve and utilize resources in their Social Forest Areas. Yet, the latter limits the role of the forest community to utilization only, i.e. to be users rather than managers.

The Social Forest licenses are granted to Forest User Groups for 35 years. Nevertheless, not all Forest User Groups are eligible to receive the license. Article 14 of Ministerial Regulation P.37/2007 limits the groups to those who have been facilitated

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[29] Article 57 (2) d of Forestry Minister's Decree 31/2001.

by district/town governments. In the facilitation process, these governments assisted by civil society groups, help forest communities to, among others, develop their local institutions, prepare a license application, make a Social Forest and business plan.

Unlike the 2001 Social Forest ministerial decree that divided the license into two types (temporary and long term), the 2007 ministerial regulation has only one license, which lasts 35 years. This change suggests that the Ministry of Forestry noted the problems related to the temporary license, as described in the previous section). Nevertheless, in fact the decree maintains the trial phase, albeit it is not legalized through a temporary license. The facilitation process has become a pre-condition of granting the Social Forest license. Unfortunately, it is unclear how long this preparatory phase must last and what criteria the district and town governments can use to assess the preparedness of the Forest User Groups to obtain the Social Forest license.

Social Forest licenses can be granted only after the Forestry Minister enacts the working area of Social Forest management (*areal kerja hutan kemasyarakatan*) as proposed by a forest community through a district-head, or a provincial in the case of an area located across-districts. Beforehand, the district-head or governor has already verified whether there have been other forestry licenses granted on the proposed area. This process indicates an improvement in terms of Social Forest area enactment on the 2001 Social Forest Ministerial Decree. As mentioned, the 2001 Social Forest legislation also allowed the regional governments to issue Social Forest licenses after the area had been stipulated by the Forestry Minister. However, the process of enactment was based on government's initiatives rather than forest communities' proposals.

GR 6/2007 states that Social Forests can be established in production, protection and conservation forests. Detailed regulations on Social Forest in conservation forests, however, will be further defined by a separate government regulation. As such, Ministerial Regulation P.37/2007 has limited its implementation only to production and protection forests. The 2007 Ministerial Regulation adds that Social Forest can only be applied to production and protection forests which are free from any forestry license and have become sources of income for the forest communities.

Besides obtaining a Social Forest license, a forest user group is allowed to obtain a business license for timber utilization, abbreviated in Indonesian as *IUPHHK*, that is valid for one year within their Social Forest Areas (see table 4–1). The Ministry of Forestry holds the authority to issue such a license. The forest user group has to establish a cooperative to obtain this licence.

The 35 year Social Forest license is extendable. However, district-head/mayor or governor must evaluate them once every five years. Three years prior to the license expiration, the license holders must ask the district-head/mayor or governor for an extension. The district-head/mayor or governor can terminate the license, if the license

holders do not meet their obligations or if there is chance of more forest destruction. This poses a threat to the Social Forest license system, because forest destruction can occur without any contribution of the forest communities. In many cases forest destruction has been the result of powerful outsiders, such as logging or plantation companies.[30]

The changes of Social Forest legislation, in response to the change of policy preferences within the Ministry of Forestry, has created legal uncertainty for many temporary Social Forest licenses. Ministerial Regulation P.37/2007 realizes that this is a serious problem. Therefore, Article 39 of the regulation offers several schemes for temporary licenses and initiatives for Social Forest. The 'aged' temporary licenses will be evaluated by a commission set up by the Forestry Minister. The district-head/mayor will use the evaluation to decide whether these licenses can be turned into 35 year licenses, or need to be annulled. Forest communities whose temporary licenses are annulled can still apply for new licenses, based on the procedure of the 2007 Ministerial Regulation.

In addition, the Forestry Minister continues to play a crucial role. The enactment of an area as Social Forest and issuance of Social Forest licenses by district-head/mayor or governor can only take place after his evaluation. This applies to all Forest Areas used either as project areas of Social Forest or social forestry, areas where communities are facilitated by regional governments and civil society groups, and areas proposed by regional governments and the Ministry of Forestry's Heads of Regional Offices as Social Forest Areas.

As is the case in previous Social Forest legislation, the 2007 Ministerial Regulation cautions that Social Forest licenses do not grant ownership rights of Forest Areas. They are non transferable and cannot be used as credit collateral. In other words, Social Forest licenses merely bestow long-term use rights.

To end this section, I will return to the initial question regarding the ability of Social Forest legislation to provide or strengthen community forest tenure security. The recent development within Social Forest licensing clearly indicates an improvement toward more clearly-defined property rights with a more adequate duration. However, property rights continue to be limited and people still lack strong legal protection of their community rights.

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[30] Chapter 10 describes the difficulties that forest communities face when trying to protect the forest in case of systematic logging carried out by outsiders, even on a very small scale.

5.5 Forest Area: Another obstacle to Social Forest

The previous section shows that the Ministry of Forestry has made various attempts to improve Social Forest legislation in order to increase the legal security of tenure for forest communities. Gradually, the legislation has become more successful in formulating clear property rights with adequate duration. However, this does not guarantee that the highest degree of tenure secure can be reached easily. Social Forest policies are incapable of securing community forest tenure as long as they are implemented in Forest Areas which have been designated by the Ministry of Forestry rather than properly enacted.

As discussed in chapter 4, the legal basis for the Ministry of Forestry's claim to Forest Areas is still unclear. This poses serious legal problems to Social Forest located in Forest Areas. By claiming the areas as state property, as the result of legal confusion between state forest and Forest Area, conflicts have arisen between the government and forest communities, particularly *adat* communities. Since most conflicts between government/private companies and *adat* communities have not been resolved permanently and the *adat* communities feel disadvantaged through being forced or manipulated by local elites during the resolution process (see chapter 11 for the case studies of such repeated claims of the *adat* communities), many *adat* communities continue to make the same land claims. How can Social Forest policy be expected to resolve conflicts, if the licences are applied on land where conflicts are still outstanding?

Secondly, the problems of the incomplete establishment process of Forest Areas affects Social Forest too. Until 2005 there were only 14 million hectares or 12 % of the whole designated Forest Areas legally enacted as Forest Areas (Ministry of Forestry 2008a:38). The remaining 88 % was still in the designation phase, which is, according to GR 44/2004 on Forestry Planning, merely the initial step towards obtaining the final legal status of Forest Areas. In terms of Social Forest, the question is to which areas it will be applied: only in the enacted Forest Areas or also in the designated Forest Areas. If the latter occurrs, Social Forest policy will be trapped in a clash of land claims. On the other hand, limiting Social Forest to legally enacted Forest Areas will seriously limit people's access to state forests.

5.6 Conclusion

By initiating Social Forest policy more than a decade ago, the Indonesian government has made an interesting attempt to legitimize community-based forest management policy. Firstly enacted in 1995, Social Forest legislation changed several times to respond to changing intentions of the government and mounting pressure by the people.

Social Forest licenses as regulated in 1995 to 2007 legislation have allowed people to control parts of state forests and utilize resources therein. It has not been an ideal legislation in terms of security of community forest tenure, albeit recent developments have indicated some progress. The Ministry of Forestry has formulated clear property rights for forest communities in Social Forest Areas. The long-term duration, for example, is an essential element of legal security. However, Social Forest legislation is still unable to provide maximum tenure security as long as the property rights it grants to forest communities are so limited, and, more importantly, as long as it does not provide provisions that can eliminate unfair treatment of government officials in the evalution and extention of the rights.

Yet, the most fundamental challenge to Social Forest legislation is the legal status of Forest Areas, where Social Forest is to be implemented. The obscure legal basis for the Ministry of Forestry's claim to the areas and the creation of Forest Areas that is procedurally incorrect, have led to a fragile state tenure in these areas. Claims to Forest Areas, particularly from *adat* communities, are widespread. Many of them remain unresolved. This undermines the Ministry of Forestry's efforts to use Social Forest to resolve conflicts.

Table 5–1
Social Forest legislation in Indonesia

	1995	1998	2001	2007
Legal basis	Minister of Forestry's Decree 622/1995	Minister of Forestry and Plantation's Decree 677/1998	Law 41/1999; Minister of Forestry's Decree 31/2001	Law 41/1999; GR 6/2007; Minister of Forestry's Regulation P.37/2007
Areas	Degraded Protection Forests; Production Forests	Production forests; Protection forests; Certain zones in conservation forests.	Production Forests; Protection Forests;	Production Forests; Protection Forests
Authoritative institution of issuing licenses	Head of Provincial Forestry Service	Head of Ministry of Forestry's Regional Office on behalf of Forestry Minister.	The district-head/mayor	The district-head/mayor; the governor for cross-district area; the Minister of Forestry for licenses of timber utilization.
Right holders	Individual citizens, farmer groups, cooperatives of forest communities.	Forest communities through their cooperatives	Forest User Groups	Forest User Groups/ Association of Forest User Groups
Communities' rights	Obtain four hectares land/person; Collect and use non timber forest products (NTFPs).	Utilize forest products; Traditional forest management	Undertake forest management Forest and land utilization; Ask for license extension; Get facilitation from central/regional governments; Get financial	Utilize non timber forest products and collect timber; Utilize Forest Areas and environmental services within these areas; Get facilitation from provincial/district governments.

			support from third parties; Participate in Social Forest evaluation.	
Communities' Obligation	Participate in Social Forest planning; Planting multi purposes tree types as decided by the Ministry of Forestry; Preventing and handling forest fires. Pay forestry levies.	Delineate Social Forest Areas; Make Social Forest Planning; Protect the forest Pay forestry levies.	Delineate Social Forest Areas; Rehabilitate and protect the forest; Make Social Forest Planning; Undertake internal control Pay forestry levies	Delineate Social Forest Areas; Make Social Forest Planning; Undertake planting, rehabilitation and save the forest Pay forestry levies. Report all Social Forest related activities to the government
Legal basis of rights	Social Forest Agreement and license; License for collecting NTFPs	Social Forest Utilization Rights	License for Social Forest Activities	License for Social Forest Utilization; License for Timber Utilization (issued after obtaining Social Forest license).
Duration of rights	Two years for NTFPs license.	35 years	25 years, consists of temporary licenses (2–3 years) and long term licenses (25 years).	35 years

Source: Minister of Forestry's Decree 622/1995; Decree 677/1998; Decree 31/2001; Ministerial Regulation P.37/2007.