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

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12. CONCLUSION:

REFORMING FOREST TENURE LAW IN INDONESIA; WHICH WAY FORWARD?

12.1 INTRODUCTION

The growing concern of the international community about the threat of climate change has encouraged developing countries particularly those with large areas of forest to immediately implement the scheme of REDD/REDD+. This study warns that as long as community forest tenure is not secure, such attempts of forest preservation will be less effective and may breach social & environmental justice.

Providing forest communities with secure forest tenure is a necessary condition for enhancing their participation in forest preservation. Therefore the government in Indonesia has tried to develop different models of community involvement in state forest management, both before and after Indonesian independence. Policies of community-based forest management have indeed been implemented. However, this study concludes that governments have done this primarily to share the responsibility for forest preservation with the communities, without strengthening their forest tenure security.

One of the policy models, the implementation of which has received much attention in the post-New Order period is the policy of Social Forest (*Hutan Kemasyarakatan*), laid down in legislation with a similar title. Law 41/1999 on Forestry states that Social Forest aims at empowering forest communities by bestowing them with a license to manage state forests. This research has analysed the social, political and legal obstacles to the Social Forest legislation's objective of providing and strengthening forest tenure security of communities. In this chapter, I will summarize the key findings of the previous chapters and discuss the main conclusions of this research. The discussion covers four levels of analysis.

The first analysis concerns policy and legislation and the socio-legal context of their emergence; it consists of three sections. The first section analyzes some constraints of legal security that were found in major national land and forestry laws. These constraints undermine the rights of both communities and the state over Forest Areas (12.2). The second section focuses on legislation and licensing concerning community-based forest management, including the Social Forest model. It will look at the

question which legal problems have restrained its objective to strengthen legal security of community forest tenure (12.3). The third section describes the post-1998 development of Social Forest legislation in a socio-legal perspective (12.4).

The second analysis concerns the implementation of national policies and legislation at the regional – provincial and district – levels, and how the regional governments in Lampung have responded to the policies and legislation (see 12.5). This section also reviews factors in the making and the implementation of regional legislation in Lampung that have weakened community forest tenure.

Then, the third analysis is about the actual practices of community forest tenure at the level of forest communities. In this part, I firstly analyse the types of community property rights as practiced by forest communities, and underlying factors of their interest in or reluctance to preserving the forest. The case study of Langkawana forms the major source for this section (12.6-12.8). Secondly, I will focus on the many unresolved land conflicts in state-claimed Forest Areas in Lampung, which have limited the effectiveness of Social Forest policy and legislation. This section draws extensively on the case studies in Tangkit Buku Jadi and Way Kejayaan Forest Areas (12.9).

Finally, after discussing the experiences with Social Forest with regard to forest tenure security for communities, I will draw a general conclusion about the nature of legal reform that has taken place with regard to Indonesian community-based forestry legislation during the last decade (12.10).

12.2 THE LIMITED LEGAL SECURITY OF COMMUNITY PROPERTY RIGHTS AND STATE RIGHTS ON FOREST AREAS

Many authors argue that the strong state control of Indonesian Forest Areas has led to a lack of security of community forest tenure. My study confirms this argument. Convincing evidence has been presented in chapters 4 and 5 and will be summarized in this section and 12.3. However, this research also found that the rights claimed by the state, notably by the Ministry of Forestry, on Forest Areas are, legally speaking, far from secure. Before detailing this conclusion, I will call to mind some aspects of the concept of security of forest tenure as applied in this study.

In Chapter 2, I proposed that this security of forest tenure refers to three domains. Firstly, there is a normative domain in which a state legal system and community normative systems regulate, recognize and protect the property rights of forest communities. The second domain refers to the way in which state officials and/or local community authorities recognize and protect these rights through practical application. In an ideal situation these officials and authorities would do this consistently, and thus contribute to high security. The last domain relates to the

perception of the majority of community members regarding both the property rights and their actual protection.

The legal analysis of forest tenure security falls within the normative domain. In this sense, this thesis has firstly analysed how legislation regulates and protects community property rights. These rights are central to the concept of legal forest tenure security. Then, we need to recall the three elements of secure community property rights: robustness, appropriate duration of rights and legal protection (see 2.4). The following sections will discuss each element as found in the major laws regarding forest tenure, the Basic Agrarian Law (BAL) and Law 41/1999 on Forestry.

(a) Robustness

As noted, robustness refers to (i) the legality; (ii) the clarity and (iii) the scope of rights (see point i of 2.4 (a)). Generally, there seems to be no problem with legality, as granted rights seem to rest on clear and strong legal bases. However, difficulties emerge particularly with regard to the clarity of rights and right's bundles.

The BAL, by its inability to provide clearly-formulated land rights for *adat* communities, has undermined the security of community property rights. The two key questions which the BAL does not answer are, firstly, whether it considers *adat* communities' land as state or private land, and secondly, whether the land should be individually or communally held by the members of *adat* communities. For several reasons, answers to these questions are necessary. In the first place, the status of state or private land will determine the types of right bundles on the land. Property rights on state land are generally more restricted than those on private land. Full ownership rights (*hak milik*) can be established on private land but they cannot be granted on state land. In the second place, it is essential to determine whether the appropriate right holder is an *adat* community or its individual member. Therefore the conceptual distinction between communal and individual rights needs to be clear.

The lack of clarity of the BAL regarding the status of *adat* communities' land has left room for many interpretations. The 1999 Forestry Law, for example, regards forests found on *adat* communities' land (*Adat Forests*, *Hutan Adat*) as part of state forest. Certainly, this seems unfair to *adat* communities, and it is also against international laws concerning indigenous peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples that recognizes the rights of indigenous (*adat*) communities to own and hold control over their land.¹

¹ In this respect see particularly Articles 10, 25, 26, and 27 of the United Nations Declaration on the Rights of Indigenous Peoples.

The 1999 Forestry Law and its operational regulations, however, seems clearer than the BAL in determining the status of communities' rights in Forest Areas. The law and regulations consider all communities' rights in Forest Areas as subject to state property. Accordingly, they only provide forest communities with use rights concerning land and resources, but not with ownership rights. In this way, the forestry legislation recognizes limited bundles of community property rights. This has limited the tenure security of community rights in the Forest Areas.²

(b) Duration

As chapter 4 demonstrates, the 1960 BAL includes an obscure formulation of *adat* communities' rights on land and natural resources (*hak ulayat*). Article 3 of the BAL recognizes the *hak ulayat* as long as this right exists but it does not prescribe how to assess the existence of this community right. We can find the criteria for determining the existence of *hak ulayat* in a later regulation, namely the Regulation of the Minister of Agrarian Affairs number 5/1999. However, like the BAL, the 1999 Regulation provides only limited protection of *adat* communities' rights, and its implementation is unpredictable (see 4.4).³ Meanwhile, Law 41/1999 does not contain any conclusive stipulation on the issue of duration of communities' rights either. Yet, legislation concerning community-based forest management does have provisions regarding the rights' duration of forest communities.

(c) Legal protection

In chapter 2 we formulated three cumulative conditions for achieving the legal protection of rights as follows: (i) legislation that enables community participation in government decision-making concerning their rights; (ii) accessible and effective complaint mechanisms found at state institutions to handle people's grievances; (iii) accessible, affordable and fair mechanisms of conflict resolution, including judicial process. If these conditions would be fulfilled, rights cannot just be overridden by other individuals or the state unfairly, as there would be effective ways to seek redress.

The BAL and forestry legislation provide very limited protection of community rights. They generally do not have provisions detailing the mechanisms of involving communities in the decision-making regarding continuation of their rights. Likewise, they also do not offer any mechanisms for grievance handling.

² The fact that forest communities' rights have been part of state property will not thoroughly undermine their legal security. In 12.4 I will add another argument regarding the central legal issue on this matter.

³ See 4.4. A study of Laurens Bakker shows how Agrarian Minister's Regulation number 5/1999 has been used and misused by regional governments to recognize and de-recognize *hak ulayat* in East Kalimantan (Bakker 2010).

One can argue that it is not necessary for legislation to have such provisions because in case of injustices courts are the place to go. Courts can indeed serve as a proper avenue for the legal protection of communities' rights, if they are easily reached by the communities and if they proceed the cases affordably and fairly. Unfortunately, we cannot assume that this is the situation in most Indonesian courts. Judicial reform in the last decade has not yet managed to set up accessible courts with affordable and fair judicial process. Another problem is the incapability of judges to come up with innovative legal interpretations of unclear legal provisions or provisions with weak or even no legal basis.⁴ Considering these factors, how can we expect that the courts will protect the communities' rights?

Rather than waiting for the communities to go to court, government institutions may offer alternative channels for the communities to express their grievances. However, this kind of mechanism has not yet been institutionalized in state forestry administration.⁵ The case studies discussed in chapters 10 and 11 illustrate the vulnerability of community rights due to this situation.

At this point we can see that there is a serious lack of legal security of community property rights. Law and legal institutions are not able to provide forest communities, including *adat* communities, with clear, extended and fully protected rights on land and forest resources.

The problem of legal security, as I mentioned in the beginning of this section, is also relevant to state forest tenure. Two major problems have led to this conclusion. Firstly, there is a problem with the legal basis of the Ministry of Forestry's control over land in Forest Areas. Secondly, there is a problem with the legal status of the existing Forest Areas.

As for the first problem, chapter 4 has verified that neither Law 5/1967 nor Law 41/1999 authorize the Ministry of Forestry to control the land in Forest Areas. Similarly, Government Regulation 8/1953 that has been often referred to uphold the Ministry's legal argument cannot serve to justify the Ministry of Forestry's legal claims on all forest land. This Regulation does only apply to Forest Areas that were designated

⁴ For analyses regarding the role of courts in applying and interpreting legal provisions in concrete cases see 4.3 and 10.2. I suggest for further readings on administrative court decisions concerning land disputes in Indonesia, Bedner (2001); for the Constitutional Court's decisions that interpret the state's right of controlling land and natural resources and its implications to people's rights see Arizona (2007).

⁵ Several state institutions in Indonesia have handled people's grievances on land and natural resource problems. National and district councils, the National Commission of Human Rights (*Komnas HAM*) and others fulfill this function. One of my case studies has described how forest communities used the district council to express their grievances and to mediate their land conflicts. Another study that extensively analyses the role of district councils and the Human Rights Commission is Reerink (2010).

before 1953. For the majority of Forest Areas – particularly outside Java – that have gradually been designated since the 1980s, state control requires another legal basis. To date, no law or regulation has been enacted for this purpose.

Concerning the second problem, we must look at the procedures to establish the legal status of Forest Areas. Law 41/1999 states that a Forest Area comes into existence after the Ministry of Forestry has accomplished a series of actions, called forest establishment (*pengukuhan hutan*). The process consists of forest area designation (*penunjukan kawasan hutan*), forest boundary demarcation and mapping (*penataan batas* and *pemetaan*), and, finally, official enactment (*penetapan*) of Forest Areas by the Forestry Minister. The enactment of Forest Areas should provide final legal certainty concerning the status, function, location, border and size of these areas. Government Regulation 44/2004 on Forestry Planning states that only after this legal certainty is established, the government may undertake forest land use and other activities related to forest management.

Yet, the majority of existing Forest Areas is still in the designation phase. Only some 12 % of the Forest Areas have actually been enacted. The designation of Forest Areas is basically a unilateral decision of the Ministry of Forestry to determine certain land as Forest Areas. As such, in the designated Forest Areas there is a high probability of overlapping claims of the Ministry and forest communities. As the areas have not been officially delineated, the borders with neighbouring lands may be obscure.

That most Forest Areas in Indonesia are only designated areas, and not yet enacted, raises a question regarding the legal status of forest management carried out by the Ministry of Forestry in these areas. In particular it will have an implication on the legal status of community-based forest management models supported by the Ministry. A basic question is thus whether the Ministry has the legal power to undertake forest management in areas that have been only designated but not enacted yet. What is the legal status of forestry licenses that are granted on these designated Forest Areas?

In sum, the problem of weak legal security does affect not only communities' rights but also the Ministry of Forestry's claims on Forest Areas.

12.3 SECURING COMMUNITY PROPERTY RIGHTS THROUGH PUBLIC AND PRIVATE LAW

Notwithstanding the legal insecurity of the rights over Forest Areas, the Ministry of Forestry has legislation that bestows forest communities with rights to utilize the Forest Areas. Representing the ministry's policy of community-based forest management, such legislation includes Law 41/1999, Government Regulation (GR) 34/2002 – and its successor GR 6/2007 – and several Regulations of the Forestry Minister. In chapter 3 we distinguished the following policy models: *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*), and Collaboration in managing Conservation Forests (*Kolaborasi Pengelolaan Kawasan Konservasi*).

This legislation has been criticised because it subjects the rights of forest communities to state property, rather than providing a form of private property as the most secure right. This book holds a different viewpoint on this issue, which I will explain in the last part of this section. To come to this conclusion, I firstly have to describe how the existing community-based forest management legislation regulates community property rights.

This research concludes that the present community-based forest management legislation is more advanced than the previous legislation, which was based on the New Order Forestry Law (Law 5/1967). The present legislation offers various models of accessing Forest Areas, depending on the type of forest community and forest resource, and different functions of Forest Areas. Prior to the enactment of Law 41/1999, the legislation was less specific.

Since the areas where such community rights are granted are controlled by the state, does the present legislation offer optimal property rights to forest communities? This question can only be answered by checking the elements of legal security of forest tenure, as elaborated in 2.4. But, before we look at these elements, we must note that the present legislation provides two ways in which the rights and access of forest communities can be recognized. Licences for community-based forest management are one way. The second way consists of agreements between forest communities and other forest users. The licensing model is central to the legislation about Village Forest, People's Plantation Forest, and Social Forest. Meanwhile, the legislation about Company-community partnership and Collaboration in managing Conservation Forests employs the agreement model.⁶

(a) Legal tenure security in community-based forestry licensing

The licensing systems of Village Forest, Social Forest and People's Plantation Forest share a clear definition of the right holders of forest utilization, the resources and the locations in which the licenses can be granted. Moreover, these licenses also meet the standard of legality. However, they have serious limitations in terms of the extent of the rights (see point i of section 2.4 (a)). In the first, place, forest communities do not obtain full property rights. GR 6/2007 states that the rights do not imply ownership in

⁶ Forest Areas with Specific Purposes and *Adat* Forest are not included in this chapter, due to the absence of any operational regulations.

Forest Areas, and this is reaffirmed by ministerial regulations in these three areas. Furthermore, these regulations prohibit transfer of rights, and the use of these rights as collateral for credit. However, regulations differ in this respect. GR 6/2007, for example, allows holders of a People's Plantation Forest license to use their trees as collateral for credit, but in the regulations on Village Forest and Social Forest such provision cannot be found. So there is no general rule concerning the use of forest resources as collateral for credit.

What are the implications of this regulatory difference for the robustness of communities' rights to forest resources, and for the different ways in which forest communities generate income from the resources? License holders of Village Forest and Social Forest are strictly prohibited to transfer and use their license as credit warranty. Thus this legislation clearly only recognizes these rights as use rights of state land and resources. In contrast, the regulation concerning People's Plantation Forest allows its licence holders to use the trees as collateral. While Law 4/1996 (Mortgage Law) states that a security of loan can be attached to either an ownership right or a use right of land, we do not know whether the People Plantation Forest legislation considers the trees as owned by the license holders or by the state. This makes this legislation ambiguous.

Another problem is the duration of rights. At first glance, the legislation seems to offer an adequate period of rights. Village and Social Forest licences are given for 35 years, and People's Plantation Forest licences for 60 years. In view of the harvesting cycle of tropical trees, this seems to give forest communities sufficient time to reap benefits from planting trees. Yet, a closer look at the relevant provisions in several regulations leads to a different conclusion. From the legislation we learn that the duration of rights is formulated either as definite or as indefinite. The Social Forest licenses, for example, represent a definite duration of rights. GR 6/2007 and Forestry Minister's Regulation P.37/2007 clearly state that the licenses are valid for 35 years and extendable based on the result of regular evaluation. However, legislation on Village Forest and People's Plantation Forest states that these licenses will be granted for a maximum period of 35 years (for Village Forest), or 60 years (for People's Plantation Forest). The term maximum here allows the government to grant the licenses for less than 35 years or 60 years; for how long the license will precisely be granted depends on the government's discretion. Licenses of short duration will affect the legal security of community forest tenure, particularly when the legislation does not say whether licenses can be extended, as is the case with Forestry Minister Regulation P.23/2007 regarding People's Plantation Forest.

Finally, we come to the discussion regarding the legal protection of these rights'. The legislation bestows forest communities with weak legal protection. Although the licenses can be granted for a long period, the ministerial regulations on Village Forest,

Social Forest and People's Plantation Forest oblige regional governments or the Minister of Forestry – depending on the types of licenses – to regularly evaluate the licenses. This evaluation is meant to encourage responsible forest management by the communities. The problem with this evaluation is that legislation – with the exception of Forestry Minister Regulation on Social Forest number P.37/2007 – does not prescribe community participation in the evaluation process. The 2007 Social Forest Regulation has a provision that obliges the district-head or mayor to undertake participatory evaluations. Yet, it does not regulate what such participation consists of, who must represent the forest communities, and what the roles of the communities are. More importantly, the communities have no significant role in government's decision-making, nor does the legislation provide a mechanism of objection against unfair administrative decisions. This lack of legal protection makes communities' rights especially vulnerable as the results of regular evaluation can lead to removal of the license. Without an institutionalized complaint mechanism and effective courts, how can disadvantaged forest communities protect their rights against unfair cancellation of their license?

(b) Legal tenure security in agreements on community-based forest management

In this subsection we discuss the second category of legislation, concerning forestry agreements. This usually occurs in Forest Areas that have been designated as 'conservation forests' and are administered by conservation offices, and in Forest Areas that have been granted commercial forestry licenses (table 4-1). The Minister of Forestry cannot grant any licenses to forest communities in these areas. Therefore, to provide the communities with access to use and benefit from the forest, the Ministry allows the conservation offices or forestry companies to conclude agreements with forest communities about their utilization of their areas. We can also regard them as condoning agreements. In these agreements private, contract law is applied on state land. It means that the status of state land does not impede the application of private law.

In the last five years, several conservation agreements were signed by the head of national park offices and forest communities. Meanwhile, agreements between forestry companies and communities can take the form of profit sharing (*bagi hasil*) agreements. Such agreements are mostly employed by the state-owned forestry corporation (*Perhutani*). *Perhutani* has conducted a program named Company-community Joint Forest Management (*Pengelolaan Hutan Bersama Masyarakat*) in their management areas in Java. This program works on the basis of profit-sharing agreements. Another type is the agreement of a forestry company to provide the community with social, physical and economic facilities through Company Community Development (*Pembinaan Masyarakat Desa Hutan*). Such agreements are regarded as part of the company's social

corporate responsibility, which is a mandatory program according to Law 40/1997 on the Limited Company and Law 25/2007 on Investment. The community development program does not always allow the communities to utilize the company's concession areas. The forestry companies usually set up charity programs rather than allowing the communities to use the forest.

It is hard to say in general terms to what extent these agreements have bestowed forest communities with secure property rights. All depends on the provisions in each agreement. The agreement may contain a clear formulation regarding their subject, object of resources and duration. But even then, they still cannot provide the community with full bundles of rights, as there is no opportunity for the community to hold ownership rights. Meanwhile, for the protection of rights, the community is dependent on good and fair agreements, a fair judicial process – in case a dispute would eventually be brought to court – and the company's or conservation office's goodwill. Since the agreements, as noted, fall under private law, the government has no formal role.

(c) Does contrasting public and private law and rights matter?

Private property is often assumed to provide the most secure rights and thus to be the ultimate goal of forest tenure reforms. Private property is part of a private law regime, and rights emanate from private legal relations. In order to limit state intervention, proponents of private property regimes have promoted community property rights which are directed toward private property (Lynch and Harwell 2002:3-6).

One may ask, though, what it is that actually strengthens property rights. Is it the legal status of land – as state or private land –; or, the area of law – public law or private law – that regulates the rights; or the fulfilment of the abovementioned elements of legal security? I have chosen the last. The most systematic way to assess the security of community property rights is by scrutinizing tenure systems for the elements of robustness, duration and legal protection. I do not deny the fact that most private property rights, particularly ownership rights, are able to meet the requirements of robustness and duration. Yet, this does not guarantee that they will also obtain full legal protection. In practice, unlawful and unfair appropriation of land often occurs due to a lack of legal protection. Rights, no matter their robustness and duration, will have limited security if they have weak legal protection. Thus, among the elements of legal security, the protection of rights has become crucial. Most community-based forest management legislation in Indonesia, unfortunately, seems not to have taken this into account. Yet, legal protection turns out to be a more fundamental issue than the debate about whether state or private property is more secure, or which type of regulation is better: public or private law.

12.4 SOCIAL FOREST IN POST-1998 INDONESIA: THE SOCIO-LEGAL FACTORS OF ITS DEVELOPMENT

Social Forest, one of the policy models of community-based forest management, has undergone more than a decade of implementation, and has seen several changes. The emergence of and changes within Social Forest legislation occurred to respond to different social and political circumstances as well as to adapt to other law reforms (figure 3-2). This section summarizes the milestones of Social Forest development and identifies the main actors and factors behind the changes of Social Forest legislation.

Firstly enacted during Suharto's administration, Social Forest legislation (Forestry Minister Decree 622/1995) was initially aimed at mobilizing forest villagers for the recovery of degraded state forests. Neither strengthening legal security of community forest tenure nor offering an equal community-government partnership of forest management, the 1995 Social Forest Decree contained more obligations than rights (5.4.(a)).

The turning point of Social Forest came in October 1998 when the Forestry and Plantation Minister under President Habibie's administration, Muslimin Nasution, enacted Ministerial Decree 677/1998. The enactment was highly influenced by civil society actors. In addition to this, the making of this decree was also caused by the chaotic situations in most Forest Areas in Indonesia where people entered and claimed the Forest Areas without forestry officials being capable to stop them. In the atmosphere of *reformasi* and as a response to this uncontrollable situation, the 1998 Social Forest Decree was made. The decree recognized the forest community as the main actor in state forest management. It provides for licenses granted to forest communities through their forest user organizations for a period of 35 years. In practice, however, the Ministry of Forestry would only grant temporary licenses that were valid for about five years.

The 1998 Social Forest Decree unlocked access of communities to state forests by allowing them to utilize non-timber forest resources, practice agro-forestry, plant the forest with their own preference of tree species and harvest the fruits. Ministerial Decree 677/1998 also entitled the communities as represented by their Forest User Groups to apply their own system of community forest tenure, including to settle internal conflicts based on their own justice system. Only if the local system was unable to handle the conflicts, the state had the power to intervene.

Enacting his 1998 decree was a courageous action of Minister Nasution. Made prior to the 1999 Forestry Law, the decree used Law 5/1967 as its legal basis. Minister Nasution went beyond the limits of Law 5/1967, and he was not the only high-level official who initiated such an audacious interpretation of Law 5/1967. Before, Minister of Forestry, Djamiluddin Suryohadikusumo, had enacted Ministerial Decree number

47/1998 that recognized the areas controlled by an *adat* community in West Lampung, named Krui, as Area with Exceptional Purpose.⁷ The difference between the two Ministers is that the former promoted a nation-wide recognition of communities' rights, whereas the latter localized it only for Krui people. The difference in attitude can be explained by the difference in political regimes, in which they governed. Djamaluddin Suryohadikusumo worked still under the authoritarian regime of Suharto, while Minister Nasution had his tenure in the early period of *reformasi*.

The implementation of Ministerial Decree 677/1998 expanded as the euphoria of *reformasi* grew. Some forest communities obtained Social Forest licenses but few took the responsibility of managing the state forest sustainably. Many license holders, particularly in Central Kalimantan, abused their licenses by conducting destructive logging. This became a black spot of the Social Forest policy and caused the Ministry to receive much criticism. Later on, these bad practices encouraged forestry officials in Jakarta to revise Decree 677/1998.

The enactment of the Regional Autonomy Law (Law 22/1999) brought a new era of decentralization. The Ministry of Forestry used this opportunity to revise Ministerial Decree 677/1998. Using the argument of adjusting the decree to Law 22/1999, the Ministry changed many positive provisions in Decree 677/1998. Forestry Minister Nur Mahmudi Ismail, who served in the administration of President Abdurrahman Wahid, enacted Ministerial Decree 31/2001 on Social Forest. This decree provided district or town governments with the authority to grant Social Forest licenses. At the same time, it imposed stricter conditions on Social Forest licensing than Decree 677/1998 had done, mainly due to the bad experiences from 1998. This ministerial decree prohibited Social Forest licenses on conservation forests and on Forest Areas that had not been designated specifically as Social Forest Areas. Regarding the the duration of licenses it also distinguished between temporary and long term licenses, and reduced the duration of a long term license from 35 years to 25 years, with a preparatory phase of three to five years.

Although it tightened the requirements of license granting and reduced the duration of licenses, the 2001 Social Forest Decree still allowed forest communities through their Forest User Groups to manage state forests. The communities had a freedom to decide their forest management model and to settle internal forest tenure conflicts. Many district governments indicated their enthusiasm to grant Social Forest licenses. Nevertheless, their efforts were blocked because the Ministry of Forestry had not designated the Social Forest Areas yet. Internally conflicting views regarding Social

⁷ Information regarding the enactment of Ministerial Decree 47/1998 can be found briefly in 3.5 and is further elaborated in point viii of 7.2 (e).

Forest among the Ministry's officials led to this stagnation. As noted, since its implementation in 1998, Social Forest had seen many failures and very few successes.

Another reason for postponing the designation of Social Forest Areas was the change of forestry legislation. In 2002 GR 34/2002 was enacted and stated that Social Forest should be regulated in accordance with the policy of community empowerment as legalized through a ministerial regulation. Since such a regulation had not been enacted yet, many officials were reluctant to continue implementing the 2001 Ministerial Decree on Social Forest.

The development of Social Forest slowed further down when in 2004 the Forestry Minister of President Megawati Soekarnoputri's administration, Muhammad Prakosa, promulgated a ministerial regulation concerning social forestry (Forestry Minister Regulation P.01/2004). The regulation was meant to be an umbrella regulation for all community-based forest management legislation. Although the regulation did not annul the 2001 Forestry Minister Decree on Social Forest, in practice, many regional forestry officials interpreted the regulation as the successor of Ministerial Decree 31/2001. The officials preferred to develop social forestry projects rather than granting Social Forest licenses.

From 2002 to 2007, the development of Social Forest was suspended. This changed once again, when the Forestry Minister of President Susilo Bambang Yudhoyono's administration, M.S.Kaban, enacted a new ministerial regulation on Social Forest (Ministerial Regulation P.37/2007).⁸ This regulation re-stated the importance of Social Forest. New Social Forest licenses were granted. Recently, the Ministry of Forestry announced a plan to designate two million hectares of Forest Areas as Social Forest Areas until 2014.

When regimes change, so do their laws. That general conclusion is often drawn when legal changes in Indonesia are analysed. But, why would regime change also have consequences for the law? Are laws made just according to the wishes of political leaders as law-makers? Or, are there some other factors that determine the change? I do not deny that professional background, personal experience and preferences of law makers have great influence on law change. Each Forestry Minister, from Nasution to Kaban certainly left personal marks. Nevertheless, I also believe that the law-makers are not always autonomous actors who make their decisions in a social vacuum. This study found that many decisions about new legislation emerged as in response to certain social and political circumstances, as well as to changes of other laws.

⁸ See 4.2 for the explanation and legal basis regarding the use of the terms decree and regulation in legislation at the ministerial level.

The changes within Social Forest legislation demonstrate that a great political change, such as the period of *reformasi*, can force the government to make a new policy, which is consequently turned into legislation. Social pressure at the grass-roots level was definitely a factor in that political change. It dismantled the state's physical control over the Forest Areas. Finally, the enactment of Law 41/1999 on regional autonomy and GR 34/2002 created new legal obligations for other law-makers. They compelled the Ministry of Forestry to replace some Social Forest decrees. So various socio-legal factors were at stake in making and changing Social Forest legislation in different periods.

12.5 DECENTRALIZATION AS ENABLING AND CONSTRAINING FACTOR

Decentralization of forest administration in Indonesia has created a dilemma. It has given regional governments the authority to most Forest Areas. It is common knowledge that regional governments in their management of natural resources such as forest have generally tended to raise their incomes rather than to protect forest and people. This effect of decentralization may be saddening, it is not the whole story in Lampung. I found a range of regional regulations on Social Forest and other community-based forest management, and looked at their implementation. Beside elements and signs of regional revenue-seeking, we seen how the objectives of national policies and law as well as pressures from local social and political contexts also determine the objective and outline of regional legislation and its implementation.

At the outset of *reformasi*, Lampung forestry officials generally believed that Social Forest would be an appropriate solution for handling forest destruction, poverty and conflicts. Social Forest became a preferred instrument, particularly after projects and policies of reforestation and relocation from the 1980s until the mid-1990s turned out to have little success.

The officials' perception of Social Forest license as a tool of earning local revenue emerged following the enactment of Law 22/1999, as decentralization went into effect. This law inspired many regional officials to initiate regional regulations that aimed largely at collecting forestry levies from the communities while granting them licenses to utilize Forest Areas. The Provincial Government took the initiative by enacting Provincial Regulation (*Perda Provinsi*, Provincial *Perda*)⁹ number 7/2000 concerning levies and licenses on collecting non-timber forest products. Officials of the Provincial Forestry Service at the time often justified such regulation by the lack of financial support from the central government to regional forestry development and the underestimation of the value of forest resources collected by the communities.

⁹ See 4.2 regarding the use of terms Provincial *Perda* and District *Perda* in this book.

Not surprisingly, with its focus on seeking revenue, Provincial *Perda* 7/2000 was not intent on securing community property rights. In terms of robustness, duration and protection of rights, this regulation provides less secure rights for forest communities than the national Social Forest legislation. The implementers of this regulation, the officials of the Provincial Forestry Service, seemed to not regard the strengthening of community property rights as their priority. In one of my case studies, they collected levies from the communities on the basis of this regulation without granting these communities licenses (see 9.9).

Provincial Regulation 7/2000 was implemented in most Forest Areas in which Provincial Government had the authority. For Forest Areas that according to the law were under the authority of district governments, the Provincial Government persuaded the district governments to make and implement similar regulations. My research found two districts following the Provincial Government (see 7.3 (c)). In their verbatim reproductions of Provincial *Perda* 7/2000, the district regulations aimed to turn forest resources into sources of district revenues and forest communities into tax payers.

The powers newly granted by decentralization, definitely stimulated the making of these new, profit-seeking, regulations with regards to Forest Areas in Lampung. But there was another reason too; the stagnation of national Social Forest policy in 2002 induced district governments to initiate regulations, particularly in the areas where Social Forest licenses expired. In the view of many forestry officials, the policy stagnation had put them in a difficult corner. They had to respond to forest communities' needs of acquiring legal access to Forest Areas, whilst at the same time the Ministry of Forestry seemed reluctant to implement Social Forest legislation. There was the additional problem that the ministry had not designated the Social Forest Areas yet. Therefore, the Provincial Government and some district governments introduced the license model, as Provincial *Perda* 7/2000 demonstrates.

An unintended consequence of the decentralization introduced by Law 22/1999¹⁰ was that district governments began to feel strongly independent from provincial and central governments. No one could anymore assure that district governments followed national and provincial policies. This was also the case in West Lampung District. Rather than following the Provincial Government in setting up profit-seeking

¹⁰ Law 22/1999 was replaced by Law 32/2004 that revised the political and fiscal relations between district and provincial/central government. Law 32/2004 made the relations more hierarchical than when regulated by Law 22/1999. My research on regional regulations in Lampung was carried out in 2005; however at that time Law 32/2004 had not been effectively implemented yet. This section primarily refers to a situation in Lampung before Law 32/2004 came into effect. For recent developments see also the Epilogue.

legislation, the government of West Lampung enacted District Regulation (*Perda Kabupaten*) number 18/2004) that was aimed at providing an integrative regulation of community-based natural resource management (7.3 (b)).

District Regulation 18/2004 gave the district head a legal basis for granting licenses of natural resource utilization to communities, whether they were considered *adat* communities or not. This legal foundation enabled district forestry officials to grant forestry licenses to communities replacing Social Forest licenses. Given the changes of the Ministry of Forestry's policies on community-based forest management and the stagnation of Social Forest policy, these officials sought for a more stable legal basis of license granting. In their view, District *Perda* 18/2004 formed a solution.

The process of making West Lampung District Regulation 18/2004 was exceptional. A series of public consultations were held with forest communities, and the role of civil society groups was important. They provided legal and technical assistance in drafting the regulation and setting up the public consultations. I call it exceptional since no provincial or district regulation was set up in Lampung at the time in the same way.

A good process of lawmaking and progressive law-makers, did not necessarily lead to a regulation – District *Perda* 18/2004 – which strengthens community property rights. Many provisions of this *Perda* are unsatisfactory in terms of clarity, duration and legal protection, the three elements of legal tenure security (see 7.3.(b)). At this point, we can say that in the sense of securing community property rights, this regulation is not a just piece of legislation.

A lesson from the making of West Lampung Regulation 18/2004 is that attempts at securing the property rights of forest communities can be frustrated by a lack of substantive quality of regional legislation. There is still a lack of capacity among district law-makers to develop a clear concept of community property rights. The assistance of civil society groups has certainly been advantageous, although in the case of West Lampung Regulation 18/2004 the process was perhaps more gratifying than the resulting content of the regulation, particularly the legal security of community property rights. It is fortunate that the regulation aimed to provide a policy direction for natural resource management. Yet, if it aims to consider people as the basis of such management, it should make the rights of these people clear.

Now, I will discuss the last example of regional legislation in Lampung: Central Lampung District Regulation 4/2004 on Social Forest. Through this District *Perda*, the Central Lampung government aimed to combine revenue with the legalisation of forest community rights. To this end, District *Perda* 4/2004 copied almost all provisions from Forestry Minister Decree 31/2001 and provisions concerning forestry levies from Provincial Regulation 7/2000. As Ministerial Decree 31/2001 contained many flawed provisions regarding the legal security of forest community property rights, their

verbatim reproduction into District *Perda* 4/2004 transferred such weaknesses into its provisions.

Is regional lawmaking determined by the personal preferences of its main actors, such as the heads of regional governments, its high officials, and the members of provincial and district councils? This study found that in the period of study people's pressure also is a distinct factor. Social problems in each district have influenced the process. In the case of Central Lampung, we found a very pragmatic approach. District law-makers were influenced from two sides. They wanted to respond to forest communities' needs of acquiring Social Forest licenses, and they also wanted to show their loyalty to the provincial government. For the second motive we can say that the personal preference of district highlevel officials was important. But, for the first motive we need to consider that Central Lampung District, compared to West Lampung, has more complicated forest conflicts and a higher population pressure on forests (see 6.6 and 11.3). The call for a fair regulation of forest dwellers' access weighed heavily. To respond to the pressures from both sides, the Central Lampung District considered a low-risk strategy of law-making.

From our study of Lampung regional legislation we can learn what the main requirements for securing community property rights are in the context of regional autonomy. In the first place, the national legislation should consistently enable provincial/district governments to self-regulate their people and environment in a responsible way. In this respect, Law 22/1999 and its successor Law 32/2004 provide such support. Forestry Minister Decree 31/2001 tried to do the same, albeit its later development undermined the district government's autonomy.

Secondly, good quality of regional legislation is essential. The capacity of regional law-makers to make legal concepts concerning community property rights applicable and their ability to transform the concepts into clear provisions of regional regulation will determine such a quality. The other factor affecting legislative quality is people's participation in law-making. The higher the level of participation of forest communities in making regional regulation, the more responsive the regulations are to the actual needs and problems of communities. Thirdly, there should be a strong intent of key actors in regional governments – the governor, district-head/mayor, the head of Forestry Service and members of provincial/district councils – to legalize community property rights before obliging people to pay forestry levies.

Finally, regional governments should have the capability to overcome social problems, such as major conflicts about land and resources, in the areas where the regulations are applied (see the case studies in chapter 11).

12.6 REDEFINING FOREST TENURE SECURITY OF COMMUNITIES: LESSONS FROM LANGKAWANA

After having discussed the main legal and administrative obstacles to forest tenure security of communities, this section will address another domain of forest tenure, namely the local community, its norms and practices. The case study of Langkawana as described in chapters 8 and 9 is the main source for this section.

In spite of the fact that Langkawana is a migrant community, the villagers indeed form part of a community forest tenure system. We found in Langkawana a normative system that regulates tenure relations among villagers, which is practiced by the villagers and protected by community authorities. The notion of property rights in their local tenure system refers to individual property of land and resources.

Land ownership in Langkawana can be acquired through land clearing (*buka lahan*, *bukaan*), purchase (*beli* or often named *ganti rugi*),¹¹ inheritance (*warisan*), or exchange (*tukar lahan*). Secondary property rights can apply to parcels of land through sharecropping (*bagi hasil*), leasing (*sewa*), pledging (*gadai*; *gade*), and cultivating someone else's land for free (*numbang tanam*). The holders of secondary rights own the plants they cultivate.

Rights over land resources are either permanently or temporarily transferable. Inheritance and land sale lead to a permanent transfer; whilst leasing and all forms of secondary rights imply a temporary transfer of rights. According to the local rules relatives and neighbours should be prioritized when rights are transferred. Land can also be used as collateral for credit, as in the case of land pledging.

In this community tenure system, property rights are not fully exclusionary, thus 'non-absolute'. For example, anyone can pick fruits remaining in their gardens after the harvest season (*leles*) without explicit permission from the owners. People consider the left-over fruits as communal property.

The community property rights emanate from a forest tenure system that had been brought by the Javanese and Bantenese from their home villages to their new land in Lampung. Thus, Langkawana's forest tenure system is a migrant system, which was transferred not by the state or others but by the communities who migrated. As I argued in chapter 8, in Langkawana community property rights do not adhere to the evolutionist or state intervention theories of property rights.

From their first arrival in Gunung Raya Forest until the moment that they obtained a Social Forest license in 1999, Langkawana villagers never had secure property rights on a permanent basis. At the outset, they had to negotiate land transactions with the

¹¹ See 8.7 for their reason of using the term *ganti rugi* for land purchase.

Lampungese who claimed the area as their *adat* land (*tanah marga*). Often, several transactions had to be carried out on the same parcel of land with different Lampungese claimants. When the Lampungese left, the villagers had to deal with forest rangers who often warned them that they were illegal occupants of state forests. In the 1980s the rangers relocated many of the villagers from their housing land or gardens in the Forest Area.¹²

Negotiation and financial compensation were the villagers' common strategies to maintain their rights toward the Lampungese; while dealing with the rangers, people also had to resort to bribes. But, the situation changed when the Ministry of Forestry granted Langkawana villagers through their Association of Forest User Organizations a five year license to conduct Social Forest. It was the first license granted under the framework of Forestry and Plantation Minister's Decree 677/1998.¹³ With this license, the Ministry legalized community property rights and the villagers' access to the Forest Areas. Meanwhile, the villagers had shown their responsibility by setting-up Forest User Groups and making group rules of forest management. The community facilitators had assisted them in those activities.

Apart from the weaknesses of the license from the perspective of normative (legal) security, such as the short period and the limited bundles of rights, Langkawana villagers were quite positive about the license. The main reason for this was that it gave protection from the threats of forest rangers. This shows that beside normative security, actual, physical security is also important. After the Social Forest license was granted, the Provincial Forestry Service recalled the rangers from their posts nearby Langkawana. The newly obtained physical security enabled the community to safely access the Forest Areas. The granting of Social Forest licenses also ended neighbouring forest users stealing fruits from Langkawana villagers' agro-forest gardens.

These developments were in accordance with the villagers' perception of tenure security as a situation of '*aman*' (safe, secure) and '*tenang*' (quiet, free from fear) of forest utilization. *Aman* meant that everyone respected the rights over their forest gardens. *Tenang* connoted a lack of disturbances of or threats against their access to the forest. The two were mutually reinforcing and constituted an integrated concept of perceived tenure security, where the most important aspect were long-term access to the forestland and free from the repression of the forest rangers and disturbances from their neighbours.

¹² For people's strategy of maintaining their property rights towards different claimants see 8.7-8.8.

¹³ See 9.2-9.4 for the process of Social Forest license granting, both at the community level and at the Ministry of Forestry.

The second reason why villagers were so positive was that the license did not intervene with the fundamental principle of community property rights, the recognition of individual property rights. The license recognized the collective rights of Langkawana villagers in 400 hectares of Forest Area but did not abolish the individual property rights. By only recognizing the collective rights and allowing Forest User Organizations to regulate individual property rights in accordance with the community's forest tenure system, the Social Forest license was well received by the villagers. In terms of a legalisation model, we can consider this license as an incorporation of community property rights into a state forest tenure system.

A serious problem arose, however, regarding the benefits which in the perception of Langkawana villagers would make the access to Forest Area worthwhile, and tenure security valuable. The license was granted on land that was covered by *sonokeling* trees (Indian rosewood, *Dalbergia latifolia*), that had been planted by the Forestry Service. This type of tree was of little financial benefit to the forest users. To resolve this problem, the villagers tried to get rid of the *sonokeling*. Many villagers started cutting down the trees, which later on would have negative consequences for Langkawana Social Forest license (see 12.7).

Chapter 2 conceptualised security of community forest tenure as a harmonious combination of norms, actual practices, and actors' perceptions. The Langkawana case has demonstrated how and to which extent legal and norms, practices and perceptions contributed to the ability of a community to use, benefit from and get protection from their forest tenure.

12.7 BEYOND LEGALIZATION OF COMMUNITY FOREST TENURE

The Social Forest license in Langkawana did effectively provide people with physical security, even when legal security was still limited. After the license was obtained, people's enthusiasm to cultivate their forest gardens increased. The Forest User Groups developed collective actions to recover the forest by planting trees in the Social Forest area. In a very short time, people voluntarily reforested the land with better results than the government reforestation projects had achieved in the past. People's incomes from the forest also increased resulting in the improvement of the village economy (tables 9-1 and 9-2). The number and size of conflicts among villagers over forest land and resources also declined significantly. Since the license was in place, the forest rangers had ceased their forest visits. At this stage, Social Forest practices in Langkawana confirmed the thesis that an increase of tenure security would contribute to sustainable and peaceful forest management.

This situation came suddenly to an end, when towards the end of 2001 grand-scale logging took place in the Social Forest area of Langkawana. Did the obtained legal and physical security suddenly stop to work as the people's incentive to protect their forest

environment?¹⁴ Did the logging occur because of that the limited legal security of forest communities due to a lack of ownership rights? This research found was a more complex web of factors behind the breach of people's obligations.

In Langkawana, people's perception of the social and economic value of forest resources has been central in determining their ways of utilizing the forests. Chapter 10 showed that Langkawana villagers cut *sonokeling* because they saw little economic value in these trees. Another reason was that people perceived *sonokeling* a symbol of past oppression by the forest authorities, when they were relocated from the Forest Area.

Secondly, Langkawana villagers logged the trees also as a protest to government's inconsistency in law enforcement and the unresponsiveness of officials to their complaints. People witnessed that forest rangers turned a blind eye to loggers who had a good relationship with them. High-level officials at the Provincial Forestry Service who held the authority over Gunung Raya, also did not immediately respond to people's reports of logging. This led to an increasing number of people cutting the trees.

This case shows that legalization of community forest tenure must be equipped with effective state supervision and protection of the rights and obligations (12.3). Such a protection requires a complaint mechanism regarding social and environmental disturbances in Social Forest Areas, and a state apparatus which responds rapidly and effectively to these complaints.

Thirdly, logging also became more uncontrollable because the villagers saw that their Forest User Groups did no longer operate in an accountable way. Some leading officials of these organizations had abused their powers and discriminated people when they enforced the group rules. The organizations' social legitimacy was faltering. This made it difficult for them to activate people to preserve the forest.

Finally, the role of the community facilitators that assisted people in achieving the Social Forest license, setting up local institutions and fostering collective action of forest protection posed some problems. In Langkawana, these problems related to the fact that they could not accomplish their tasks due to time constraints and the gap of knowledge and skills between the senior and junior facilitators. The juniors that mostly worked with the community some months before the logging did not have sufficient capacity to motivate the community to protect the forest as their senior colleagues did in the past (10.3. (d)).

The implementation of Social Forest policy to fight deforestation requires much more than simply the legalization of community forest tenure. Appropriate

¹⁴ See 10.2 for the chronology of the logging.

government actions of handling public complaints and law enforcement, good conditions of the forest environment and resources, empowered local institutions and proper methods of community facilitation are among the most crucial factors.

12.8 THE END OF SOCIAL FOREST LICENSE, THE RISE OF POLITICAL SECURITY IN LANGKAWANA

The five year period of the Social Forest license in Langkawana ended in 2004. The Forestry Ministry neither granted a long term license as they had promised in 1999 nor extended the temporary license. The official reason was that Forestry Minister's Decree 31/2001 forbade any Social Forest licenses to be granted on conservation forests such as Radin Inten Park. It must be noted, however, that if the status of conservation forest had indeed been the only reason, the officials could have made more efforts to set up collaborative management of conservation areas, as regulated by Forestry Minister's Regulation P.19/2004 (see 5.2 (f) and 12.3 (b)).

Not only, the Ministry but also the Provincial Forestry Service rejected a Social Forest license. The provincial officials wished to comply with Ministerial Decree 31/2001, and they tried to persuade the Langkawana Forest User Groups to apply for a license on collecting non-timber forest products, as regulated by Provincial *Perda* 7/2000. People refused this proposal because of their expectation of obtaining a 35 year license based on Ministerial Decree 677/1998. The Provincial Forestry Service then offered another solution; they assured people of access to the Park without any license as long as they agreed to be 'supervised' by the Provincial Forestry Service (*di bawah pembinaan*) in terms of their forest management, and more importantly to pay forestry levy, as required by Provincial Regulation 7/2000.

The discourse of supervision or *pembinaan*, as developed by the regional forestry officials, clearly shows how the regional government shifted from valuing the people's need of a security guaranteed by the law to the officials' idea of security based on politico-administrative control and the economic motive of collecting levies from the people. Not only in Langkawana; the officials' discourse of *pembinaan* was broadly used in other districts such as in Central Lampung (7.4).

Without a license, the levies that were collected from Langkawana were in fact illegal. But none of the villagers challenged these practices, although they did not accept them as just either. Paying the illegal levies was the strategy of the majority of villagers to maintain their secure access to the Forest Area. In addition, they viewed maintaining good relations with forestry officials as another source of tenure security.¹⁵

¹⁵ See 9.7 for different people's perceptions on tenure security after the expiration of the Social Forest license in Langkawana.

12.9 THE LIMIT OF SOCIAL FOREST LEGISLATION: LESSONS FROM CONFLICT-RIDDEN AREAS

In areas where there are many incidences of conflict between forest inhabitants, there are serious risks involved in the implementation of Social Forest legislation before such internal conflicts are resolved. Lampung Forest Areas have been arenas for conflict involving people vis-à-vis the government and amongst people, whether they are recognized as indigenous (*adat* community) or migrants.

Chapter 11 described some of those conflicts, notably in Tangkit Buku Jadi Forest Area in the district of South Lampung and in Way Kejayaan Forest Area in the district of Central Lampung. The conflicts dated back to the colonial policy that designated communal *adat* land of the Lampungese as state forest with or without the Lampungese's consent. In Tangkit Buku Jadi, the colonial government also brought in Javanese migrants and gave them land on such forest under the policy of *kolonisatie*. Afterwards, the national government continued to allocate Forest Areas to Javanese and Sundanese migrants.

In 2000, the government released part of Tangkit Buku Jadi forest from state control and let the migrants or the companies buy land certificates on the ex-forestland. Considering this as a discriminatory policy, the Lampungese started to reclaim the forests. Yet, conflicts were not exclusively between indigenous and non-indigenous people. There were also conflicts between older and newer migrants. The older migrants were those who had entered the forest under the official regime of *kolonisatie* and who gave themselves more legitimacy in terms of staying in the forests than the other migrants who had come to the forest on their own account. All the claimants used different political, economic and cultural bases for their land claims (11.2 and 11.3).

An important aspect of these case studies relates to Social Forest policies. People in Tangkit Buku Jadi and Way Kejayaan, whether indigenous/*adat* or migrants, tried to obtain Social Forest licenses. The important lesson from these areas is that although the forest communities and dwellers¹⁶ eventually could not acquire the licenses, they competed to obtain Social Forest licenses in order to have legal recognition of their claims.

The Lampungese knew that Social Forest policy and law neither granted them ownership rights nor returned their *adat* land. Still, they tried to use Social Forest licenses merely for strengthening their position toward other claimants. Moreover, Social Forest was their short term strategy to obtain government recognition of their

¹⁶ See 2.2 for the notion of forest dwellers and how they differ from forest communities.

adat land. In a similar manner, the Javanese migrants and the newer forest inhabitants would also use the Social Forest license to justify their claims.

If Social Forest licenses would indeed have been granted in areas like Tangkit Buku Jadi and Way Kejayaan, they would be much challenged. The same would apply to other models of community forest management. Without freeing the Forest Areas from conflicts amongst indigenous and non-indigenous land claimants, Social Forest would be less effective. Serious problems would already occur when forestry officials to implement Social Forest, would have to identify the most appropriate target groups as the license holders.

12.10 CONCLUSION: SEEKING FOR A FUNDAMENTAL LEGAL REFORM OF FOREST TENURE

Despite its various weaknesses in providing satisfactory legal security of community forest tenure, Social Forest legislation and licensing have still given much hope to many forest communities. Nevertheless, national policy and law concerning the models of licensing has remained unstable due to changes of Social Forest legislation between 1998 until the present. As I mentioned in chapter 1, even up to 2010, the Ministry of Forestry was still amending the Ministerial Regulation on Social Forest (Regulation P. 37/2007). These amendments were carried out to revise the procedure for designation of Social Forest Areas.

It must be appreciated that Indonesian Ministry of Forestry has been seeking to improve regulations on Social Forest or community-based forest management. Furthermore, the case of Lampung provides us with several lessons on how Social Forest licensing might be able to achieve the objective of preserving the forests and improve the well-being of forest communities as well as to resolve conflicts in Forest Areas.

Securing community forest tenure is a matter of adjusting and harmonizing prevailing norms, practices, and perceptions. Legislation should provide and strengthen legal security of community forest tenure. However, in both national as well as regional legislation problems regarding clarity of legal provisions, limited duration and limited protection of rights continue to exist. Similarly, forest tenure systems rooted in the community are also often deficient in securing community's rights. The normative basis for Social Forest is further weakened due to two critical problems regarding the legal status of land and forest, which will be discussed below.

In addition to these normative problems, this study has shown serious shortcomings in the practices of state institutions and officials and of community leaders to actually protect community rights and access to Forest Areas consistently, and in accordance with their own normative sources. This has also affected security of forest tenure. When state institutions were also not sufficiently aware of perceptions prevailing

among the majority of community members, their regulation and management to promote community-based forest management were bound to fail.

Policy efforts to achieve social & environmental justice through forest tenure security for communities have also been challenged by inadequate physical and social conditions of Forest Areas. For example, in Lampung, forests with economically less valuable resources decreased the interest of communities to preserve them. Meanwhile, unresolved conflicts in Forest Areas proved to be another obstacle for implementing Social Forest policy.

In addition, this study identified two crucial legal problems concerning the Forest Areas which may have the potential to undermine any Social Forest policy. In the first place, this study concludes that the legal status of most of the forest areas in Indonesia is weak due to the fact that almost 90 % of the 'Forest Areas' are still in the designation phase and have not been formally enacted as Forest Area yet. The designation of the Forest Areas is not a legal assurance that these areas are free from people's claims. The designation is largely a governmental unilateral decision to administratively declare certain land as Forest Area. Without forest delineation and participatory mapping, we may expect all kinds of unresolved overlapping and contested claims between forest communities and the Ministry of Forestry. The Ministry of Forestry is aware this situation. Over the last decade it has made more serious efforts to develop and implement a national program of forest delineation. However progress is slow, as approximately a mere 12 % of the Forest Areas has been enacted.

Secondly, there remains the problem of legality of the Ministry of Forestry's claim on the whole of Forest Areas, as chapter 4 discussed. The state can only provide secure rights to forest communities if the state itself has legal security of tenure on those forest lands. This problem cannot be resolved by the enactment of Forest Areas. This study suggests that Indonesian Ministry of Forestry should seek for a proper legal basis of its claims to Forest Areas.

The urgent need to manage Indonesian Forest Areas in ways that enhance preservation, productivity, and social and environmental justice, demands that after more than a decade of experimenting with various policy models, in the next period Social Forest policy and law will go forward in terms of the areas it covers, the number of licenses it grants to forest communities, and most importantly in terms of the quality of legal security it provides. Incremental changes to Social Forest legislation as have been carried out by the Ministry of Forestry in the last decade are definitely important to improve the quality of legislation. However, those improvements will get entangled or even undone unless the underlying problems of the legality of the Ministry of Forestry's claim over Forest Areas will be resolved. It is the right time for Indonesian government to underpin its incremental reforms with the necessary fundamental revision of its land and forestry law.

