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

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EPILOGUE

After the policy of Social Forest (*Hutan Kemasyarakatan*) had stagnated for around five years, it eventually experienced a revival in 2007. Minister of Forestry Regulation number P.37/2007, which replaced Minister of Forestry Decree 31/2001, contained a new procedure for granting Social Forest licenses and enacting the work areas of Social Forest (*Areal Kerja Hutan Kemasyarakatan*), henceforth Social Forest Areas. This regulation also ended uncertainty about the future of many temporary Social Forest licenses. As has been described in section 3.6, during 2002–2007 many licenses could not be extended due to the Ministry's suspension of the implementation of Social Forest policy. The ministry had not formally annulled Ministerial Decree 31/2001 as the legal basis for granting temporary licenses of Social Forest. But they did not grant or extend any licenses or allocate any areas to implement Social Forest.

Several reasons were behind this, as also described in section 3.6. Malpractices in granting Social Forest licenses by several heads of districts (*bupati*) was one prominent factor. The Ministry of Forestry found that many heads of district used the term Social Forest for granting timber felling licenses. Another factor was the enactment of GR 34/2002 on Forest Structure and the Making of a Plan for Management and Utilization of Forest and Forest Areas. This regulation stated that Social Forest should be conducted under the policy of community empowerment (Article 51). This gave rise to interpretations by high level officials at the Ministry of Forestry concluding that Ministerial Decree 31/2001 could not be applied until there was a new regulation on the empowerment of forest communities. In 2004, such regulation was finally enacted. It was a ministerial regulation concerning Social Forestry (Regulation P.1/2004). Instead of strengthening Social Forest policy, the Social Forestry Regulation promoted a different model of people's participation in forest management and applied this in some projects of Social Forestry. Neither the regulation nor the projects provided secure forest tenure for the communities. Nevertheless, in the regions (*daerah*), forestry officials generally assumed that the Social Forest policy model had been replaced by Social Forestry projects.

After the enactment of Minister of Forestry Regulation P.37/2007, several changes in Social Forest legislation and licensing took place. The procedure of license granting as regulated by Ministerial Regulation P.37/2007, for example, has been revised twice, in 2009 and 2010. Long-term licenses of Social Forest have been granted to forest user groups in three provinces: Lampung, Yogyakarta and West Nusa Tenggara. In 2009,

the Ministry of Forestry set itself a target of allocating 400,000 hectares of Forest Areas suitable for Social Forest licenses. Then, as stated in its Strategic Planning document 2010–2014 (Minister of Forestry Regulation P.08/2010), the Ministry of Forestry is planning on allocating a total of two million hectares of Social Forest Areas between 2010 and 2014.

These developments have raised optimism among Social Forest proponents in Indonesia. But, will all changes in policy and law be able to strengthen the security of community forest tenure? This Epilogue attempts to explore that question.

Because I had the opportunity to access regulations at the Ministry of Forestry in Jakarta and to communicate with some of the policy makers, I was provided with sufficient data to detect trends in post 2007 Social Forest policy. Unfortunately, about regulation and implementation in Lampung, I was more limited in gathering data. As my field research ended in 2006 and I have not been back since, I could not observe accurately how the revival of Social Forest policy at the national level impacted the province in general, and the communities of my research in particular. Therefore, to understand the recent development of Social Forest in Lampung, I relied mostly on secondary sources originating from research reports and newspapers. In addition I had regular contact with some reliable people, who had visited Langkawana. Unfortunately, I did not have any update from Gedong Gajah, Kebagusan and Mataram Raja. This method did not allow me to achieve the same profound level of obtaining data and information as in 2004–2006. However, my findings do seem sufficient to also draw a general picture of the development of Social Forest policy and licensing in Lampung.

With the data I obtained from national and regional policy papers, I found changes and continuity pertaining to the concept, regulation and practices of Social Forest. The following sections are an exploratory attempt to describe what has changed and what has remained the same in the policy and legislation of Social Forest as well as in the everyday lives of Langkawana villagers.

The enactment of Social Forest Areas: from people to state initiative

The Ministry of Forestry amended Ministerial Regulation P.37/2007 for the first time through Regulation P.18/2009. Then, the second amendment was put through in 2010 through Forestry Minister's Regulation P.13/2010. These amendments were mainly related to the procedure of enacting Social Forest Areas (Articles 8 and 9 in Minister of Forestry Regulation P.37/2007).

According to Article 8 of Ministerial Regulation P.37/2007, the enactment of a Social Forest Areas starts with the initiative of a forest user group who wants to apply for a license. This group must send its application to the district-head/mayor, or to the governor if the Forest Area it wants to use is located in a cross-district area. With its application, the forest user group submits sketch maps of their proposed areas with all information regarding the location and borders. Then, the district-head/mayor, or the governor, verifies these locations. A team set up by the regional government undertakes the verification. Once the result of the verification is positive, the district-head/mayor or the governor proposes to the Forestry Minister to enact this location as a Social Forest Area.

After receiving the proposal, the Minister of Forestry verifies the location. Like the procedure at the regional level, a team is established to do such verification.

Originally Article 9 as found in Ministerial Regulation P.37/2007 stated that this team had to consist of first-echelon officials in the Ministry of Forestry. They were to be coordinated by the head of a special unit in the Forestry Ministry, namely *Badan Planologi*. This unit was responsible for carrying out the whole process of Forest Area establishment (*pengukuhan kawasan hutan*).¹ The amended Article 9 in Ministerial Regulation P.18/2009 replaces the position of the head of *Badan Planologi* with another first-echelon official, the Director General of Land Rehabilitation and Social Forestry. The idea that Social Forest policy is a core authority of the Directorate General of Land Rehabilitation and Social Forestry could be the reason for this replacement.

A major change within the enactment procedure of Social Forest Areas can be found in Forestry Ministry Regulation P.13/2010. This regulation changed the provision of Article 8 in Ministerial Regulation P.37/2007. As I described above, the old Article 8 applied a bottom-up approach to the enactment procedure. Forest community and regional government had a broader role in this procedure. An official of the Ministry of Forestry who had been actively involved in the making of Regulation P.37/2007 said that the approach chosen in this regulation was based on a lesson learned from the implementation of Ministerial Decree 31/2001. Many district governments could not grant Social Forest licenses due to the absence of Social Forest Areas enacted by the Ministry of Forestry. The procedure of enacting a Social Forest Area at that time was complex, thus time-consuming. Officials of *Badan Planologi* assumed that the procedure should follow the general procedure of enacting Forest Areas (see figure 4-1). As a result, no Social Forest Areas had been enacted until 2007. This was the main obstacle

¹ For the process of establishing a Forest Area see chapter 4, particularly figure 4-1.

to granting Social Forest licenses, since according to Ministry of Forestry Regulation 31/2001 licenses could only be granted on enacted areas of Social Forest. To avoid such problems, Forestry Ministry Regulation P.37/2007 allowed the forest communities to propose forest land they had cultivated to be a Social Forest area. Thus, there would be more Forest Areas fully enacted as Social Forest Areas.

But, Minister of Forestry Regulation P.13/2010 changed this process. The new Article 8 as found in this regulation states that the process of enacting a Social Forest Area starts with the initiative of a unit of the Directorate General of Land Rehabilitation and Social Forestry: a technical operation unit (*unit pelaksana teknis, UPT*) at the provincial level to determine the proposed areas of Social Forest. This proposal must be the result of coordinated efforts between the regional government and units of the Ministry of Forestry. The technical operation unit facilitates communities in these areas to apply for a Social Forest license. Then, regional governments – district-head/mayor or governor – propose to the Forestry Minister to enact the area as Social Forest area. The Minister establishes a team to verify the area. The eventual decision is based on the team's recommendation.

Forestry Minister's Regulation P.13/2010 states that this amendment was included to simplify the procedure of enacting Social Forest Areas. Nevertheless, we can see that this regulation has moved the initiative from the people to the state. This process could raise some practical questions, such as whether the technical operation unit's proposed area will fit with the people's need or not. Who can guarantee that this unit will actively seek for and determine the areas of Social Forest?

Changes without correction

In chapter 5 we have seen that Ministerial Regulation P.37/2007 contains weaknesses in terms of strengthening legal security of community property rights. The limited bundles of rights and their weak legal protection are two major problems of this regulation. As with other Social Forest regulation, Forestry Minister's Regulation P.37/2007 does not allow forest communities to hold land rights over their Social Forest Areas. The regulation also does not have an adequate provision anticipating the protection for license holders toward unfair license termination by district-head/mayor or governor. Certainly the communities can go to administrative courts; however, given the fact that their access to courts, notably to a fair judicial process, is limited, it is dubious whether the court mechanism would be an effective way of achieving legal protection of the rights.

The two amendments of Ministerial Regulation P.37/2007 did not resolve these problems. As the previous section has described, the amendments were primarily

initiated toward the enactment procedure of Social Forest Areas. How can the process of enactment and the conditions of Social Forest Areas provide secure forest tenure for communities, if the licenses limit their rights?

Ambition for Social Forest and profit-seeking licensing in Lampung

In December 2007, Muhammad Jusuf Kalla, the Indonesian vice-president at that time, attended the launch of a new model of Social Forest policy in Yogyakarta. At this ceremony, he made public three provinces as the locations for developing Social Forest. Lampung was one of these provinces. The Ministry of Forestry granted 35 year Social Forest licenses to 11 forest user groups over around 5,400 hectares of Forest Areas in the districts of West Lampung, North Lampung and Tanggamus (Watala 2008:5).

The regional governments in Lampung were keen to implement the new model of Social Forest. In 2009, as reported by a local NGO named Watala, the provincial government targeted 85,000 hectares of Forest Area to be granted a Social Forest license. I do not have any data to show whether the government was successful in reaching this target. Yet, the latest developments in Lampung show that several districts other than those mentioned above intend to implement Social Forest as modeled by Forestry Minister's Regulation P. 37/2007. A range of activities has been carried out by these district governments, such as taking a census of forest communities or dwellers, facilitating them to establish forest user groups, or mapping the areas which had been cultivated by the communities.

Has Social Forest become the priority of the regional governments' policy in Lampung? A close reading of a report on Social Forest and other community-based forestry licensing in Lampung reveals that the profit-seeking model of licensing is still dominant. As I discussed in 7.3, this type of license originates in Provincial Regulation 7/2000 concerning the license and levy of collecting non-timber forest products. In 2007, the Minister of Home Affairs annulled this regulation due to the reason that it hampered investment growth. Interestingly, district regulations that were enacted to follow-up Provincial Regulation 7/2000 were never annulled, or evaluated. In many districts in Lampung we can find that these regulations are implemented. In districts where the new model of Social Forest licensing has been implemented, such as in the districts of Tanggamus and North Lampung, 'profit-seeking licenses' are continuously being granted (Watala 2008:30,33). Similarly, in the district of Central Lampung, a district regulation on Social Forest has been used to legitimize the granting of a yearly license for collecting non-timber forest products – again a profit-seeking license. West Lampung forms an exception to this trend. In this district, the government refused to apply profit-seeking licensing but promoted a long-term license of Social Forest (Watala 2008:38).

Langkawana: Trapped into a conservation forest

In chapter 10 we learned that the provision of Forestry Minister's Decree 31/2001 that prohibited the granting of Social Forest licenses in conservation forest was the major obstacle to the extension of the temporary license of Langkawana Social Forest. The license that the Langkawana villagers obtained in 1999 on the basis of Ministerial Decree 677/1998 ended in 2004. But, the regional government refused to extend it since the license was granted on a grand forest park, a type of conservation forest.

In 2007, there was new hope for Langkawana. GR 6/2007 that replaced GR 34/2002 stated that Social Forest can be applied also in conservation forests (Article 92 (1)). Nevertheless, this hope disappeared, when Forestry Minister's Regulation P.37/2007 limited once more the areas of Social Forest to protection and production forests only (Article 6). Officials of the Ministry of Forestry argued that excluding conservation forests in this respect was due to the Ministry's plan of setting up a specific policy of community-based forest management in conservation forests. At the time of writing, a ministerial regulation concerning models for villages in and surrounding conservation forests (*model desa konservasi*) has been drafted but not yet finalised. In addition, the Ministry also intends to revise Law 5/1990 as the legal basis for managing conservation forests. Whether these initiatives of lawmaking can be used to assist Langkawana villagers obtaining rights to manage the forest is a question which needs further research.

As my informants told me, Langkawana has remained unchanged. People cultivate their agro-forest gardens in Radin Inten Grand Forest Park without any license. There have been no logging scandals as occurred in 2002. Forest user groups do no longer function. Conflicts among villagers are resolved by village functionaries or traditional leaders. Forest rangers do not threaten people.

What should we conclude about Langkawana in this respect? Can a situation of safety and free from fear (*'aman and tenang'*) as perceived by Langkawana villagers – their subjective notion of secure forest tenure (see 9.6) – be achieved without legalization of community property rights and access to Forest Areas? Findings and conclusions in 9.7 and 9.8 confirm that living without a license was not an ideal situation for Langkawana villagers. But, it has become the situation they had no choice but to live with. Their survival strategies have not led to legal security of forest tenure, but they did lead to another facet of security, namely physical security in cultivating forest land. The question is how this physical security can be maintained. I assume that a predictable policy and law is necessary: not only for providing legal certainty but also for assuring legal protection of people's rights. How the villagers think about their future in the Forest Area is another important question for further research.

To sum up, the changes of policy, legislation and licensing of Social Forest in 2007–2010 mainly related to the procedural aspects. The reforms dealt with questions such as how to set up a procedure of the enactment of Social Forest Areas and which officials have the authority to lead the process. Meanwhile, most substantive aspects pertaining to tenure security were not revised. The present regulation on Social Forest still contains inadequate provisions concerning the elements of rights' robustness and protection. The way in which forestry legislation corrects these weaknesses will be an indicator of the commitment of the Indonesian government to strengthen tenure security of forest communities. Another indicator will be the policy trends of provincial and district governments who apply for Social Forest: is it to empower communities or to share the responsibility of forest protection, while collecting levies for regional revenues. Finally, the future of Social Forest or other community-based forest management policies will also be determined by the degree of predictability of government policy for forest communities.

