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

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GLOSSARY

Adat	Custom
Adat communities	Customary-based communities
Adat Forest	State forest managed by *adat* communities (according to Law 41/1999); forest found on land belonged to *adat* communities (according to the communities)
Adat law, *hukum adat*	Customary law
Adatrechtsgemeenschap	Legally autonomous *adat* communities, see *masyarakat hukum adat*
Afdeling	Department, a local unit of colonial administration
Agraria	A term used in Indonesian legislation to mention land, water and all natural resources as found in rural and urban areas
Aman	A term used by Langkawana villagers to indicate secure property rights held by community members
Anti pembangunan	A discourse of New Order government to mention all people's activities perceived by the government as against development program
Areal kerja Hutan Kemasyarakatan	Area of Social Forest management
Assistant resident	The head of department (*afdeling*) in colonial administration
Azas perusahaan	Principle of business management
Badan Penguasa	State authotities' body
Bagi hasil	Profit sharing or share cropping
Bandar	Non-Lampungese people acting as the representative of Sultans of Banten to oversee pepper trading in pre-colonial Lampung

Bapakism	Fatherism, a leader-folower relation in the New Order bureaucrcy
Bawon	A Javanese tradition of share cropping
Beschikkingsrecht	Right of avail (of *adat* communities)
Bosch Ordonantie	Colonial Forestry Law (for Java and Madura)
Bupati	Head of district
Cabang–cabang produksi penting	Vital production sectors
Cagar alam	Nature reserve
Camat	Head of sub-district in present regional administration Indonesia.
Controleur	A head of sub-district (*onder afdeling*) in colonial administration
Cultuurstelsel	Cultivation system, a colonial policy of transforming traditional agricultural practices into state and later private companies-led commercial agro-industries in Java.
Daerah	Region (administrative units consist of province, district and town)
Daftar tanah	Land register
Damar	A kind of natural resin, *Shore javanica*
Demang	Indonesian who head a sub-division of onder *afdelling* in colonial Lampung
Desa	Village
Desa induk	Mother village
Direct bestuur	An area directly governed by colonial government
Dusun	Hamlet
Ekonomi kerakyatan	People-based economy
Gadai	Pledging agreement
Ganti rugi	Payment of compensation

Gemeinschaft	A social group with intimate, private and exclusive social relations, see *paguyuban*
Hak membuka tanah	Right to clear land
Hak memungut hasil hutan	Right to collect forest products
Hak menguasai negara	State's right of controlling land, water and natural resources
Hak menumpang	A right to use another's land
Hak milik	Land ownership right
Hak pakai	Right to use land
Hak pengelolaan	Right to manage state land
Hak pengelolaan desa	A (land) management right of a village
Hak pengusahaan	Right to commercially utilize
Hak pengusahaan Hutan Kemasyarakatan	Right to Social Forest Utilization (used in Forestry and Plantation Minister's Decree 677/1998)
Hak sewa	Right to lease
Hak ulayat	A communal land right of an *adat* community, see *beschikkingsrecht*
Hak yasan, andarbeni, ganggam bauntuik, bengkok	The names of communal land of *adat* communities as found in Basic Agrarian Law
HPH Bina Desa Hutan	Village development program of Forest Concession
HPH Kultur	Forest estate license granted in 1970s in Lampung
Hutan Adat	*Adat* Forest
Hutan Desa	Village Forest
Huta Hak/Hutan Rakyat	Private Forest/People's Forest
Hutan Kemasyarakatan	Social forest (state forest management aimed to empower communities)
Hutan Konservasi	Conservation Forest
Hutan Lindung	Protection Forest

Hutan Produksi	Production Forest
Izin	License
Izin Kegiatan Hutan Kemasyarakatan	License for Social Forest Utilization (used in Forestry Minister's Decree 31/2001)
Izin Pengusahan Hutan Kemasyarakatan	License for Social Forest Utilization (used in Forestry Minister's Regulation P.37/2007)
Jagawana	Forest ranger, see *mantri*
Jati	Teak
Kabupaten	District
Kampung atas	Upper settelement
Kampung bawah	Lower settelement
Kampung tua	Old kampong
Kanwil	*Kantor wilayah* (regional office of central government institutions)
Kawasan hutan	Forest Area
Kebun	Garden
Kebun berisi	A fully-planted garden
Kebun terlantar	An abandoned garden
Kecamatan	Sub-district
Kelola kawasan	Forest area managment (in 2004 Forestry Minister's Regulation on Social Forestry)
Kelola kelembagaan	Institutional management (in 2004 Forestry Minister's Regulation on Social Forestry)
Kelola usaha	Business management (in 2004 Forestry Minister's Regulation on Social Forestry)
Kelompok tani hutan	Forest farmer group
Kelurahan	Urban quarter
Kemitraan	Company-community partnership of state forest management

Kepala lingkungan	Head of sub-village unit
Kepala negeri	Head of *negeri*
Kolaborasi pengelolaan kawasan konservasi	Collaborative management of forest conservation
Kolonisatie	A policy of Dutch colonial government of migrating Javanese to other less dense population regions, mainly Lampung.
Konsitusi RIS	*Konstitusi Republik Indonesia Serikat* (The Consitution of Indonesian Federal Republic in 1949).
Koperasi	Cooperative
Kota	Town
Krismon	*Krisis moneter,* economic crisis took place in Indonesia in the late New Order.
Ladang permit	License for forest clearing and cultivation in the 1950s in Lampung
Leles	A tradition of collecting fruits lying on the land or those which are still on the trees after the land owners harvesting the fruits.
Lembaga desa	Village institution
Lingkungan	Sub-village unit in a town-quarter
Lurah	Civil servant appointed as head of urban-quarter
Maklumat Residen	A public announcement of Resident
Mandor	A villager acting as the representative of Forestry Service to overseeing Forest Area
Mantri hutan see jagawana	Forest ranger
Mantri–lurah project	Cooperation between forest ranges and village head in keeping the areas of Perhutani.
Marga	A traditional socio-political unit of the Lampungese
Maro/paroh lahan	A sharecropping system with an equal crop sharing between land owner and cultivator

Masyarakat adat	*Adat* communities (customary-based communities)
Masyarakat hukum adat	Customary law-based communities, see *rechtsgemeenschap*
Masyarakat setempat	Local communities
Mendukung pembangunan	A discourse of New Order's officials to mention any activities that support the govermment's policy
Musyawarah	Consensus
Numpang tanam	Free cultivation
Negeri	An upper-village administraton set up in 1952 in Lampung to replace *marga* administration
Onder afdeling	Sub-department, in regional administration during Dutch colonial times
Operasi pengamanan hutan terpadu	Integrated Operation of Forest Safekeeping
Orde Baru	New Order (a period of President Suharto's administration, 1966–1998)
Orde Lama	Old Order (a period of politically strong administration of President Soekarno, 1950–1966)
Paduserasi	Integrated harmonization of Forest Land Use Agreement and Provincial Spatial Plan
Paguyuban	A social group with intimate, private and exclusive social relations, see *gemeinschaft*
Pangkat	Lampungese acting as the resprsentative of the Sultans of Banten to oversee pepper trading in pre-colonial Lampung
Pasirah Stelsel	A policy of Dutch colonial government to recognize *marga* as a self-governing administration of the Lampungese
Pedagang pengumpul	Middleman
Pelepasan kawasan hutan	The release of Fores Areas from the authority of the Ministry of Forestry
Pekon, tiuh, anek, kampung	Names of Lampungese traditional villages

Pemberdayaan masyarakat	Community empowerment
Pembinaan	Supervision
Pemerintah Daerah	Regional government, consists of provincial, district and town governments
Pemuda	Young leaders
Pendataan	Data gathering
Pendatang	Migrant
Pendatang sah	Legal migrants
Penetapan kawasan hutan	The enactment of Forest Areas
Penggarap	Cultivator
Penggarap tanah	Land cultivator
Penghijauan	Regreening
Pengojek	A hired motorcyclist
Pengukuhan kawasan hutan	The establishment of Forest Areas
Penyetahan sebagian kekuasaan	Partial delegation
Penunjukan kawasan hutan	The designation of Forest Areas
Pepadon	A traditional ceremony of the Lampungese to publicly declare someone as part of *marga* clan
Perambah hutan	Forest encroacher
Perda	*Peraturan Daerah* (Regional regulation; consists of Provincial Regulation (Provincial *Perda) and District Regulation* (Distict *Perda)*
Peraturan Desa	Village Regulation
Perhutani	State-owned forestry corporation, mainly operate in Java, Bali and Nusa Tenggara.
Perhutanan sosial	Social Forestry
Peserta Hutan Kemasyarakatan	Participants of Social Forest project
Pinjam pakai tanah kawasan hutan	An agreement to lend-and-use land in Forest Area

Pribumi	Native
Proyek Pengamanan Hutan	The project of forest safe-keeping
Provinsi	Province
Peraturan Pemerintah	Government Regulation
Peraturan Presiden	Presidential Regulation
Reboisasi	Reforestation
Rechtsgemeenschap	Community bound by its law
Reformasi	A period of political change after the resign of Suharto in May 1998
Regenschap	Regency
Ruwatan	A Javanese ceremony aimed at driving away evil spirit or misfortune from people's life
Sekapur sirih	A Lampungese tradition held to allow outsiders using *marga* land.
Sewa	Rent
Sonokeling	Indian rosewood *(Dalbergia latifolia)*
Suaka margasatwa	Wildlife sanctuaries
Surat edaran	Circular letter, a policy rule of Indonesian bureaucrates to lower-level authorities.
Surat pernyataan	Declaratory letter
Swapraja	Self-governing area in Dutct colonial times, see *zelfbesturend*
Taman Hutan Raya	Grand Forest Park (under the authority of provincial or district government)
Taman Nasional	National Park (under the authority of central government)
Taman Wisata Alam	Nature Recreation park (under the authority of central government)
Tanah bongkar/belukar	Fallow land

Tanah garapan	Cultivated land
Tanah hak pengelolaan	Land with management rights
Tanah kawasan/tanah kehutanan	Area land/Forestry Service land (land in Forest Area)
Tanah marga	*Marga* land (land belongs to *marga*, or land located in non-non-Forest Area)
Tanah negara	State land
Tanah pemerintah	Government's land
Tanah ulayat	*Ulayat land* (communal land of *adat* communities)
Tanah pengganti	Compensated land
Tanah untuk rakyat	Land for the people
Tanah wakaf	Islamic endowment land
Tanah yang dikuasai langsung oleh negara	Land directly controlled by the state
Taungya	A Burmese word of intercropping practices of timber and agricultural crops planting on forest land, see *tumpang sari*
Tenang	Free from fear (a situation of lack of disturbance or threats against people's acces to forest)
Tim Pengamanan Hutan Terpadu	Integrated Forest Security Team
Tolong–menolong	Mutual help
Translok	*Transmigrasi lokal* (intra-migration program)
Transmigrasi	Resettlement
Tukar lahan	Land exchange
Tukar-menukar tanah kawasan hutan	The exchange of forest land
Tumpang sari	Intercropping timber with agricultural crops, see *taungya*
Umbulan	Small hamlet
Undang-undang	Law

Undang-undang Dasar	Constitution
Undang-undang Pokok	Basic Law
Urusan agraria	Agrarian affairs
Usaha bersama	Collective actions
Ustad	Islamic religious teacher
Walikota	Mayor
Warung	Stall
Wedana	District head in colonial administration
Yasa/yoso	Ownership
Zelfbesturend	Self-governing area, see *swapraja*

APPENDIX 1. LIST OF LEGISLATION

Colonial legislation

Staatsblad van Nederlandsch-Indië 1865, no. 97	Teak exploitation
Staatsblad van Nederlandsch-Indië 1874, nos. 78-79	Clearings ordinance
Staatsblad van Nederlandsch-Indië 1874, no. 94f	Domain Declaration for Sumatra
Staatsblad van Nederlandsch-Indië 1875, no. 216	Police and penal regulation on forest
Staatsblad van Nederlandsch-Indië 1918, no. 74	The preliminary provisions for the protection of state forests
Staatsblad van Nederlandsch-Indië 1927, no. 221	Colonial forestry ordinance

National legislation

1949 Federal Constitution	
1945 Constitution	
1950 Provisional Constitution	
Decree of the Provisional People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat Sementara-MPRS*) number II/MPRS/1960	The general and planned national development planning model (*Pola pembangunan nasional semesta berencana*)
Decree of People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat -MPR*) number III/*MPR*/2000	Legal sources and the hierarchy of laws and regulations
Decree of People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat -MPR*) number IX/*MPR*/2001	Agrarian reform and natural resource management
Decree of People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat -MPR*) number I/MPR/2003	The review of the substance and legal status of *MPR* Decrees from 1960 to 2002
Law 5/1960	Basic provisions on *agraria* (Basic Agrarian Law)

Law 56/Prp/1960	Maximum size of agricultural land
Law 1/1967	Foreign investment
Law 5/1967, replaced by Law 41/1999	Basic provisions on forestry
Law 11/1967 replaced by Law 4/2009	Basic provisions on mining
Law 6/1968	Domestic investment
Law 5/1990	Conservation of living natural resources and their eco-systems
Law 24/1992, replaced by Law 26/2007	Spatial planning
Law 4/1996	Mortgage
Law 40/1997	Limited company
Law 22/1999, replaced by Law 32/2004	Regional government
Law 41/1999	Forestry
Law 20/2002 (annulled by Constitutional Court Decision Case number 001-021-022/PUU-I/2003)	Electrical power
Law 22/2002	Oil and natural gas
Law 27/2003	Geo-thermal energy
Law 7/2004	Water resources
Law 10/2004	The making of legislative regulation
Law 18/2004	Plantation
Law 19/2004	The enactment of Government Regulation in Lieu number 1/2004 concerning the revision on of Law 41/1999
Law 31/2004	Fishery
Law 32/2004	Regional government
Law 25/2007	Investment
Law 27/2007	Coastal management and small islands
Law 4/2009	Mineral and coal mining

Law 32/2009	Environmental protection and management
Government Regulation 20/1952	Organizational structure and executive management of state ministries
Government Regulation 8/1953	The control over state lands
Government Regulation 64/1957	The partial delegation of central government authority over fisheries, forestry and small holder rubber plantations to provincial government
Government Regulation 224/1961	The implementation of land redistribution and payment of land compensation
Government Regulation 21/1970	Rights on forest utilization and forest product harvesting
Government Regulation 28/1985 replaced by Regulation 45/2004	Forest protection
Government Regulation 24/1997	Land registration
Government Regulation 68/1998	The area of nature reserves and preservation
Government Regulation 6/1999	Forest exploitation and forest produce collection in production forest
Government Regulation 25/2000 replaced by Government Regulation 38/2007	The division of government authority
Government Regulation 34/2002 replaced by Government Regulation 6/2007	Forest structure, and the making of a plan for management and utilization of forest and forest areas
Government Regulation 35/2002	Afforestation fund
Government Regulation 44/2004	Forestry planning
Government Regulation 45/2004	Forest protection
Government Regulation 72/2005	Village government
Government Regulation 10/2010	The mechanism to change the allocation and the function of forest areas

Presidential Regulation number 46/2008	The national council on climate change
Minister of Agriculture's Decree 291/Kpts/Um/5/1970	The enactment of forest concecession areas as production forest areas
Director General of Forestry's Decree 54/Kpts/DJ/I/1975	The procedure of releasing forest areas for the purposes of plantation, husbandry, fishery and food cropping
Minister of Agricultre's Decree 680/Kpts/Um/8/1981	The guidelines of forest land use agreement
Minister of Agriculture's Decree 682/Kpts/Um/8/1981	The definition and procedure of determining maximum size of forest, convertible production forest and permanent production forest
Minister of Agriculture's Decree 683/Kpts/Um/1981	The criteria and procedure of enacting production forest
Forestry Minister's Decree 67/1991, revised by Decree 416/1999, Decree 256/2000	The designation of Forest Areas in Lampung
Forestry Minister's Decree 691/1991, replaced by Decree 69/1995 and Decree 537/1997	Village development programs of forest concessions (*HPH Bina Desa Hutan*)
Forestry Minister 's Decree 622/1995	The guidelines of social forest (*hutan kemasyarakatan*)
Forestry Ministers' Decree 537/1997	Forest villagers' empowerment
Forestry Minister's Decree 47/1998	The designation of protection and limited production forests of 29,000 hectares in the cluster of *Pesisir* Forest in West Lampung District, Lampung Province, in the form of *damar* gardens (*repong damar*) managed by adat law communities as Area with Exceptional Purpose (*Kawasan dengan Tujuan Istimewa, KdTI).*
Forestry and Plantation Minister's Decree 677/1998	Right to utilization of social forest
Forestry and Plantation Minister's Decree 865/1999	The improvement of Forestry and Plantation Minister's Decree 677/1998.
Minister of Agrarian affairs Regulation 5/1999	The guidelines for resolving the problems of *ulayat* rights of customary law-based

	communities
Forestry Minister's Decree 31/2001	The implementation of social forest
Forestry Minister's Decree 70/ 2001 replaced by Decree 48/2004	Forest areas enactment and the change of status and the functions of forest areas
Forestry Minister's Regulation P.01/2004	The empowerment of local communities living in and/or around forest in the framework of social forestry
Forestry Minister's Regulation P.19/2004	Collaborative management of conservation forest between conservation offices and communities or private companies.
Forestry Minister's Regulation P. 26/2005	The guidelines for private forest
Forestry Minister's Regulation P.23/2007, amended by Ministerial Regulation P.5/2008	The application procedure for Licenses of Commercial Utilization of Timber Products in People's Plantation Forest
Forestry Minister's Regulation P.37/2007 amanded by Forestry Minister Regulation P.18/2009 and Regulation P.13/2010.	Social forest
Forestry Minister's Regulation P.6/2008	The implementation of REDD's demonstration activities
Forestry Minister's Regulation P.43/2008	The Guidelines on lend-and-use agreement concerning Forest Areas (*Pedoman Pinjam Pakai Kawasan Hutan*)
Forestry Minister's Regulation P.49/2008	Village forest
Forestry Minister's Regulation P.22/2009	The revision of Forestry Minister's Regulation P.31/2005 concerning the release of forest areas for developing plantation
Forestry Minister's Regulation P.30/2009	The procedure of reducing emission from deforestation and forest degradation (REDD)
Forestry Minister's Regulation P.50/2009	The confirmation of the status and functions of forest areas

Director General of Reforestation and Land Rehabilitation's Decree 95/1997	The procedure of applying licenses for non-timber forest products collection in social forest areas
Director General of Reforestation and Land Rehabilitation's Decree 97/1997	The procedure of appointing participants, granting licenses, and making agreements of social forest utilization

Lampung Provincial legislation

Provincial Regulation 1/1982	The formation, unification, fragmentation and abolishment of villages
Provincial Regulation 7/2000	Levy on license for collecting non-timber forest products in forest areas
Provincial Regulation 6/2001	The change of function of ex-convertible production forest land of ± 145,125 hectares to non-convertibe forest area to be granted private land rights
Lampung Resident's Decree 153/D/1952	The abolishment of *marga*
Lampung Governor's Decree G/171/B.III/HK/1973	The granting of license for collecting forest products
Lampung Governor's Decree G/133/DPD/HK/1979	The model of implementation and program of village resettlement in Lampung Province
Lampung Governor's Decree G/074/DPD/HK/1980	The re-enactment of an implementation model concerning people resettlement in Lampung Province
Lampung Governor's Decree G/254/Bappeda/HK/1982	The relocation of an intra-migration (*translok)* area from North Lampung District to Central Lampung District
Lampung Governor's Decree G/235/B.VII/HK/1985	License to collect forest products and timber utilization in transmigration areas
Lampung Governor's Decree G/011/Bappeda/HK/1989	The establishment of a technical team for allocating forest land in the areas designated by forest land use agreement in Lampung

Lampung Governor's Decree 26/2000	The guidelines for the implementation of Provincial Regulation number 7 year 2000 concerning levy on license for collecting non-timber forest products in forest areas
Lampung Governor's Decree G/283.A/B.IX/HK/2000	The enactment of the land status [as state land] of ex-convertible production forest of ± 145,125 hectares
Lampung Governor's Decree 70/2001	The guidelines for the impementation of Provincial Regulation number 6 year 2001 concerning the change of function of ex-convertible production forest land of ± 145,125 hectares to non-convertibe forest area to be granted private land rights
District legislation	
District Regulation of East Lampung 16/2002	Levy on license for collecting minor forest products (*hasil hutan ikutan*)
District Regulation of Way Kanan 29/2002	Levy on license for collecting non-timber forest products in forest areas
District Regulation of West Lampung 18/2004	Community-based natural resources and environmental management
District Regulation of Central Lampung 4/2004	Social Forest
West Lampung Head of Districts's Decree 11 /2004	The indicators and criteria for monitoring and evaluating social forest programs
West Lampung Head of Districts's Decree 225 /2005	The technical guidelines for scoring the indicators and criteria of social forest management

APPENDIX 2. LIST OF COURT DECISIONS

Constitutional Court Decision Case number 001-021-022/PUU-I/2003	Judicial review of Law number 20 year 2002 concerning Electrical Power
Constitutional Court Decisions Case number 002/PUU-I/2003	Judicial review of Law number 22 year 2001 concerning Oil and Natural Gas
Constitutional Court Decisions Case numbers 058-059-060-063/PUU-II/2004 and 008/PUU-III/2005	Judicial review of Law number 7 year 2004 concerning Water Resources
Decision of Tanjung Karang District Court number 458/PID.B/2002/PN.TK.	The criminal case of Wrn.
Decision of Tanjung Karang District Court number 459/PID/B/2002/PN.TK.	The criminal case of Sn.

CURRICULUM VITAE

Myrna Asnawati Safitri was born in Samarinda, East Kalimantan, Indonesia on October 8, 1969. She graduated in law *cum laude* at Brawijaya University, Malang, Indonesia in 1992. She worked as a part time lecturer at Gajayana University and Muhammadiyah University in Malang in 1992. She continued her master in anthropology at the University of Indonesia, Jakarta where she graduated in 1997. From 1993 to 2004, she worked as a researcher, then became program manager at the Program for Research and Development of Ecological Anthropology, University of Indonesia (*Program Penelitian dan Pengembangan Antropologi Ekologi-Uviversitas Indonesia P3AE*). In 2003–2004, she taught in the master program of Anthropology, University of Indonesia. She worked with some international organizations – Asian Development Bank, United Nations Development Programme, Asia Pacific Forum on Women, Law and Development – on issues of indigenous people, land tenure, environmental management, poverty reduction and women empowerment. During 2003–2009 she joined the INDIRA project of the Van Vollenhoven Institute, Faculty of Law, Leiden University. She has been active in the Indonesian civil society movement on reforming land and natural resources policy since 1994. She is the founder, then became the secretary of the board of HuMa, an Indonesian legal NGO, for community and ecology-based law reform. She chaired a learning centre of HuMa in 2009–2010. Since September 2010 she has served as executive director of a newly established organization, Epistema Institute – an Indonesian research centre on law and society. She has also worked closely with Indonesian government institutions in promoting policy and law reform in the area of land and natural resources. This includes working with the Ministry of Environment in the making of the Bill on Natural Resources Management and with the National Development Planning Agency in preparing Indonesian's National Strategy on Access to Justice.