Rethinking Adat strategies: the politics of state recognition of customary land rights in Indonesia

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2 Characteristics of forest tenure conflicts and emerging options for resolution

2.1. Introduction

Forest is a very contested natural resource in Indonesia. For centuries, colonial rulers, post-colonial governments, corporations, local traditional kingdoms, and local land users have competed over forest rights and access. The contestation of actors, claims, strategies and goals have made forest areas an important arena for natural resource conflicts. Forest conflicts are pervasive in Indonesia, because forests contain extensive natural resources, including timber, mining deposits, carbon, animals, fruits, and other natural products.

The government of Indonesia claims control over 120 million hectares of forest, which is around 64% of the national land surface. The government has divided the forest into areas for extractive activities, such as logging, plantations and mining, and areas for the conservation of biodiversity. Meanwhile, local communities who live in the areas surrounding such forest are not allowed to access it, even though they have been living and utilising forest resources for generations. The Indonesian Central Bureau of Statistics *(Badan Pusat Statistik/BPS)* released a census, stating that 31,957 (or 71.06% of) villages in Indonesia are located in the surrounds of forest areas (Safitri et al. 2011:6-7). In 2014, the MoEF conducted a forestry survey and found that 32,447,851 people depend on forest resources for their livelihoods. Most of them are living in poverty. They have been cultivating land and gathering products from the forest, according to their local customs. The local communities continued living there, but after the government changed the status of their forest to 'state forest', they became illegal squatters, according to state law. This imbalance of power and access leads to forest tenure conflicts between local communities, state agencies and forest corporations, centering on the question of who has legitimate rights and access to forest resources. This chapter elaborates on the main forest tenure problems, with a historical explanation of why forest tenure conflicts have been occurring, and an analysis of why (in general) solving forest tenure conflicts is so difficult.

The first part of the chapter concentrates on how the state developed its control over forest areas throughout history in Indonesia, and how

this led to pervasive land conflicts with local communities. This part will explain how the legal construct of 'state forest' was invented by the colonial government of the Dutch East Indies, and how it was continued by successive post-colonial governments in Indonesia. The idea of designating state forests was not only based on politico-administrative decisions, it was also justified by the argument that the state is the most capable actor in scientific forest management - able to best balance environmental protection with economic exploitation. In practice, creating state forest areas implies that the government determines boundaries, and divides the functions and allocation of forests according to conservation, protection, or production forest areas. Accordingly, the government restricts access to the forest for anyone without a government license or entry permit; this shows the practical meaning of the legal concept of state forest, when defined as an area. The legal concept defines state forest as an area that is cleared of any other individual or collective private rights. Consequently, government agencies perceive members of local forest communities who enter the forest in the way they have been doing for generations as trespassers, who are intruding on the state's exclusive control over forest areas.[12]

The second part of the chapter addresses the question of how forest conflicts can be characterised. Denial of local communities' customary rights to forest resources has been the leading cause of forest tenure conflicts (Peluso 1992:44). However, a more sophisticated analytical framework is needed in order to understand how conflicts arise, who the main actors and interests are, and what the legal underpinnings of their positions and the possible solutions are. My analytical framework distinguishes types of forest conflicts based on: (a) the (well-differentiated) main actors involved; (b) legal classification of the state forest concerned; and, (c) the interests and objectives of local community members regarding the contested forest rights. In other words, conflicts occur between local communities and forestry agencies, such as national parks, as well as with companies operating within forest areas. Companies operating in forest areas are also various, from merely logging trees, to building timber plantations, conducting conservation activities, or mining gold and silver. Meanwhile, local community members have various objectives; for example, maintaining access to their forest gardens as a source of livelihood, or obtaining compensation

[12] For instance, Article 24 of *Boschordonantie voor Java en Madura 1927* for the colonial period, and Article 50 (3) of the Forestry Law Number 41/1999.

and other benefits from companies operating in their customary forest areas. This variety of interests makes not only the analysis, but also the solution of forest conflicts complex.

The third part of the chapter discusses the solutions for forest conflicts that government agencies, companies, NGOs, academics, and local land users have been seeking. Since the 1980s, international and national NGOs, as well as academic scholars, have promoted community-based forest management as an alternative to state-centred forest management. The main argument for this approach is that local communities can better manage forests in a sustainable way, which will reduce environmental degradation due to deforestation. In addition, community-based forest management supports poverty alleviation in rural areas. Therefore, NGOs and local communities have been encouraging the government and parliament to create legislation and programmes which recognise community-based forest management practices. This kind of advocacy by NGOs and forestry academic scholars has gradually convinced government institutions to create policies and programmes to enhance public access to forest resource management. In this section, I will analyse some legal options for resolving forest tenure conflicts, such as social forestry and land reform programmes. However, these schemes never provide a structural solution for local communities' lack of formal rights to the forest. This is precisely what points towards an advantage to be gained by an alternative solution for forest conflicts: state recognition of customary forest. It is also why my research has been devoted to this – in theory - more promising and structural solution for ending forest conflicts.

Together, the three parts of this chapter provide general background for the case study chapters (4 to 7) on forest tenure conflicts, and how legal recognition of customary forest is used by local communities as a strategy to resolve forest tenure conflicts.

2.2. State territorialisation and political forest

> *The ideology of "scientific" forestry was embraced by the colonial state and its foresters, while local institutions of forest access and property were gradually phased out of the legal discourse. The impacts of these policies on the lives of forest-dwelling people remain significant today.*
>
> Nancy Lee Peluso (1992:44)

To understand the background to the current proliferation of forest tenure conflicts, we need to return to colonial times, when the policies that still constitute the backbone of present-day government forest policy were developed. Two concepts are central to the policies: state territorialisation, and political forests. State territorialisation refers to the measures by which the government declared forest areas to be state property. This legal construct is a legacy of the Dutch colonial regime, as will be explained below. 'Political forest' constructed 'forest areas' which are areas determined by the government, by administrative decision, and such areas are distinguished from other types of land. Within the concept of political forest, forest area is not defined by its biological characteristics; for example, by measuring tree density. Instead, what constitutes a forest area is determined by the government's political decision (Peluso 1992:131; Peluso and Vandergeest 2001).

2.2.1. The formation of state forest area in the colonial period

The territorialisation process began in the colonial period, when the VOC declared that forest areas belonged to the colonial authority and prohibited the local population from entering the forest to log trees. Even during the period before actual colonisation, the founder of Batavia (which later became Jakarta), Jan Pieterzoon Coen, prohibited logging around Batavia in 1620. Subsequent rulers continued with similar policies. In 1811, Governor-General Daendels declared that teak forests would have the legal status of 'state domain' (*staat landsdomein*) from then on, and that they should be managed for the benefit of the state (Peluso 1992:45). At that time, the Dutch colonial government focused on creating regulations to control teak forest on Java Island. As soon as forests were designated state property, the colonial government started granting concessions to private companies. In 1831, King Willem I decided that the government could grant short- and long-term lease rights to European plantation owners, for uncultivated land in the colony (especially forest areas), adding the restriction, "as long as such land lease permit did not harm the rights of native communities" (Termorshuizen-Arts 2010:42).

In 1865, the Dutch colonial government strengthened forestry control via a regulation applying specifically to Java and Madura.[13] The

[13] Ordonnantie van 10 September 1865, Staats- blad no. 96: Reglement voor het beheer en de exploitatie der houtbosschen van de Lande op Java en Madura (See Peluso 1991:68 and 74).

1865 forest regulation defined forests as state-owned forests by removing a provision on the recognition of native communities managing their village forests (Hardjodarsono et al 1986:76). At that time, the general policies of European expansion and imperialism supported the creation of regulations to protect and control colonies against other colonial powers, whilst increasing profits from colonial exploitation. The 1865 forestry regulation was revised several times, including in 1874, 1875, 1897, 1913, 1927, 1932, 1937, and 1939. Such revision was conducted to expand government control over forest areas, including by implementing the 'domain declaration' principle, according to the *Agrarische Besluit* of 1870 (Rachman 2012:33-4). For example, in 1874 the colonial government enacted a regulation on forest management and exploitation in Java and Madura, which divided forest management by teak and non-teak forest areas (Hardjodarsono et al 1986:80; Mary, Armanto and Lukito 2007:10). This regulation strengthened the colonial government's control, and provided a legal basis for issuing concessions to private corporations to exploit teak forests. In the beginning, the colonial government was only interested in controlling teak forest in Java, because of its commercial value. However, under the Domain Declaration, state control extended to non-commercial forest and 'wilderness' forest (Termorshuizen-Arts 2010:63-4). The colonial government expanded its control over non-teak forests by prohibiting logging activities. At the time, the ban on logging was intended to ensure the availability of timber stocks, but the ban has persisted on the grounds of maintaining flood prevention and protecting biodiversity.

Colonial government control of forest areas was not only based on policy, but also on the application of specific academic knowledge, known as 'scientific forestry' (Peluso 1992:44; Siscawati 2012:1-2). Scientific forestry employed a quantitative approach to forest management. One of the first scholarly works on scientific forestry was produced by Georg Grünberger (1749-1820), professor of mathematics and co-director of the Bavarian Royal School of Forestry, in Munich. Grünberger introduced the fundamental principle of scientific forestry by producing a map that showed an imaginary forest patch, structured within a mathematical grid. Grünberger's academic textbooks on scientific forestry were used by the first generation of scientifically trained foresters in Germany (Siscawati 2012:53). There are three key concepts in scientific forestry (Rajan 1999; 324-333, cited in Sirait

2015:41). The first is that forest has to be maintained at minimum diversity, in order to obtain as much of the same timber product as possible from a limited land area. A consequence of this is the clearing of other trees, with less commercial value. The second is that balance sheets should be created, which aim to convert the standing timber stock into a numerical value and calculate the optimum harvesting age of the trees. The third is that employing sustained yields aims to maintain a logging cycle rotation over several decades, which requires a system of forest cut blocks and an annual allowable cut (AAC).

As scientific forestry was developed in Germany, sometimes this approach is called the German School of Forestry. This scientific forestry paradigm spread to Germany's neighbouring countries, including France, England, and the Netherlands, as well as to the colonies of European countries, including India, Burma, and the Dutch East Indies (Siscawati 2012:55). In 1849, the first professional foresters with a German forestry education were appointed under the Dutch colonial administration, with a mandate to develop improved cultivation practices for the teak forest estates in Java (Hardjodarsono et al 1986:80; Boomgaard 1992). The principle that forest management was best assured by state stewardship over forest lands led to the establishment of a professional government forestry service. Its responsibilities included controlling forest lands, replanting degraded forests, the development of tree species, and following and improving forest management practices (Peluso 1991; Siscawati 2012:65). To implement scientific forestry, forest areas must be under the direct control of the state, and be free of any individual or collective claims (Article 2 of *Boschordonantie* 1927). To ensure exclusive control by the government, forest areas must also be designated and separated from non-forest areas. In other words, to ensure that forest management can provide maximum benefits for the state, the state authority needs the support of scientific forestry.

The colonial government also created a forestry service, *Het Boschwezen van Nederlandsch Indië*, on July 1st 1897 (Siscawati 2012:66). The *Boschwezen* was a colonial government enterprise under the Ministry of Agriculture (Termorshuizen-Arts 2010:62-3). *Boschwezen* developed 'political forests' by drawing boundaries between agricultural and forested land on their maps, seizing all the land unclaimed by native communities to be designated as state forest domain (Peluso 1992; Peluso and Vandergeest 2001). The authority of the *Boschwezen* working area became a debate in the colonial period.

When the Dutch parliament ratified the Agrarische Wet 1870 and the domain declaration, the colonial government's control over the forest area became explicit. This happened because of the broad interpretation of the scope of 'domain declaration' principle, which will be discussed in the next chapter. The domain declaration is a decree by the colonial government which states that land for which no one could prove ownership would be classified as state land. In general, colonial government officials considered forest area to be abandoned land *(woeste gronden)* without an owner; it was therefore state property. At the time, most abandoned land was forest. One of the proponents of a broad interpretation of the domain declaration was Nolst Trenite, senior adviser to the Dutch government on agricultural policy (Burns 2004:21). Trenite wrote in his *Domeinnota* that state land in the colony was divided into two categories: free state land domain, and unfree state land domain. Furthermore, he argued that the state could perform any activity it chose in free state land domain, including on uncultivated land, and especially in forest areas (Termorshuizen-Arts 2010:47).

The proponents of a broad interpretation of the domain declaration argued that the forest's government authority was crucial to overcoming the scarcity of wood, because of massive exploitation of the teak forest to supply shipbuilding and other types of construction. Another argument was that the government should limit deforestation and begin reforestation. According to forestry officials, the leading cause of deforestation at that time was the shifting cultivation practised by native communities (Siscawati 2012:66). Accordingly, the *Boschwezen* restricted local community members in accessing and utilising forest resources. Logging wood from the forest was only allowed with the permission of the forestry service. The colonial government also created a map of forest areas, and resettled local communities to ensure that forest areas were free from land claims by local community members. A similar practice occurred outside Java (see also Chapter 4). The impact of this policy was that local communities had limited access to forest land and resources. The colonial government policy on forest restriction, including against levying taxes from farmers, led to widespread social protests in many places (Peluso 1992:67-72; Kartodirdjo 1987:375-85).

In 1928, the Governor-General of Dutch East Indies established an agrarian commission to conduct a study on implementation of the domain declaration doctrine, and on legal certainty about native communities' land rights (see Chapter 3). One of the critical topics in the

commission was whether or not forest areas should be included in the commission's inquiry. This topic was raised by Koesoemo Oetoyo, a Javanese member of Volksraad and a member of the Agrarian Commission, who stated that he was not arguing against proclaiming teak forests in Java as government property, but that he objected to the denial of all forms of native rights to the forest, including native rights to use its resources. Especially in Java, local residents had practised foraging, gleaning, and grazing livestock in the jungle for many years (Burns 2004:107). Foresters worried that if the domain declaration was abolished, forestry agencies would have to cooperate with native communities. Forestry officials assumed that local communities were unwilling to cooperate, given the many riots and conflicts between the forestry service agencies and local communities in various places (Peluso 1992: 68-70; Termorshuizen-Arts 2010:65). The attitude of foresters at the time was anxious, in the sense that "the foresters did not, could not, would not, trust native communities" (Burns 2004:108). However, the Agrarian Commission did not mention the status of forest areas in its recommendation.[14]

Before the commission conducted its investigation (1928-1930), the colonial government revised its forestry regulations by issuing the *Boschordonantie voor Java en Madura* 1927, which was later revised in 1932. Article 2 of this forestry regulation stated that forests are state-owned and free from indigenous rights. According to this regulation, state forests consisted of uncultivated trees and bamboo plants, timber gardens planted by the Forestry Service or other government agencies, and gardens containing plants that do not produce trees but are planted by the Forestry Service. The colonial government only made regulations on forest control for Java and Madura (Termorshuizen-Arts 2010:65). The lack of forestry regulations enacted for regions outside Java and Madura was due to a shortage of personnel and budget for carrying out effective government control of forest areas. The post-colonial

[14] Forestry bureaucrats at the time worried about the investigation being conducted by the commission, in particular regarding the status of forest area and the impact of the commission's recommendation for government control over forest areas. This concern was clarified a few years later by Logeman, a member of the commission and a professor at Batavia law school. In 1932, at a conference held by de *Vereeniging van Hoogere Ambtenaren bij het Boschwezen in Nederlandsch-Oost-Indie* (the Association of Senior Officials of the Dutch East Indies Forestry Service), Logemann stated that forestry was not included in the scope discussed within the Agrarian Commission. Logeman's statement eased foresters' concerns at the time, by saying that the forest areas would have nothing to do with the policy recommended by the Agrarian Commission (Burns 2004:107).

government used the colonial forest policies on Java and Madura as the bases for developing new forest policy and management. In particular, forestry policies have their own legal development route, different from agrarian policy (governing agricultural land) and other land policy. The following sections discuss forestry policy in the post-colonial period.

2.2.2. Underpinning of state control of forest area after Indonesian independence

In the early period of Indonesian independence, Indonesia's post-colonial government replaced Dutch colonial land laws with national laws that were compatible with Indonesian peoples' interests. During preparation of the Basic Agrarian Law (BAL) 1960, forestry issues were not much debated. Although the BAL intended to reform forest regulation by replacing the concepts of state domain and domain declaration in the *Agrarische Wet 1870*, it did not impact the core forestry regulations. The BAL removed several agrarian regulations from the colonial period, but it did not revoke the *Boschordonantie 1932*. The BAL regulated the limited right to open collection of forest products, but the Ministry of Agrarian Affairs never created implementing regulations to make such rights operational. From 1960 to 1963 the government launched a land reform programme, distributing land to farmers in order to implement the BAL. The majority of officials within the Forestry Service wanted the forest to be excluded from land reform programmes. They considered land reform a threat to forest sustainability (Rachman 2012:38). Anti-land reform Forestry Service officials urged President Sukarno to set up forestry companies, and promised to increase state revenues from the forestry sector.

Forestry became a policy domain for a separate institution in Indonesian land law, under the Ministry of Agriculture, while non-forested land under direct control of Ministry of Agrarian Affairs. The first forestry law in the post-colonial period was created in 1967. President Suharto enacted Basic Forestry Law Number 5 of 1967 (BFL) to increase economic activity in forest areas that would create state income. In contrast to the BAL, which specifically revoked agrarian regulations in the colonial period, BFL did not revoke the *Boschordonantie*. Forestry Service officials translated the *Boschordonantie* into Bahasa Indonesia, and used it as the main source for the BFL (Peluso 1992:131). By not removing the *Boschordonantie*, the government can preserve implementing regulations in the forestry sector, including

maps of forest areas based on the *Boschordonantie*. The BFL continued the forestry management policy of the *Boschordonantie* by stating that the state is the forest landowner. The Minister of Forestry has the authority to determine which areas are designated as 'forest area' (Article 1, point 4 of the BFL), and to grant logging concessions to foreign and domestic companies (Article 14 of the BFL, and Government Regulation No. 21/1970). The BFL does not recognise customary territories at all, and thus no customary forests (Rachman and Siscawati 2016). President Suharto established a state-owned enterprise, Perhutani, to extract forest resources in support of national economic development. Perhutani's working area covered all the productive forest areas which were under control of the *Boschwezen* during the colonial period in Java (Rachman 2012:44). Similar to the colonial setting, the expansion of Perhutani's working area in the post-colonial period was also determined without the consent of the local communities affected (see Chapter 6). Subsequently, President Suharto upgraded the directorate-general of forestry within the Ministry of Agriculture to a new, full Ministry of Forestry, in order to strengthen state-controlled forestry management.

Suharto's New Order government sustained the colonial policy of exclusive state control over forest areas. The government even expanded the state forest area. Nancy Peluso pointed out that the exclusive state control of forest area has become the foresters' ideology in Indonesia, including the three characteristics of forest management from the colonial period. The first is that state forestry is carried out based on utilitarian rhetoric: everything is for the greatest good of the most significant number of people. The second is that scientific forestry is the most efficient and rational use of resources. The third is that promoting economic growth through forestry production efforts is the primary orientation (Peluso 1992:125). In this sense, forestry policies during Suharto's authoritarian regime were not new (Peluso 1992:124).

During Suharto's New Order period, the government began a real exploitation of forest resources on the outer islands. During the colonial period, forest exploitation was restricted to Java and Madura. In the 1980s, the Ministry of Forestry enacted a series of regulations on the Forest Land Agreement (*Tata Guna Hutan Kesepakan/TGHK*). This policy expanded state control over forest areas. The TGHK map was the result of this activity. The main problem with the TGHK map was that it was different from the actual condition of forest or land use according to provincial spatial planning documents. Many forest areas on the TGHK map overlapped with villages, plantations, or people's agricultural land.

Although this policy was called 'forest land agreement', local communities were not involved in establishing forest areas. In TGHK policy, 'the agreement' constituted an agreement between the Ministry of Forestry and other national and regional government agencies. Consequently, TGHK policy led to land dispossession, and to land conflict between the Ministry of Forestry and local communities. However, at that time the Ministry of Forestry had little difficulty in handling such conflicts. During the 1980s, the Ministry of Forestry was a strong department, backed up by military and forest rangers, because it was believed to be a major contributor to Indonesian GDP (Safitri 2010b:96).

Based on the TGHK system in the 1980s, the Ministry of Forestry claimed 147.02 million hectares (67%) of the land surface as forest area. State forests were divided into several categories: 1) production forest, aimed at producing timber for export, and later on for timber-based industries (64.3 million hectares); 2) protection forests (30.7 million hectares); 3) natural conservation areas and nature preserve forests (18.8 million hectares); and 4) convertible forests (26.6 million hectares). With support from World Bank-sponsored projects, the Ministry of Forestry aimed to demarcate forest lands according to TGHK policy, with 1985 as the deadline (Siscawati 2012:96). However, the demarcation process did not go as expected, partly because of the government's lack of capacity to conduct the demarcation, and partly because local communities who had overlapping land claims with state forest rejected the demarcation. Once the Ministry of Forestry was in control of a large area, based on TGHK policy, it granted large-scale logging concessions to private companies. By 1990, the Ministry of Forestry had granted forest concessions to more than 500 companies throughout Indonesia (Yasmi et al. 2009). The concessions covered around 60 million hectares for logging, and 4 million hectares for industrial timber plantations (Barr et al. 2006; Siscawati et al., 2017:6). One of these cases will be discussed extensively in Chapter 5. Forestry concessions provided the second-largest income for the state, after oil and gas, and continuously contributed 12-13% to the national foreign exchange earnings in the 1980s (Tarrant et al. 1987:120; Peluso 1992:143).

The New Order government considered local communities living in forest areas to be disruptive of forest conservation and exploitation by forestry corporations holding legal permits. In a modernistic development paradigm, the New Order regime depicted the forest-

based agriculture performed by local communities as backward (Peluso 1992, Simon 2001, Vandergeest and Peluso 2006). The communities practised a variety of forest-based agriculture known as 'swidden agriculture'. Swidden agriculture is a style of agriculture that is very well adapted to the local (often harsh) natural circumstances. However, the government agencies (and many foresters) of the New Order era simply defined it as 'slash and burn' agriculture, or 'shifting cultivation'. The shifting cultivation label was used by government institutions and development agencies, because they assumed that people who practised this form of agriculture were themselves 'shifting' or semi-nomadic (Peluso 1992:125; Dove 1993:19; Li 2000; Tsing 2007; Siscawati 2012:5-6).

After President Suharto stepped down in 1998, the newly elected government and parliament enacted a new Forestry Law (Number 41/1999) to replace BFL (Law No. 5 of 1967). The new Forestry Law regulated a new procedure for the forest establishment (*pengukuhan*) process – split in four stages: designation (*penunjukan*), boundary demarcation (*penatabatasan*), mapping (*pemetaan*), and official enactment (*penetapan*) of forest areas (Article 15). Accordingly, the government's claim over forest areas, based on TGHK policy, was regarded as merely the first step in the forest establishment process. Subsequently, the Ministry of Forestry had to conduct a mapping and delineation process before officially enacting any state forest area. However, in reality, the Ministry of Forestry argued that state forest areas based on TGHK policy already had a definitive legal status, and that the Ministry could continue granting forest concessions and penalising intruders (Safitri 2010b:98).[15] In practice, state control over forest areas, as well as the denial of local community access, did not change with the adoption of the 1999 Forestry Law. Therefore, forest tenure conflicts have persisted, and have even become more widespread throughout Indonesia.

During the formulation of the new Forestry Law, environmental NGOs and forestry scholars from several universities pushed the Ministry of Forestry and parliament members to accommodate

[15] "Such loose interpretation of forest areas occurred because the Forestry Law provisions did not explicitly distinguish between the designation (*penunjukkan*) and enactment (*penetapan*) of forest areas." Article 1 point 3 of the 1999 Forestry Law states that: "forest areas are specific areas that had been appointed and/or determined by the Government to be maintained as a permanent forest". In an extensive interpretation, the Ministry of Forestry considers that the forest area newly appointed by the government is legal forest area, without having to go through the mapping and delineation process to solve overlapping claims with local communities.

community-based forest management schemes within the new law. They created a Community Forestry Communication Forum (*Forum Komunikasi Kehutanan Masyarakat*/*FKKM*) and proposed an alternative draft for revision of the Forestry Law (Siscawati 2012:251-2). They hoped that recognition of local communities' rights of access to forest areas would resolve forest tenure conflicts. Indeed, the Forestry Law (Number 41/1999) accommodated a selection of points proposed by NGOs and academics, for example regarding ways in which communities could share in the benefits of forest management. The 1999 Forestry Law also opened up an option for the recognition of customary forests, but it was unclear how that could be achieved in practice. The main problem was that the law defined "customary forests as state forests located within the territory of adat communities" (Article 1 point 6), which made it unclear whether customary forests are under jurisdiction of the state or adat communities. In 2012, AMAN challenged this vague provision in the Forestry Law to the Constitutional Court (Case Number 35/PUU-X/2012). In 2013, the Constitutional Court ruling changed the definition of customary forests, stating that customary forests should be regarded as part of adat community territories, instead of being under state forest jurisdiction. Further explanation of this court ruling will be discussed in Chapter 3.

District governments also perceived some problems contained in the 1999 Forestry Law, because it did not provide sufficient authority for district governments to control forest areas in their districts. In 1999, the Ministry of Forestry delegated authority to the district governments to grant small-scale concessions, with a maximum of 100 hectares per concession. This decentralisation policy led to a massive number of permits being issued by the district governments to forestry companies, causing both corruption and environmental degradation. For instance, the head of the district government in West Kalimantan Province released 994 concessions from 2000 to 2003 (Anshari et al. 2005:1). The ministry therefore revoked the authority in 2003, recentralising the forest concession process.

Provincial and district governments contested the exclusive control of forest areas by the Ministry of Forestry. In 2011, five district heads in Central Kalimantan challenged the Forestry Law in the Constitutional Court (Case Number 45/PUU-IX/2011). Their main points of concern were the provisions defining forest areas (*kawasan hutan*). Article 1, point 3 of the Forestry Law states that: "forest areas are specific areas that had

been designated and/or enacted by the Government to be maintained as a permanent forest". This provision is vague, because it implies that the legal basis for state forest area can be relied on as a designation and/or enactment. Article 15 of the Forestry Law states that the establishment of forest areas should follow four stages: designation, boundary mapping, delineation, and enactment. The Ministry of Forestry designated forest based on the forest inventory. Then, Ministry of Forestry officials conducted delineation and mapping, involving district governments and local communities. The final part of the forest establishment process is enactment by the Ministry of Forestry. Therefore, Article 1 of the Forestry Law, which states that forest area can be established by Ministry of Forestry designation, without completing other stages, excludes provincial and district government interests in the forest establishment process. Consequently, district governments could not build public facilities and release permits for companies which were interested in natural resource extraction in forest areas. The Constitutional Court removed the phrase 'designated and/or' in the provision. The new provision is: "forest areas are specific areas that had been enacted by the Government to be maintained as a permanent forest". This meant that any forest area must be established by following the four stages of the forest establishment process (Article 15 of the Forestry Law) (Arizona et al., 2012).

Based on the Constitutional Court ruling, forest area is an area where the government has conducted the four stages of the forest establishment process. The ruling provides a fundamental correction at policy level, regarding the process of establishing forest areas. In 2011, the Ministry of Forestry had formally enacted 15.2 hectares (11.1%) of 136 million hectares of forest areas (Arizona et al., 2012). The court's decision urged the Ministry of Forestry to speed up the process of establishing forest areas. Although the government sped up the forest establishment process, this did not resolve long-standing land conflicts in the forestry sector, which were due to a lack of local community participation in the delineation process. By 2020, Indonesia's state forest had been reduced to 120 million hectares. As already mentioned, this area is equal to 64% of Indonesia's land surface (SOIFO 2020). The size of the area reduced because the government allocated forest areas for non-forestry activities, primarily palm oil plantations and infrastructure development. The Ministry of Forestry maintained control over forest areas by sustaining permits to timber companies, and by creating conservation areas managed by national park agencies. Meanwhile,

many local communities have been living within (and on the borders of) forest areas for decades, sometimes centuries, even before the government designated such areas as state forests.

2.3. Characteristics of forest tenure conflicts

The denial of local communities' customary rights and access to forest resources has been the leading cause of forest tenure conflicts (Peluso 1992:44). A more sophisticated analytical framework is needed for understanding how conflicts arise, who the main actors and interests are, and what constitutes the legal underpinnings of their positions and possible solutions. Therefore, my analytical framework distinguishes types of forest conflicts based on: (a) the (well-differentiated) main actors involved; (b) the legal classification of the state forest concerned; and, (c) the objectives or interests of local community members, regarding the contested forest rights.

2.3.1. Actors in forest tenure conflicts

The main actors in forest tenure conflicts are government agencies, local communities, and companies. The contentions between the three categories of actors can be classified into several types of forest-related conflicts: (a) land conflict between local communities and government agencies; (b) land conflicts between local communities and companies; (c) land conflicts between government agencies and companies; and, (d) land conflicts within one category of actors, notably between members of different factions within communities, or between various government agencies, or between divisions or departments within corporations (Welker 2014:1). For instance, within the government there is a difference of interests between the district government, which prioritises local economic development, and the Directorate-General of Forestry Business Development at the Ministry of Forestry, which secures the interest of companies in keeping their concessions. Likewise, local community members are often divided between those who want to work for the company or share in the benefits of its exploitation, and those who are struggling to reclaim their land from the company's concession area. In many cases, conflicts occur which feature a combination of the four typologies above. For example, in land conflict between local communities and companies, the government is also involved in the conflict, because the government gives forest concessions to companies to conduct activities in forest areas.

2.3.2. Categories of forest use in conflicts

The second way to categorise forest conflicts refers to the purpose for which a forest area is used: nature conservation, commercial forestry, tourism, mining, or local community subsistence activities. I will explain forest use, based on Forestry Law and how different actors use forest resources in practice. Forestry Law divides forest areas into three functional categories, including production forests, protection forests, and conservation forests. When the forest's main function is to generate forest products, it will be considered production forest. Protection forest is intended to protect life-supporting systems, prevent floods, control erosion, prevent seawater intrusion, and maintain soil fertility. Conservation forest means forest that is used primarily to preserve plant and animal diversity, and the ecosystem (Article 1 of the Forestry Law). A specific ministry department is in charge of each of these categories, and there is a set of regulations that determines legal room for activities in the forest. In reality, the three functions of forest areas established by the government often do not fit with how different actors use the forest areas. For instance, the government designates a particular area as conservation forest, but in reality the area is a rural settlement including local community farm gardens. Therefore, the Ministry of Forestry officials consider that the local community is conducting illegal activities in the conservation forest. Likewise, the government designates production forest, but the local community protects the area as sacred forest, maintained for environmental sustainability. Different interests, perceptions, and uses of forest land and resources by different actors all contribute to land conflict.

Moving from categories of forest in the legislation to the use of forest by different stakeholders, I found that actors use forest land and resources for three purposes. The first purpose is conserving forest areas and resources. The Ministry of Forestry designates certain forest as conservation areas, especially upland and areas with a high inclination level. The Ministry of Forestry created national parks, nature tourism parks, game parks, and other kinds of conservation activities, in order to maintain biodiversity-rich areas, and endemic plants and animals, for environmental sustainability. Furthermore, the Ministry of Forestry employs forest ranger for ensuring that conservation areas are kept free of human activities. Corporations are not allowed to do extractive activities, such as creating timber plantations or establishing mining sites, in conservation forests. In addition to the government, companies

and local communities also carry out conservation activities. The Ministry of Forestry obliges companies operating in forest areas to maintain areas that have high conservation value (HCV) within their concession areas. Similarly, the community protects certain areas in their location in order to prevent disaster and environmental degradation, to maintain water supply, and to protect sacred sites within forest areas.

The second purpose of the forest areas is economic production through natural resource extraction. The Ministry of Forestry gives forest concessions to companies to perform forestry and non-forestry activities in forest areas. Forestry activities include logging of natural forest and establishing timber plantations to produce pulp and paper. Non-forestry activities refer to mining operations, construction of public roads, and telecommunication installations in forest areas. In addition to activities that are formally allowed by the Ministry, there are many illegal activities happening in forests where companies and local communities have established cash crop forest gardens or palm oil plantations and are conducting illegal mining without the permission of the Ministry of Forestry.

When mining is the purpose for which part of the forest is used, not only the Ministry of Forestry is involved on behalf of the government, but also the Ministry of Energy and Mineral Resources (MEMR). The company first has to obtain a permit from the MEMR, then apply to the Ministry of Forestry to obtain a lease to use the forest area. A mining company can operate in both protection and production forests.[16] Often, various ministries enact different permits for the same areas, creating overlapping authority between government agencies. In 2011, the Commission for the Eradication of Corruption (*Komisi Pemberantasan Korupsi*/*KPK*) found that 1,052 mining permits, covering 15 million hectares, overlapped with forest areas. In 2017, another study by the Forestry Department of the Bogor Agricultural Institute uncovered 17,4 million hectares of mining and palm oil plantation that were located in forest areas; most of this activity lacked a permit from the Ministry of Forestry (Diantoro 2020:246).

The third use of forest resources is for the subsistence of local community members. The population around forest areas is growing, so local communities need more land for cultivation, and for other resources to increase their income. This category is different from the second category above, in terms of scale. Local communities extract

[16] For more detail about mining operations in forest areas, see Chapter 4.

forest resources on a small scale, to fulfil their daily needs. Local communities perceive forests as agricultural reserve areas for future generations, and as a way to escape poverty. A World Bank report concluded that in 2000, of the 50 to 60 million Indonesian people who lived in rural areas, particularly in and surrounding the Forest Areas, 20% could be categorised as poor (World Bank 2006: 99-100 cited in Safitri 2010b:44). Therefore, the main local community interests in controlling forest land are subsistence, and ensuring that future generations still have assets and land that they can cultivate and manage. In addition to opening up cultivation land (especially rice fields), local communities also need the forest to cultivate non-timber products such as benzoin sap, fruits, leaves and seeds.

2.3.3. Variety of interests within local communities in forest tenure conflicts

Local community members have various responses to land conflicts in the forestry sector. Their strategy depends on their interests and goals. The interests of local communities depend heavily on their needs and the basis of their land claims, as well as their values, capacity, and opportunities. In one situation, local community members might protest against land appropriation by the state and corporations, whereas in another situation, local community members might give up because they either think they cannot stop land dispossession, or they lose interest in preserving their land. The community members who want to fight back against land dispossession are looking for support and alliances that will strengthen their position against external forces. Sometimes, local community members fight against a company's operation in their area, simply to increase their bargaining position and build a joint agreement with the company. Forest company operation benefits local community members by offering employment, business contracts or compensation payments. In such diverse conditions, local community members do not always see the negative aspect of land conflict. Land conflicts also provide opportunities for some community members to engage in natural resource management, fair distribution, and collaboration to promote environmental preservation (Yasmi et al. 2009:107). In this sense, some local community members perceive land conflicts as having a positive dimension, allowing for negotiation and stimulating learning for some actors (Yasmi et al. 2009:98).

For the case studies that will be analysed in the following chapters, I describe four categories of local community interests and objectives

when dealing with forest tenure conflicts. The first is reclaiming the land to sustain local community livelihood. Restrictions are imposed on local community members because the government has allocated forest areas for conservation and natural resources extraction, which has caused local communities to lose potential income from forests. Therefore, securing sources of income from forests has become a dominant argument for local communities fighting against land dispossession.

The second concerns environmental protection. This objective is connected to the first, because a healthy environment supports secure and sustainable livelihood. For instance, environmental protection ensures a good water supply for daily consumption and for agricultural activities. Local communities also protect forest in order to preserve arable land for further generations. Local community roles in protecting the environment link to the global environmental movement. Indonesia is the second biodiverse-rich country in the world, after Brazil, making forest protection one of the demands that arise in tenurial forestry conflicts. In Indonesia, the adat community movement is strongly influenced by the idea of forest protection, because adat communities claim that they are the guardians of the forest (Tsing 2007).

The third objective relates to the benefits that local community members can obtain from corporations operating in forest areas. Local community members sometimes perceive a company's operation in their area as an opportunity to improve their living standards. These opportunities include jobs, business contracts, and land use cooperation between the community and the company. In Indonesia, companies that conduct natural resources extraction activities are required to conduct corporate social responsibility (CSR) programmes. Activities within the CSR programme may take the form of construction of public facilities, such as schools, churches, and roads. Therefore, local community members can benefit from the company. In addition, community members can be involved in the management of CSR funds, in order to implement empowerment for local communities surrounding the concession area.

The fourth objective of local community members in forest tenure conflicts concerns compensation. The Forestry Law stipulates that a community whose land is designated as forest area, and who loses access to the forest, can seek compensation from the government. Although this provision is stipulated in the Forestry Law, the Ministry of Forestry has never made operational regulations on this subject. Local

communities are demanding to obtain compensation, because the community members argue that they have lost their rights and access to the forest as a result of the company's concessions in their area. One of the case studies in this thesis (Chapter 4) discusses compensation claims made by communities whose former villages are now designated as forest areas where the government has granted mining concessions to corporations. Two main reasons usually appear in land conflict cases where local communities have formulated their goal for getting compensation from a big corporation. On the one hand, they are no longer dependent on forest area because they have an alternative source of income. On the other hand, the local community believes that they will not succeed in stopping big companies operating in their territory.

2.4. Emerging options for solving forest tenure conflicts

The previous section explains that forest conflicts occur when there is a reason for government institutions to enforce a state forest boundary. Government institutions do this when they are present in the forest area concerned, they have enough capacity (in terms of manpower) to defend the forest, and there are people actually trespassing on the boundaries of a business concession area or national park. Forest conflicts develop when local communities resist the enforcement of state forest boundaries. During the colonial and the first decade of the New Order regime, local communities could only resort to 'civil disobedience' to voice their resistance - for example, via land occupation, illegally logging trees, burning forest plantations, or conducting violence against company and government officials in response to land conflicts. At that time, there were no legal procedures for solving land conflicts, but this has changed since the 1980s. In this section, I will present an overview of the legal solutions that have developed since then (starting with community-based forest management), and that have proliferated in many kinds of social forestry schemes – including (at present) the option of state recognition of customary forest rights. The question here is whether or not these successive legal solutions have been effective in ending forest tenure conflicts.

2.4.1. Promotion of social forestry policies

Starting in the late 1970s, international funding agencies, national NGOs, and academic scholars proposed that the government recognise community-based natural forest management (CBFM) as a legal and

non-violent solution to land conflicts (Siscawati 2012:179-80). This was the start of a process by which the government incrementally set up policies and programmes to provide forest management access and rights to local communities.

Figure 4. Rp. 100 coins featuring the text 'Hutan untuk Kesejahteraan' (Forest for prosperity) (Source: en.ucoin.net)

In October 1978, the Food and Agriculture Organisation (FAO) and the Government of Indonesia organised the Eighth World Forestry Congress, on 'Forests for the People', in Jakarta. The government enthusiastically issued a series of Rp. 100 coins featuring the text '*Hutan untuk Kesejahteraan*' ('Forest for Prosperity').

Next, the FAO and SIDA (the Swedish International Development Cooperation Agency) set up a worldwide programme on 'Forestry for Local Community Development'. Its main objective was to promote and support programmes related to forestry uses for rural development, especially in developing countries (Siscawati 2012:140-4). Although the programme did not directly affect local community participation in forest management, it did increase awareness - including amongst Ministry of Forestry officials - of the fact that people's participation in forest management was essential to develop further at that time (Siscawati 2012:138). Subsequently, numerous publications on forest management, and forestry programmes supported by international funding agencies and government institutions, addressed the terms 'community forestry', 'community-based forest management', and 'social forestry'.

In line with these developments, in 1984 the State Forestry Company (Perhutani) came up with a programme that provided temporary access to landless farmers to grow and maintain the teak forest in Java. With the support of the Ford Foundation, Perhutani developed a programme called 'social forestry' which included efforts to involve villagers as labourers in forest management (Siscawati 2012:150). The type of social forestry developed by Perhutani focused on 'intercropping' (*tumpang sari*). Perhutani employed local community members to plant teak seeds

on Perhutani land, and then allowed farmers to plant annual crops for a few years. Farmers were obliged to take care of the planted teak seedlings during that period. The work arrangement was similar to the model adopted by the *Boschwezen* in 1883, known as *De djaticultuur* (Peluso 1992:63-5). However, the model developed by Perhutani did not support the resolution of forestry conflicts in Indonesia, for two reasons. The first is that the cooperation model only gave local communities a very short period to cultivate land in the forest. The second is that the scheme was limited to Perhutani's working areas in Java, so it did not affect forestry conflicts elsewhere, for example, in Kalimantan, Sumatra, and Sulawesi. Despite its limitations, the Ministry of Forestry encouraged private forest companies in the outer islands to involve local communities in their concessions, via the Forest Concessions Village Development Programme *(Hak Pengusahaan Hutan – HPH – Bina Desa)* (Safitri 2010b:51).

Although Perhutani's programmes did not have a significant impact on the resolution of land conflicts, government officials gradually began to adopt the term 'social forestry'. Meanwhile, NGO activists and academic forestry scholars recognised the positive change in the government's attitude as an opportunity to use social forestry as a tool for the emancipation of rural communities and other social groups from the destructive power of capital and authoritarian rule (Moniaga 1993 cited in Siscawati 2012:10). National NGOs, such as Walhi and YLBHI, began to assist communities involved in forest tenure conflicts. In various regions, NGOs were created by local intellectuals and activists in response to the deprivation of public living space due to the operation of logging companies, for example the regional NGO KSPPM in Parapat, North Sumatra, which organised protests against PT. Inti Indorayon Utama (see Chapter 5). The government's openness to social forestry presented an entry point for NGO actions, which was rare under the authoritarian New Order regime.

NGO activists also used the discourse on social forestry to criticise the deforestation that had occurred because the government had given large-scale permits to companies to clear natural forests. In 1982, the primary forests in Indonesia had been reduced to 119.3 million hectares (or 62% of the country's land surface) (RePPProt 1990). The deforestation rate accelerated between 1982 and 1993, reaching up to 2.4 million hectares/year (Bobsien and Hoffmann 1998; cited in Siscawati 2012:98). In addition, NGO activists criticised the international conservation organisation, World Wild Fund for Nature (WWF), complaining that it

was not interested in social justice for forest-dependent people, but only cared about saving endangered species of flora and fauna (Siscawati 2012:182).

Since the 1980s, the international funding organisation, The Ford Foundation, has provided support for key actors to develop social forestry further. The support included sponsoring a visit by a delegation of government officials and representatives of Perhutani to social forestry pilot projects in India and Thailand, some main lessons from which were afterwards applied in Indonesia (Siscawati 2012:124). An important lesson from the comparative studies in Thailand was the strong role of NGO activists and academic scholars in helping people to develop their own community-based forest management schemes.

Despite these positive initiatives, social forestry could only become a formal solution to forest conflicts if it were incorporated into the national legal system. The regime change in 1998, which ended the authoritarian New order period, opened up a new opportunity to accommodate social forestry. Democratisation since 1998 had boosted the idea that the people should own the forest, and the Ministry of Forestry has changed a lot since 2000.

The Ministry of Forestry, Perhutani, and forestry companies conducted several experiments that allowed local communities to cultivate land, or otherwise engage in utilising the forest, in production and protection forest areas. Such experiments were legally supported, either by ministerial regulations or by joint agreements between local communities and government agencies or corporations (Safitri 2010b; Siscawati 2012). In 2014, President Joko Widodo announced a national target to release 12.7 million hectares (or around 10%) of the state forest for social forestry programmes. Subsequently, forest area is now also a target for implementing land reform programmes. Under the land reform programme, the government planned to distribute 4,9 million hectares of forest area to farmers. This political commitment was part of the national development plan, and it became one of the priority national programmes. Social forestry programmes then developed into various schemes providing management access to state forest areas to local communities. Nevertheless, implementation of these programmes still falls far short of the target set by the government. The following sections will discuss the legal framework for social forestry and its realisation up to the present day.

2.4.2. Government schemes for resolving forest conflicts

Since 1990, the Ministry of Forestry has created nine schemes to address forest tenure conflicts and involve local communities in forest management. The Ministry of Forestry classifies some schemes as social forestry programmes, including community forest (Hutan Kemasyarakatan/HKm), village forest (Hutan Desa/HD), peoples' plantation forest (Hutan Tanaman Rakyat/HTR), conservation partnership (*Kemitraan Konservasi*), community-company partnership (*Kemitraan Perusahaan-Masyarakat*), and customary forest recognition. To understand the difference between these schemes, I will first describe them from the Ministry of Forestry's bureaucratic point of view; this means referring to which options can legally be applied in which areas, and under which circumstances. Afterwards, I will analyse the main characteristics of each option from the point of view of local community interests in forest tenure conflicts.

Nine schemes for resolving forest tenure conflicts

1. Community forest (Hutan Kemasyarakatan/HKm)
2. Village forest (Hutan Desa/HD)
3. Peoples' plantation forest (Hutan Tanaman Rakyat/HTR)
4. Conservation partnership (*Kemitraan Konservasi*)
5. Community-company partnership (*Kemitraan Perusahaan-Masyarakat*)
6. Approval of forest use for public facilities
7. Individual land claims and verification procedures
8. Agrarian reform programmes in the forestry sector
9. Customary forest recognition

The Ministry of Forestry view of what constitutes suitable solutions to forest tenure conflicts consists of three considerations. The first is the category of forest areas. Based on Forestry Law (Number 41/1999), the Ministry of Forestry designates forest areas based on three functions: conservation forest, protection forest, and production forest. The second category for consideration is the adequacy of forest areas, because the government must maintain at least 30% of the watershed, island, or province as forest area. Next, the Ministry categorises in accordance with the actual condition of land which overlaps the government and local community claims. If the overlapping land is already being used for public facilities, such as schools, places of worship etc., then the solution

offered by the government is different from that offered for land which has been cultivated in order to grow food crops. Additionally, cultivated land is only to be considered for social forestry schemes if local community members have used it for more than 20 years.

Figure 5. Options for solving forest tenure conflicts, based on the three categories of forest use.

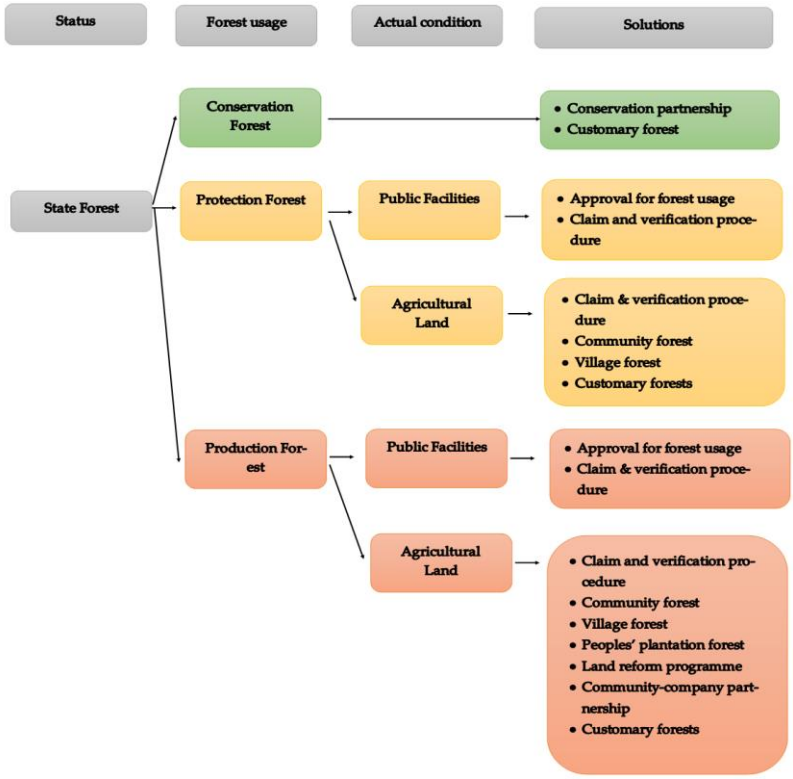

Figure 5, above, shows options for resolving forest tenure conflicts concerning state forest areas within the three categories of forest use. The first category is concerned with land conflict in conservation forest areas. There are two options to resolve forest tenure conflicts between local communities and state conservation agencies, mainly working with national park agencies: conservation partnership, and customary forest recognition. A conservation partnership (*kemitraan konservasi*) is a cooperation between regional conservation units under the Ministry of Forestry (or conservation permit holder) and local communities, based

on the principles of mutual respect, mutual trust, and mutual benefit.[17] Local communities can apply to the Ministry of Forestry to create collaborative management with government agencies in what is called the 'Utilisation Zone' - just one of the categories of zones in conservation forests. In the utilisation zone, local communities are allowed to use non-timber forest products, mainly for non-commercial purposes. If local community members want to cultivate forest products for commercial purposes, they need to apply to another unit within the Ministry of Forestry, for a different permit.[18] The Ministry of Forestry also restricts the type of plants allowed to grow in conservation forests, excluding (for example) palm oil trees. Under these restrictions, the scheme is not likely to resolve local communities' land conflicts with forestry agencies. The only alternative to collaborative conservation partnership is customary forest recognition, which involves a long and difficult legal process, as will become clear in Chapter 6 of this thesis.

The second category of land conflict occurs in protection forest areas. There are five options available for local communities to settle forest tenure conflicts with the Ministry of Forestry in protection forest areas: (a) community forests; (b) village forests; (c) the Ministry of Forestry's approval of the forest area for use; (d) individual land claims and verification procedures; and (e) customary forest recognition. The first two options - community forest and village forest – are relatively similar. In these schemes, the Ministry of Forestry issues permits for local community organisations and village governments to maintain state forest area for a limited period.[19] The Ministry of Forestry can release a decree specifically for the construction of public facilities located in protected forest areas. This kind of decree is called a decree to approve forest area usage (*persetujuan penggunaan kawasan hutan*). The Ministry of Forestry official encourages local community members to be involved in social forestry programmes. For the regional government, local community involvement in social forestry programmes located in protected forests is important to increasing local people's income from forest resources, whereas the MoF benefits from engaging local communities in reforestation. Also, customary forest recognition is an

[17] Article 1, point 13 of Peraturan Direktur Jenderal Konservasi Sumber Daya Alam dan Ekosistem Nomor P.6/KSDAE/SET/Kum.1/6/2018.

[18] Article 5 (4) of the Peraturan Direktur Jenderal Konservasi Sumber Daya Alam dan Ekosistem Nomor P.6/KSDAE/SET/Kum.1/6/2018.

[19] For more detail about social forestry schemes, see Safitri 2010b: 112-21.

alternative solution for resolving forest conflicts in protection forest, as I will explain in detail in Chapter 3.

The third category is the land conflict that occurs in production forest areas. The Ministry of Forestry has divided production forests into three levels: permanent production forest, limited production forest, and convertible production forest. The difference between permanent production forest and limited production forest relates to the logging method conducted by forest companies in the production forest. In permanent production forests, forestry companies can carry out logging by selective cutting (*tebang pilih*) or cutting everything down *(tebang habis)*. Meanwhile, in limited production forests, logging by selective cutting is the only legal option. Convertible production forest is the lowest strata in forestry administration. The Ministry of Forestry can convert production forest into land for transmigration, plantations, and agrarian reform programmes. Generally, production forests are managed by companies that obtain concessions from the Ministry of Forestry. However, some production forests are still under the direct control of the Ministry of Forestry. In overlapping claims between local communities and forest company concession areas, the Ministry of Forestry encourages local communities and companies to get involved in forestry partnership schemes.

For production forest that is under the direct control of the Ministry of Forestry, there are seven options available to local communities for resolving their overlapping claims with forest agencies: (a) community forests; (b) village forests; (c) peoples' plantation forest; (d) Ministry of Forestry approval of the forest area for use; (e) individual land claims and verification procedures; (f) land reform programmes; and, (g) customary forest recognition. In addition to the schemes which also apply to protection forests, two new options are available that are for production forest tenure conflicts only: peoples' plantation forest (*Hutan Tanaman Rakyat*/*HTR*), and land reform programmes. Local community members can apply for HTR individually or collectively. HTR is a type of small-scale logging which is conducted by local community members. In 2014, the Government of Indonesia planned to provide 4.8 million hectares of forest area for the land reform programme, the second option for resolving conflicts in this category. This is a new opportunity, since for many decades land reform programmes could not implemented in forest areas. However, the implementation of this programme is very slow. Very few local communities have succeeded in enrolling in this

programme (Sirait 2015). One of the main restrictions is that land reform programmes can only be applied to convertible production forest. This means that if the status of the forest is 'permanent production forest', a necessary additional step in the land reform programme process would be to change the status of production forest from 'permanent' to 'convertible' production forest area.

In summary, the Ministry of Forestry has created many options for local communities to resolve forest tenure conflicts with forestry agencies and companies. Depending on the status of forest areas and compared to the options for protection and production forest, options for solving land conflicts in conservation forests are very limited. A very important conclusion from the overview of legal solutions here is *that customary forest recognition is an available legal solution in all categories of forest area.* This research will uncover to what extent customary forest recognition can resolve a variety of forest tenure conflicts.

2.4.3. Conflict solutions inspired by local community members

In the previous section (section 2.3.3), I discussed the four main local community objectives in forest tenure conflicts with government agencies and forest companies. The four objectives are sustainable livelihood, environmental protection, collaborative management, and compensation. These objectives often intertwine in forest tenure conflict cases. Different groups within local communities bring their goals and interests forward. A variety of community member interests can lead to an internal coalition to oppose forestry agencies and companies and achieve common interests. However, more often than not, competing interests amongst local community members lead to disagreement and internal conflicts, which makes settling forest tenure conflict complex and difficult.

Figure 6. Options for resolving forest tenure conflicts, based on the objectives of local community members.

Objective of local community members	Solution to achieve local community members' objective
Sustainable livelihood	Community forest Village forest Peoples plantation forest Land reform programme Claim and verification procedure Customary forest
Protecting the environment	Conservation partnership Customary forest
Obtaining benefit from the company (collaborative management, jobs, CSR etc)	Community-company partnership Conservation partnership
Compensation payment	Community-company partnership Claim and verification procedure Customary forest

The different interests of local community members implies that different strategies and options are necessary to achieve their respective goals. As I have discussed in the previous section, the Ministry of Forestry - with the support of NGOs and academic researchers - has been developing several schemes to address forest tenure conflicts. To what extent such schemes can accommodate different interests amongst local community members involved in forest tenure conflicts? The first and most dominant objective for local communities living around the forest is to gain access to forest resources which are useful for their livelihood. Local community members who depend on forest resources for their livelihood are sometimes referred to as forest dwellers or forest communities (Peluso 1992; Safitri 2010b). The communities actively cultivate agricultural land and perform agroforestry activities, such as tilling the land for open farms, and planting, maintaining and harvesting forest products. The communities' main concern is access and property rights to forest land. However, if there is opportunity to obtain property rights (either individual or collective), they will take the opportunity by considering the cost and benefit of pursuing property rights. The Ministry of Forestry has developed several options which provide access

to local communities to manage state forest for a limited period, via social forestry programmes such as community forests, village forests, and people's plantation forests. Other options for local communities to gain property rights are the land reform programme, individual land claims and verification procedures, and customary forest recognition.

The second objective relates to environmental protection. A local community member who supports this objective wants to conserve nature, animals and other resources in the forest. These groups restrict their extraction of forest resources, because their main objectives are not to gain economic benefits from such resources. If there are potential economic benefits to gain from the forests, the groups expect these to be obtained from non-extractive activities, such as incentives from natural tourism and environmental services. This group also perceived extractive activities carried out by forestry companies, or the creation of public facilities in forest areas (such as building roads) to be a threat to environmental sustainability. This group uses environmental protection as an argument to stop companies operating in forest areas. The group's objective aligns with conservation programmes undertaken by several units within the Ministry of Forestry, such as the Directorate General of Nature and Ecosystem Conservation and national park agencies. Two options for channelling this objective in forest tenure conflicts are conservation partnerships and customary forest recognition.

The third objective is concerned with collaborating with forest agencies and companies. The main goal of this group is to benefit from companies' operations. This group does not always base their claim on access and rights to forest resources, but rather on the social responsibilities of government agencies and companies to pay attention to the living conditions of local communities surrounding the company's operational areas. This group does not fully consider companies or government agencies as threats, instead thinking of them as an opportunity to gain support in improving their living standards. They perceive that a company's operation can provide new jobs and public facilities, as well as opportunities to engage in business contracts and maintain CSR funds for the company. Mostly, these community member is not very dependent on forest resources for their livelihood. The most appropriate solution to meet their objectives is collaboration, either via community-company partnerships, or via conservation partnerships if their interest relates to conservation business.

The fourth objective is obtaining compensation payment. This group argues that government agencies and companies have dispossessed

them of their land, and they pursue strengthening their land claims as a basis for demanding compensation payment from the company. The objective of obtaining compensation usually exists in a situation where a local community no longer depends on forest resources for its livelihood, or when community members think they will not be able to stop companies from operating in their area. Therefore, they want to gain benefit, in the form of compensation, for losing access and their land. These demands can be met if the community can strengthen its ownership claim to the land via claim and verification schemes and customary forest recognition. In addition, the company is also considering providing compensation as part of its working relationship with the community.

I have explained several options for resolving forest tenure conflicts, above. The Ministry of Forestry officials favour collaborative management, if forest tenure conflicts occur between local communities and companies. In forest tenure conflicts between local communities and government agencies, the Ministry of Forestry encourages social forestry schemes, such as community forest, village forest, and peoples' plantation forest schemes. However, social forestry schemes do not address the roots of forest tenure conflict, because these schemes only provide access to local communities to manage state forest for a limited period. Social forestry schemes also might not address the various interests of local community members, such as obtaining compensation and collaborative management with forest companies. Amongst the options available, only the customary forest recognition scheme is apparent in all types of forest tenure conflict. The research in this thesis specifically analyses to what extent customary forest recognition can achieve various objectives in the community, when dealing with forest tenure conflicts. What are the enabling and constraining factors in recognition of customary forests as a means to meet the objectives of local communities in forest tenure conflicts?

2.5. Conclusion

This chapter shows that the establishment of state forest areas has formed a basis for forest tenure conflicts. The Dutch colonial government began the process, by appropriating areas as state forest, and the various post-colonial governments sustained and expanded the state forest area to cover more than 60% of Indonesia's land surface (at present). Following the concept of the political forest, what constitutes a forest

area in Indonesia is not always based on biological conditions, but also on the government's political decisions. Consequently, the Ministry of Forestry not only controls trees in the forest, but also land and other resources therein. The Ministry of Forestry and other forestry agencies apply scientific forestry management and have exclusive control over forest areas, creating forest area land-use planning and administration. On the other hand, the government excludes local communities from using the forest. The denial of a local community's customary rights to forest resources has been the leading cause of forest tenure conflicts (Peluso 1992:44). The legal framework supporting state forests implies the criminalisation of customary rights and access to forest resources, which has led to local resistance of the forestry agencies (Peluso 1992:236).

Not all forest areas in Indonesia involve land conflict. Conflicts only occur when opposing interests clash; the root cause of conflict will then surface. Forest tenure conflicts occur when government agencies enforce their control to protect forestry concessions and conservation programmes, and to restrict local community access to forest resources. Local communities around forest areas are resisting the controls and restrictions imposed by the government and companies. Forestry tenure conflicts often lead to violence and the imprisonment of local community members, because of the criminalisation of their customary practices in natural resource management, or because local community members commit violence and theft, which is considered a crime by forestry law. Another type of forest-related conflict occurs when local community members protest because they feel deprived of opportunities to benefit from forest exploitation via employment in the extractive industries, by deriving income from (infrastructure) projects funded by the company, or by getting compensation payments for land use.

Since the late 1970s, international funding agencies, national NGOs, and academic scholars have encouraged governments and companies to accommodate local community interests in forest management. The government incrementally supports community-based forest management as a crucial strategy for preventing and resolving forest tenure conflicts. The Ministry of Forestry formulated regulations enabling various social forestry schemes to provide access for local communities to manage state forests. In the last two decades, local community access to state forest areas has increased, although it is still far from the government's planned target. Social forestry programmes are sometimes able to prevent conflicts. However, they have their

limitations, in terms of resolving the causes of forest tenure conflicts, particularly in conflicts with national parks and mining companies operating in forest areas. A typical limitation is that the procedure for local communities to apply for a social forestry programme is long and complicated. Moreover, social forestry programmes only provide access and use rights; they are not designed to respond to land claims based on customary land rights. Therefore, social forestry programmes do not always answer the practical needs of local communities in land conflicts. In 2013, the Constitutional Court of the Republic of Indonesia issued a ruling assigning legal status to customary forest, and it instructed the Ministry of Forestry to implement legal recognition of customary forests. Indonesian NGOs and adat community organisations celebrated this ruling as a strategic opportunity to resolve forest tenure conflicts. Can, and will, state recognition of customary forests be a solution to forest tenure conflicts? The following chapters will answer that question.