RaTA:

A Rapid Land Tenure Assessment Manual for Identifying the Nature of Land Tenure Conflicts

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What This Manual is For

This Manual is based on Indonesian experience and its associated knowledge. The main objectives are:

1. To provide a practical introduction to the relationship between land tenure and land claims, whether we are talking about how land claim issues function as causal or aggravating factors in conflict, or whether we are thinking about land claims that arise in post-conflict settings.
2. To contribute towards the improvement of land tenure policies through a better understanding of land tenure system dynamics and pluralism.
3. To familiarize practitioners with a range of interventions and to sensitize officers to the fact that confusing policies can inadvertently cause competing land claims to erupt.

The Manual is not a comparative analysis of different systems and methods, nor is it a theoretical investigation on land tenure approaches. Many rapid appraisal methods share similar global objectives and principles, and different methodological frameworks can be used. The Manual does not intend to provide an overall view of these methods. Instead, the Manual is primarily an educational instrument for readers looking for new, efficient and adapted methods and tools. It aims to obtain immediate results by offering a tried and tested methodology for immediate field use. The Manual offers practical tools developed all over Indonesia in World Agroforestry Centre-South East Asia projects and used by other development agencies in the past few years. It should also contribute, however, to improved investigation and development skills amongst those carrying out field studies. This is even more important because it is also a self-training process for those carrying out the project.

The target audience includes development technicians working in national institutions in charge of land conflict and competing claims, NGO field experts, and government officers. The Manual also aims to help technicians and consultants who have been working on land conflict issues and are carrying out land tenure studies, and are proposing policies to improve land tenure.

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1. Background: The Importance of Tenure Assessment

A land tenure issue is often cited as a root cause of communal or even separatist violent conflict. Although it is unclear what is really at stake behind the 'ethnic' or 'religious' conflicts that have erupted since the fall of Suharto in Indonesia, it is commonly stated in various forms that land and natural resources issues are the main cause of these conflicts. In West Kalimantan, beside the negative characteristics attributed to the Madurese by other groups, the gradual dispossession and marginalization of Dayak people to access natural resources explain why an ethnic conflict took place and exploded compared to other provinces in Kalimantan (De Jonge and Nooteboom, 2006; Peluso, 2008; van Klinken, 2008). In Central Sulawesi, competition to secure access to land in a context of migration and changing land ownership and use patterns led to "autochthons-outsider" conflict (Aragon, 2001; 2002). A similar cause of this conflict also took place in Maluku, where many migrants from Java and Bugis gained many benefits and advantages during the Suharto regime to access natural resources, later creating jealousy among local tribes (Brown *et al*., 2005). In Papua, injustice over the state's control and management has been reported to have significantly contributed to tensions there (Chauvel and Bhakti, 2004). Consequently, comprehending how land and natural resources are controlled, managed and distributed, and how various actors access and use them, is essential for understanding the real cause of these ethno-religious conflicts (Clark, 2004).

The descriptions above explain the importance of tenure assessment as a part of conflict analysis. However, land tenure assessment is needed not only for investigating the real cause of violent conflicts, but also for the implementation of a program to assist local communities to work toward better management of natural resources. Freundenberger (1994) provided three reasons why studying tenure is so important in natural resource management programs: first, it affects who has access to resources; second, it affects whether people are willing to participate in project activities; and third, it affects the distribution of the program's benefits.

Effective management of environmental issues should consider land tenure early in the design phase. In Africa, land tenure issues became a prohibitive problem for many afforestation and reforestation sequestration projects that were to be part of

the Clean Development Mechanism (CDM) of the Kyoto Protocol, simply because their understanding of land tenure was usually brief, general, oblique, unclear, or mistaken. A disconnect between customary and statutory land tenure systems prohibited any CDM projects in Africa (Unruh, 2008). Without understanding how tenure rules work, programs based on natural resources are likely to encounter major problems, causing conflicts in the future. There is also a certain risk that the program could reduce other people's rights to resources, livelihood and security. Many practitioners alert scientists and policy makers to the importance of property rights issues in the context of climate change (Griffiths, 2007; RRI, 2008).

In the livelihood study, secure access and rights to land can be fundamental to the achievement of food security and sustainable rural development. Inadequate rights of access to land and other natural resources, and insecure tenure of those rights, often result in extreme poverty and hunger. In most societies, access to land has favored certain individuals and groups at the expense of others. Any program should ensure that causes, which prevent people from enjoying their rights, are eliminated or reduced. Essentially, there is a need to study tenure as a means to provide tenure security, a precondition for changing livelihood conditions (FAO, 2002; United Nations, 2003).

Ironically, food security and poverty are intertwined with the problems of deforestation and land management. Although researchers well recognize land degradation and deforestation at the global level, they have given little attention to understanding the underlying causes of these undesirable trends. Therefore, there is a need to examine aspects of land tenure that affect long-term management of forestland, rangeland, and farmland, as well as tree resources and other minor forest products (Otsuka and Place, 2001).

2. Land Tenure Conflicts

Access to land is governed through land tenure systems. Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. It is the system of rights and institutions that governs access to and use of land. The institution consists of rules invented by societies to regulate behavior. These rules define the rights of access of people to particular natural resources, and are also a form of social endorsement of these relationships, such as how property rights to land are being allocated within societies and how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restraints (FAO, 2002). The land and its natural resources are the objects of tenure arrangement that are defined by the actors as social processes.

Box 1. Customary and Statutory Land Tenure System in Indonesia.

The Basic Agrarian Law (BAL) 1960 covers the entire Indonesian land base. It guides the government in recognizing and awarding 7 types of rights over land. Viewed from the general western legal perspective, the most encompassing and secure is the right of ownership (*hak milik*). The remaining 6 are forms of usufruct rights on land under state control. Under Government Regulation 24, lands are divided into two types, the first being Customary Land (*tanah adat*), where rights can be recognized to have existed prior to the enactment of the BAL (*hak lama*), and the second being State Lands (*tanah negara*), which are open for distribution to private entities (*hak baru*).

On the other hand, the forest zone (*kawasan hutan*) is under the Department of Forestry jurisdiction. The 1999 Forestry Law empowers the Department of Forestry to determine and manage Indonesia's forest zone. The law divides into two distinct areas:

1. State Forests (*Kawasan Hutan Negara*), where the government has established that there are no private rights over the land; and
2. Private Forests (*Hutan Hak*), where the land and land cover qualify as being forests and there are private rights attached.

While both the legislation and numerous subsequent natural resources management regulations give much attention to the recognition of customary rights (*Hak Ulayat*), there is in fact little de facto recognition and, thus far, little political will. One prominent exception is the procedure for the recognition of 'private communal land title' for customary communities laid out in a 1999 National Land Agency decision that provides guidelines for the registration of customary lands (Ministerial Decree 5, 1999). The BAL states that existing customary rights cannot be acknowledged on 'land controlled directly by the State'. However, it is not explicitly clear in forest law. The Indonesian Government only acknowledges the rights of customary communities in principle rather than in practice.

The tenure agreements in these two laws and its perceptions could change if the actors perceived differently. Unfortunately the Legislative Act no IX/2001 on Land Reform and Natural Resource Management that mandated to solve this kind of overlapping laws and interpretation has not yet succeed to push the actors to come to a unity of tenure arrangement.

Adopted from Contreras-Hermosilla and Fay (2005) and Galudra et al (2006)

These rules and norms governing land tenure usually can be administered by statutory and customary organizations. Consequently, to understand land tenure, one must fully understand the historical and political context under which they were shaped. Land tenure conflicts are outcomes of competition over power, ideology and local history, leading to changing patterns of inequality. Clearly, this means that tenure is not only about institution, but also about the process by which institutions are created. The latter refers to forest governance (Koning et al., 2008). The term “forest governance” encompasses topics relating to how forest resources are managed, ranging from how decisions about forest use are made and who is involved in the decision-making process, to the enforcement of forest laws and policy on the ground. Many actors are involved in this process, creating a complex relationship of alliances or competition with regard to land. However, when a powerful player exacerbates interest and harms other people's interest, conflicts may erupt. Nevertheless, land conflict is not just a conflict of interests among the competing actors.

Box 2. Land Tenure being Distinct from Other Tenure Forms (Tree, Water etc)

RaTA tool focuses on competing claims on land tenure issues. It is concerned about rights and institutions that govern access to and use of land. However, despite the limitation of this tool's scope, we should not neglect the possibilities of other tenure forms that might be also under dispute, such as tree tenure, water etc. Rights over trees are often distinct from rights over land. Tree tenure consists of a bundle of rights over trees and their produce which may be held by different people at different times. These rights include the right to own or inherit trees, the right to plant trees, the right to use trees and tree products, the right to dispose of trees and the right to exclude others from the use of trees and tree products. In Indonesia, these kinds of rights can be found in Kalimantan such as *Tembawang. Tembawang* is an agroforestry system which distinguishes trees into private trees and family trees, regardless the land owners are.

Water tenure refers to the right of a user to use water from a water source, e.g., a river, stream, pond or source of groundwater. In areas with plentiful water and few users, such systems are generally not complicated or contentious. In other areas, especially arid areas where irrigation is practiced, such systems are often the source of conflict, both legal and physical. There are not many studies concerning water tenure in Indonesia, despite that these kind of rights in Indonesia has been legalized through Law No 7/2004.

Adopted from Fortman (1985) and Peluso (1996)

Herrera and da Passano (2006) has categorized three causes of land tenure conflicts. One of the main reasons is *political influence*, which is present in almost every land tenure conflict. The potential erupts into conflict when significant changes (perceived and actual) occur in the access by one or more party to land and security of tenure. As was observed, the superimposition of statutory legal systems on customary systems creates new windows of opportunity for people to take advantage of multiple systems when claiming resources (Peluso, 1995).

Another cause that can lead to land tenure conflicts is *legal aspects*. In many land tenure conflicts, the main problem is that actors are not aware of their legal rights or the different legal frameworks that regulate access to areas and the use of natural resources in different or opposing ways. A clash between two or more organizations that possess legal authority to regulate the same area of land could also lead to land tenure conflicts. Another major cause of land tenure conflicts is *economic factors*. If, for example, land is the only source of income and the exclusive resource of the actor and thus the basis for their survival, their involvement in the conflict will be greater and they will be ready to do whatever is necessary to maintain their position.

From the explanation above, land tenure conflicts are evidently caused by these three factors. However, there is a lack of detailed analysis on competing claims of access and use rights on land as the main source of land tenure conflicts. The main source of these competing claims can be traced to lack of clarity, legitimacy and legality of land tenure policies (see Box 3 for the main sources of competing claims on the land tenure issue). Legality refers to alignment with constitutional rights and principles, while legitimacy refers to full actor involvement in discussions on legal reform. These land tenure conflicts arise from perceptions and the different interpretations that people give to their rights over forested land and resources.

Box 3. Sources of Competing Claims on Land Tenure Issues.

1. The historical transformation of governance from local communities to a colonial mix of support for local rulers and external control for economic and political interests of the state and the subsequent integration into a unitary state with formal law, has left a patchwork of claimants to rights on various part of the landscape.
2. The duality of the tenure system between formal state laws (incompletely understood and implemented) versus informal or customary claims is largely unresolved.
3. Land border disputes due to unclear ownership/management status or differing perceptions of land ownership.
4. Overlapping rights by different parties to the same land due to differing objectives, interests and jurisdictions of various government departments or under different legal regimes.
5. Lack of recognition of customary/informal rights in government development projects.
6. Unclear land registry records and multiple party possession of land titles for the same land.
7. Increased commercial agricultural and extensive land use leading to land access competition.
8. Land inequality, associated with extreme poverty and vanishing opportunities, causing fierce competition over land.
9. Displacement and return of populations caused by conflicts as a result of war or forced resettlement by government projects.
10. Migrants to areas with established communities and land tenure systems, leading to conflict and misunderstandings over the rules of access to land and exposure to local entrepreneurs who sell non-legitimate claims on land.

Another fact that should be addressed is that conflicts over tenure issues are dynamic, not static, and must be recognized and respected through the adaptability of the tenure systems. As the most of the land and resource tenure arrangement, were started with the tangible object of natural resources such as piece of land, the natural resources on the top of it such as trees, forest etc, water run of resources, mining beneath of it such as mineral water and other mining resources. In the latest situation, the tenure arrangements are so dynamic, includes intangible natural resources. The resources that could not seen, but felt and valued in the global world by its the environmental services; carbon stocks, carbon sequestration, and other gasses emission, etc.

The challenge for an empirical analysis is to understand the complexity of these dynamics, particularly when rules within the tenure system evolve as many actors become involved, either because of government intervention over land access arrangements and increasing control by local authorities, or market opportunities and economic reasons (Cotula, 2007). These changes cause numerous actors to have powers and 'legitimate' claims that affect the land tenure system. Conflicts may arise when these different actors pursue their 'legitimate claims'; thus, tenure analysis should never overlook the power relationships among the actors.

Tenure conflict should also be concerned with land security beyond the legal aspects. There is a hold-premise that a legal land title can be equated with secure land rights, which views land titles and secure land rights as being preconditions for farmers to invest in land and sound management of natural resources (Alston *et al*., 1996; Feder *et al*., 1988). This hold-premise led to a focus only on legal aspects and neglected the complex interweaving of the social, economic and political sources of land tenure security and insecurity (Mehta *et al*., 1999; Ostrom, 2001).

Therefore, negotiation and enforcement of rights and claims become the central focus of the discussion when the importance of power relations is acknowledged. As a result, land use and land tenure turn into a complex arena of overlapping and competing social and political relations (Juul and Lund, 2002; Leach *et al*., 1999; Mehta *et al*., 1999). Ambiguities and several competing normative orders may co-exist, and different groups and institutions compete over the jurisdiction to settle disputes and set norm. As such, competing tenure claims must be assessed in relation to the capacity of the actors to put rights into effect.

The multitude of claims, interests, interpretations of rights and norms, and facts that are used by the actors to the dispute form an excellent example of legal pluralism and of the importance of power relations in the development of conflict resolution (Biezefeld, 2004). The extent to which one can bend the law to one's own benefit depends on the distribution of power (Turk, 1978). History is a record that is

constructed and reconstructed by people. Even maps and archives do not provide objective evidence, and the distribution of power determines whose version of reality will win (Berry 1997). As a result, enforcement of rights becomes part of this analysis. In this context, RaTA (rapid land tenure assessment) will help to enhance understanding of the importance of social relationships, including relation of power, in the enforcement of land tenure claims and in the constant process of creation, negotiation and contesting of these rights.

3. The Concept of Rapid Land Tenure Assessment (RaTA)

3.1. Objectives of RaTA

Land tenure conflicts arise from perceptions and the different interpretations that people give to their rights over forested land and resource. The main source of these land tenure conflicts can be traced to the competing claims from various actors due to lack of clarity, legitimacy and legality of land tenure policies. Legality refers to alignment with constitutional rights and principles, while legitimacy refers to full actor involvement in discussions on legal reform. Unlike other guidelines that only identify existing land tenure systems and general conflicts (Bruce, 1989; Engel and Korf, 2005; Freudenberger, 1994; Herrera and da Passano, 2006, USAID, 2005), the Rapid Land Tenure Assessment (RaTA) explores competing claims among different actors, who hold different rights and powers, as these competing claims are often related to competing or changing land tenure policies, developed in different historical periods and for various purposes. By using policy study for analyzing the roles of policies in the land conflicts and competing claims, RaTA can provide policy options, and intervention is offered as an alternative solution to settle the land conflicts.

Box 4. The Necessity to Address Land Conflict Issues Through Practical Guidelines.

As was noted, there has been considerable movement on land and conflict issues by official development agencies in recent years. Some of them attribute violent conflict to structural factors such as socio-economic disparities, scarcity of land and changes in the land tenure system. Other suggests that land rights and their historic negation were at the core of these many conflicts.

These acknowledgements brought others to create practical guides, either for evaluating conflict outcomes of land policy, or as training tools used by mediators working on land rights or making information on land rights available to communities and local governments. These important land policies and guidelines can be seen in the following links:

1. OECD Development Assistance Committee (DAC) Guidelines on Conflict, Peace and Development Cooperation (CPDC) http://www1.umn.edu/humanrts/
2. World Bank Land Policies Research Report: http://econ.worldbank.org/
3. USAID Land and Conflict Toolkits http://www.usaid.gov/our_work/cross-cutting_programs/conflict/
4. EU Land Policy Guidelines: http://www.donorplatform.org/
5. FAO Land Tenure and Alternative Conflict Management http://www.fao.org/sd/dim_in1/
6. DFID Land: Better Access and Secure Rights for Poor People: http://www.dfid.gov.uk/pubs/files/LandPaper2007.pdf

Five objectives are used to engage land tenure conflict: a general reading on land use and conflict, actor analysis, various forms of perceived historical and legal claims, linkages of these claims to policy and (customary, religious, etc) land laws, and a mechanism for conflict resolution (see Table 1).

Table 1. Objectives of the Study on RaTA.

	Aims
Objective 1	Describe general reading on land use and conflict linkages to a particular context; political, economic, environmental etc.
Objective 2	Identify and analyze actors.
Objective 3	Identify various forms of perceived historical and legal claims by actors.
Objective 4	Identify the institutions and rules governing the management of natural resources and analyze the linkage of various claims to policy and (customary) land laws.
Objective 5	Determine policy options/ interventions for conflict resolution mechanism

3.2. Steps on RaTA

1. Locating and Mapping Potential Sites

The initial stage of this tool mainly consists of compiling and analyzing secondary data. The question to answer from the first step is whether or not the area under consideration is subject to ongoing disputes or there is potentially conflict. This kind of information is mostly available from various websites, newspapers, official reports, television etc. Other alternative sources that should be considered are interviews, such as with local NGOs, government officials or undisclosed reports from the government.

The next step is to ascertain the type of land use associated with the competing claims. This step also determines competing land uses and what resources used are at stake. It also determines the types of land tenure system. Moreover, in RaTA, spatial analysis and participatory mapping can be used to determine the competing land uses and the resource uses at stake. Spatial analysis using satellite imagery and/or aerial photography can be used when dealing with large areas. However, participatory mapping is useful to understand the local definition of land use types and the institutions related to land and natural resource use. Therefore, in RaTA, both approaches are being used.

Baseline data includes: administrative data (provincial to village scale maps), soil and geological maps, road and river networks, and land/ forest status maps. These maps can be obtained from local government agencies, forestry departments, or mapping/ survey agencies. Another useful set of data is derived from statistics from official reports regarding historical land cover and use. Since RaTA will help to

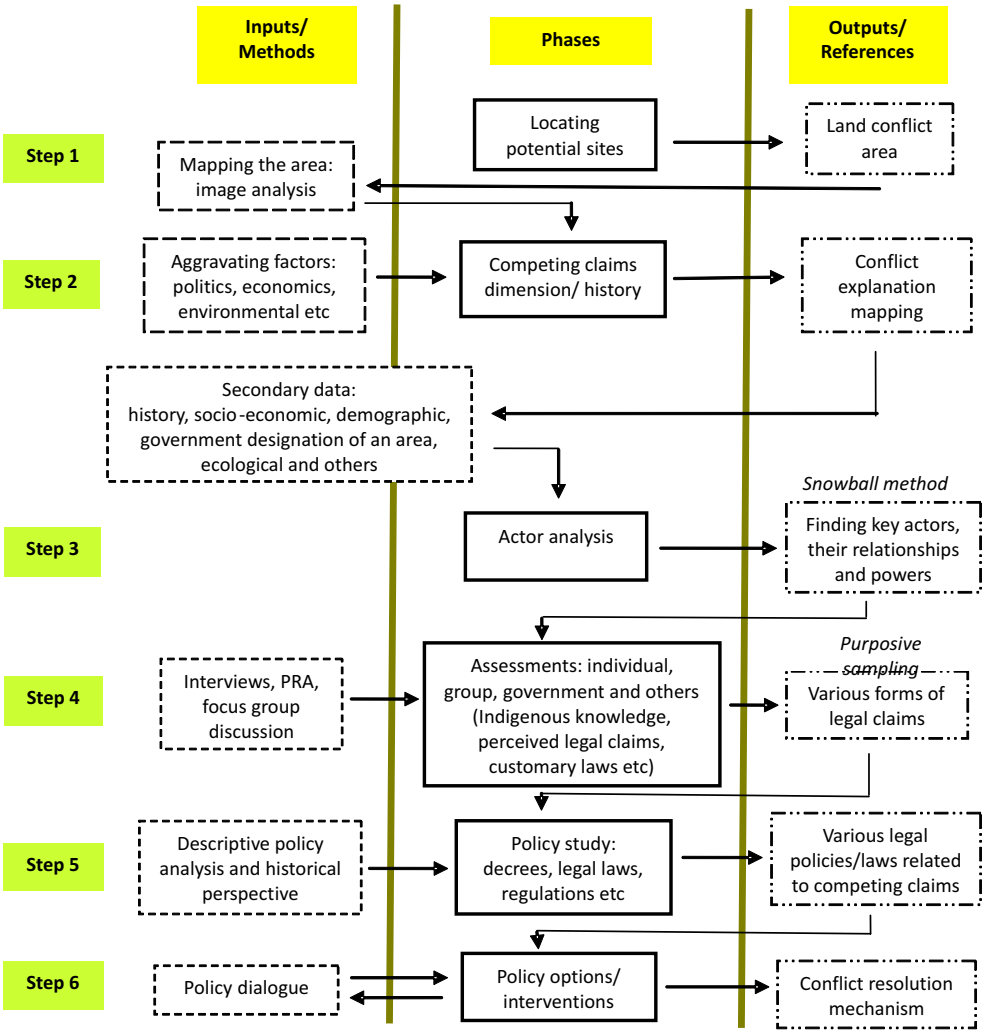

Figure 1. The steps in RaTA analysis.

understand why conflict of land tenure erupted, the most probable sites are where the conflicts occur and taking place. However, RaTA also can be applied for the sites where conflicts have not yet happened such as a discourse on land tenure access and competing claims is being taken placed or a project development is being implemented but potentially bring impact on natural resource use and access (See Box 2 on Sources of Competing Claims on Land Tenure Issues).

2. Competing Claims Dimension

The competing claims aspect discusses the dimensions of stakes for competing claims and the relative importance that each actor gives to the stake. The latter aspect is based not only on the actors' interests, but also on their feelings and perceptions.

Parameters of dimension and intensity require some explanation. The higher the number of actors involved and the greater the manifestation of violence, the more important the stake is. Another dimension that needs to be considered is the relationship between conflicting parties. When conflicting parties are suspicious and hostile to each other, their competing claims may be tough. The competing claims history (duration and frequency), and the resolution process should be assessed as well.

3. Actor Analysis

The actor analysis in RaTA uses and adopts several theoretical approaches. Stakeholder power analysis, developed by Mayer (2005) and used in this study, is a tool, which helps understand how people affect policies and institutions, and how policies and institutions affect people. Change in the relationships among actors is the main factor that causes conflict. Policies and institutions usually shape, and often determine, these relationships between actors. Therefore, this step is not simply to identify actors involved in the competing claims, but also to assess actors' power through understanding which policies, institutions and processes shape and determine the power relationship of the competing actors. Here the actors need to identify carefully, known as subject of the conflict which need to be asses its interest and legitimacy.

Another theory, the 'Theory of Access' developed by Ribot and Peluso (2003), can help to understand power. This approach views access as a bundle of power as opposed to the conventional approach to property, which considers a bundle of rights (Bromley and Feeny, 1992; Ostrom and Schlager, 1996). This 'bundle of right' approach cannot explain how external interests are able to appropriate the resources considering that the resources are usually controlled and managed by the people within the groups. Moreover, it is unable to explain how some users might use indirect means to extract benefit from the resources like benefits derived from 'illegal' activities. The theory of access is able to analyze how somebody generates benefit from things whether or not that person holds the rights to them (Ribot and Peluso, 2003).

With respect to actor analysis, the above theories can explain what factors lead actors to become involved in competing claims in excising their rights and or their

power. RaTA assumes changes in power relationships result in some actors taking part in claims over natural resources. The actor analysis uses both approaches, including actors who actually have rights or perceived rights over the natural resources and actors who actually have power to ascertain their claims beyond other rights (See Annex 1 and Annex 2 for how to use actor analysis and mapping in this manual).

Box 5. Categorizing Actors.

There are no easy answers to decide on the appropriate balance of actors in competing claims. In some text book on civil society participation the term stakeholder has been used to replace the term actor, but actually it has different meaning. Stakeholder is someone who owns a stake (ticket) i.e. in gambling. The probability to win is the same for all stakeholders. But the term Actor emphasized the inequality of power between them. Here, to assist the decision, actor groups need to define and agree on criteria to define primary and secondary actors. We must ensure that the primary actors include those who claim most of the area as within their rights or who are most affected by the competing claims. This includes considering the range of options available to a actor group if an interest or basic need associated with a resource is not met.

Actors that are linked to the competing claims but have less direct effect on it are secondary actors. They may play key roles in affecting others to use or claim the land as their rights, create policy or law, permit other actors to use the land, act as a third party or an intermediary, or work alongside a weaker party in an advocacy role, moving the wider political arena towards greater equity.

4. Assessment

Following the actor analysis, the next step involves obtaining perspectives of the identified actors regarding competing claims on natural resources. This is achieved by conducting an assessment of the claims by society, both as individuals and groups, and of government, bearing in mind that RaTA is not a purely 'scientific' and 'legal' assessment tool; it extensively uses 'citizen perceived legality' and the knowledge of local actors. This is based on the argument that competing land claims have occurred because many actors have different perceptions of 'legal' land rights and vastly different understandings of land policies. Advantages include its use being time-effective, easy and flexible for use in combination with other 'legal' approaches and it can foster the development of a relationship between researchers, advocates and local communities.

4.1. Exploring "Local Perspectives"

Assessment of local perceptions or perceived legal claims usually indicates the relative importance of certain facets of tenure claims, which are utility focused and infrequently documented. Therefore, the existing methods of acquiring information usually apply an ad hoc approach. Some of the most commonly found issues related to resources management at the local level are elaborated in Table 2.

Table 2. Exploring the perspective of local actors on land tenure claims.

Aspects to Explore in the Assessment			*examples of ideas for exploration*
	Tenure and rights on land	Forms of rights, ownership and access, terms and definition of land uses, acknowledgement of rights; establishment of 'claim' and resolution of conflicts and multiple claims	
	Local knowledge on land laws and land rights	Perceptions and understanding of land laws and rights, awareness of land laws and policies, local/ traditional knowledge	
	Governance and land policies	Existing regulation, agreement with other organizations (governmen t, private sector or other villages), collective actions, customary rules and regulations, policy from different administrative levels	
	Threats and power degree	Behavior on conflicts, level of satisfaction from land use rights, preference with regards to preserving land rights claims	
	Potential opportunities	Unforeseen opportunities, existing networks, bundling the resolution scheme	

In order to explore these aspects, a set of tools, questions and documents has been prepared in Annexes 3-6. Although the set is specifically tailored for the Indonesian context, it is designed to be adequately generic to be used in other tropical contexts.

4.2. Representations in Local Context

Key persons who hold information on policy making are selected based on representatives of the existing social strata in local villages and local government institutions. We are aware that social strata in local villages are established informally and often perceived differently by the different social groups. For example, wealthier people are less dependent on land, while at the same time they may have higher control over the resources and options to reclaim them. In addition, poorer individuals might appreciate land access rather than land ownership, as they have limited power to negotiate. Some ideas to select 'social strata' at the village level include:

- Gender–institutional arrangements for the division of responsibilities in daily living; women's representation and decision-making, etc.
- Economic assets and land ownership (land owner, tenants, intermediaries)
- Representation of institutions (customary, administrative)
- Occupations (peasants, fishermen, loggers, etc.)

On the other hand, policy makers are differentiated formally based on government rules and policies. However, not all government agencies have general rule-making power or responsibility. We need to identify the policy makers and analyze their positions on policy, and power to assert and interest. This determines who the influential actors are in forming a policy that addresses local land tenure system. Based on these facts, Table 3 and Annex 7 describe some ideas on selecting key people based on policy sources.

Table 3. Key people based on public policy sources.

	Province	**Regency**
Rule-making	Legislature, executive, courts, regulatory agencies	Mayor/*bupati*, boards and commissions
Implementer	Local offices	Local offices

To allow the capture of issues or problems related to land tenure and rights claims to be perceived by different actors as rapid, we need to target the right government institution and the right informants to interview at this stage (see Annex 7). Additionally, we could check which government officials to interview, based on the local government structure and hierarchies or using snowball sampling.

5. Policy Study

A major aspect of policy study is law. In a general sense, the law includes specific legislation and more broadly defined provisions of constitutional or international law. However, policy is certainly not about law. While the law can compel or prohibit behavior, policy guides actions toward those that are most likely to achieve a desired outcome (see Box 4). We must clearly be aware that conflicting claims commonly emerge over time because of contradictions, gaps, and uncertainties in a country's land law, policies and regimes. Policy analysis requires the understanding of what is manifest and what is latent. The manifest policies may espouse fairness, peoples' welfare, while latent policies involve hidden law within certain policies. Keeley and Scoones (2003) define policy process as a relationship between knowledge, power and policy. This may occur in number of ways.

1. Policies may be substantially altered in practice by the agencies that implement them.
2. Policies are perceived systematically and collectively in a particular way by the people to whom they are meant to apply.
3. Government actions may be linked to a set of different interests (Pal, 1989).

Box 6. Policy Definition

The word "policy" is not a tightly defined concept but a highly flexible one, used in different ways on different occasions, including:

- A definite course or method of action selected (by a government, institution, group or individual) from among alternatives and in the light of given conditions to guide and usually, to determine present and future decisions
- A specific decision or set of decisions designed to carry out such a course of action
- The specific decision or set of decisions together with the related actions designed to implement them
- A projected program consisting of desired objectives and the means to achieve them
- A set of coherent decisions with a common long-term purpose(s)

Adopted from ILRI (1995)

Several styles and approaches are used to support RaTA (See Table 4 and Box 7).

Table 4. Styles of policy analysis.

Styles	Characteristics
Content analysis	• Empirical description of the contents of an existing public policy • Focus on current policy • Aim to ensure consistency and relationship with constitutional, legal and policy provisions
Historical analysis	• View policy more expansively, stretching over decades • Assume that current public policies have been shaped by past events, and carry within them their unarticulated effects
Process analysis	• Focus on the immediate political process, decisions, debates, conflicts and compromises that produce public policy • Assume that policy is best explained with reference to the political system
Evaluation	• Focus on judging policy on consistency between means and ends, and its effects on intended targets

Source: Adopted from Pal (1989)

Box 7. Analysis of Policy Statements and Laws

Analysis of policy documents is an important part of policy analysis. The language, style and length of policy documents can tell us much about context and process. A desk review of key policy documents might include:

- Gathering policy documents which have a bearing on forests access, rights and people
- Cataloguing the contents in relation to the purpose of the analysis
- Highlighting inconsistencies, links and overlaps between the documents
- Comparing these documents with the position of key stakeholder groups on land claim
- Noting any conflicts that were caused by these documents
- Identifying mechanism for dialogue between stakeholders for reconciliation

Adopted from Mayers and Bass (2004)

6. Policy Options

The last step of RaTA is to determine which of the various alternative policies will best achieve a given set of goals in light of the relationships between the policies and the competing claims. Rather than understanding policies, we are focusing on making alternative decisions to settle the competing claims. Appropriate legislative and policy reform is often required to prevent continued land claim disputes. Competing claims that involve conflicting legal rights might require court proceedings to be effectively resolved. In some contexts, specialized land courts have proven helpful in dispute resolution.

On the other hand, experience has also shown that many types of land disputes are best managed outside the courts. Limited court capacity to process land claims efficiently and transparently is a serious constraint in many places. Legal arguments are not always the most decisive arguments in settling a dispute (USAID, 2005). Thus, alternative dispute resolution processes, especially mediation and arbitration, can be useful, while customary and community-based mechanisms for conflict resolution may be relevant in some cases. Property commissions or claims commissions may also be pertinent to certain post-conflict contexts. Here, we are seeking land claim resolution based on the latter mechanism. Increasing and protecting tenure security is the best way to resolve the competing claims.

4. Case Studies

This chapter presents four case studies around Indonesia. The first one was conducted in West Kutai District, East Kalimantan and more emphasizes on how RaTA had been done for legal and social assessment. On the other hand, the other three case studies have been conducted in Ex-Mega Rice Area, Central Kalimantan, Mount Halimun-Salak National Park, Banten and West Java and Lamandau River Wildlife Reserve, Central Kalimantan. These case studies are more focusing on the results and for further implications. The last case study in Lamandau shows an interesting fact when land tenure claims are different from tree tenure claims.

4.1. Case Study 1: Social and Legal Assessment of the Community Based Forest Resources Management in West Kutai, East Kalimantan[1]

In responding the mitigation of Climate Change, the case study in West Kutai District, East Kalimantan Province, has been brought as a case study to elaborate how RATA will be used on the ground in responding the REDD+ plan, particularly in dealing with the land and resource tenure aspect to be complied with the CCBA standard especially the Draft REDD+ Social and Environment Standard (2nd October 2009 version) (The Climate, Community and Biodiversity Alliance, 2009). The WWF-Indonesia assessment in Kutai Barat District, East Kalimantan has been conducted and presented the steps how RATA will be used in the assessment.

4.1.1 Background

Community Based Forest Resource Management (KHM/*Kehutanan Masyarakat*) allocated approximately 114 000 ha in West Kutai District, East Kalimantan, which were defines as non forest areas. These areas supposedly located outside forest areas, which is under the jurisdiction of the local government. Even though KHM located outside the gazettal forest area and administered under the jurisdiction of the local government, there is no guarantee that the KHM area will be free from overlapping claims from the central government (ie. forestry department), local

[1]The findings of this study has been presented at Sendawar, West Kutai, East Kalimantan on 18 May 2010 by Martua Sirait, Andiko, Andy Mangopo, Jentra and Bambang Rudy Ananto

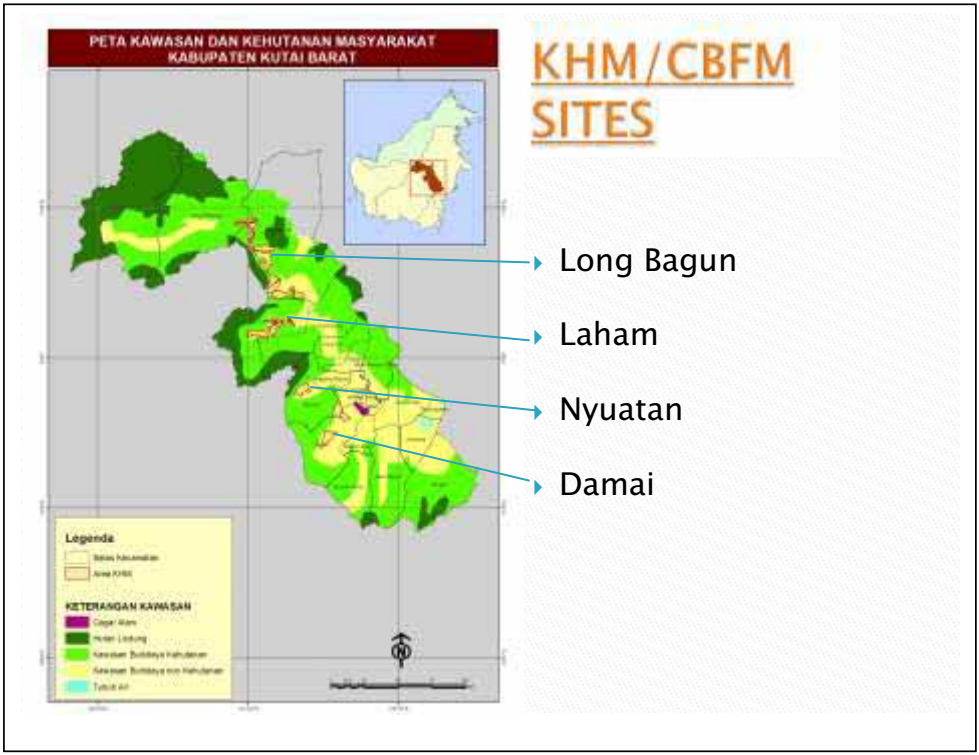

Figure 2. The Location for KHM in Kutai District

government as well as local communities claim. Several interests between the central government, local government as well as local communities and global community agendas need to be better understood as the requirement to plan a comprehensive natural resource management plan which will mitigate further forest degradation. For better understanding of the driving force of deforestation and deterioration of the forest and address the welfare of the local community, the assessment were developed, especially in dealing with the current issue of Climate Change and its REDD framework through the CCBA as one of the standard and other effort to maintain the Hart of Borneo (HoB) remaining forest.

4.1.2. Steps

The team carry out following activities elaborates in several steps;

1. Conduct relevant literature research on the social and legal aspect surround the KHM (*Kehutananan Masyarakat*) in West Kutai district and check relevant Principles, Criteria and Indicator relates to the tenure issues, i.e. **Principle 1** Rights to Land, territories and resources are recognized and respected,

Principle 6: All relevant actors and rights holders are able to participate fully and effectively in the REDD+ program. **Principle 8**: The REDD+ program complies with applicable local and national laws and international treaties and agreements. See Table 5 next.

Table 5. REDD+ Social and Environmental Standard

Principle 1: Rights to land, territories and resources are recognized and respected.	
Criteria	**Framework for indicators**
1.1 The REDD+ program effectively identifies the different rights holders (statutory and customary) and their rights to land, territories and resources relevant to the program	1.1.1 A process is established to inventory and map existing statutory and customary land, territories and resources tenure/use/access/management rights (including those of women and other potentially marginalized groups) relevant to the program including and any overlapping or conflicting rights. 1.1.2 Land-use plans including forest management plans in areas included in the REDD+ program identify the rights of all rights holders and their spatial boundaries.
1.2 The REDD+ program respects and recognizes both statutory and customary rights to land, territories and resources which Indigenous Peoples or local communities have traditionally owned and occupied or otherwise used or acquired	1.2.1 Land-use plans including forest management plans in areas included in the REDD+ program recognize customary and statutory rights of Indigenous Peoples and local communities. 1.2.2 The policies of the National REDD+ program include recognition of the customary rights of Indigenous People's and local communities. 1.2.3 The REDD+ program promotes securing statutory rights6 to land, territories and resources which Indigenous Peoples or local communities have traditionally owned and occupied or otherwise used or acquired.
1.3 The REDD+ program requires the free, prior and informed consent of rights holders for any activities affecting their rights to lands, territories and resources.	1.3.1 The policies of the National REDD+ program uphold the principle of free, prior and informed consent of rights holders for any activities affecting their rights to lands, territories and resources. 1.3.2 The REDD+ program effectively disseminates information about the requirement for free, prior and informed consent of rights holders for any activities affecting their rights to lands, territories and resources. 1.3.3 Collective rights holders define a verifiable process of obtaining free, prior and informed consent including who has authority to give consent on their behalf.

	1.3.4 Free, prior and informed consent is obtained from rights holders for any activities affecting their rights to lands, territories and resources following the agreed process.
1.4. The REDD+ program includes process to resolve any disputes over rights to land, territories and based on the free, prior and informed consent of the parties involved.	1.4.1. A transparent and accessible mechanism of local/community/ national mediation to resolve a disputes over rights to land, territories and resources related to REDD+ program is developed and functional. 1.4.2. Disputes are resolved in a timely manner within an agreed timeframe
1.5 Where the REDD+ program enables private ownership of carbon rights, these rights are based on the statutory and customary rights to the land,territories and resources (as identified in 1.1) that generated the greenhouse gas emissions reductions and removals.	1.5.1. A transparent process for defining carbon rights is developed and implemented based on the statutory and customary rights to the land, territories and resources (as identified in 1.1) that generated the greenhouse gas emissions reductions and removals
Principle 6: All relevant stakeholders and rights holders are able to participate fully and effectively in the REDD+ program	
Criteria	**Framework for indicators**
6.1. The REDD+ program identifies and characterizes stakeholder groups	6.1.1 Stakeholder groups are identified including Indigenous Peoples, local communities, women and other potentially marginalized groups. 6.1.2. The rights and interests of each stakeholder group in relation the REDD+ program are characterized including potential barriers to their participation
Principle 8: The REDD+ program compiles with applicable local and national laws and international treaties and agreements	
Criteria	**Framework for indicators**
8.1. The REDD+ program compiles with local law, national law and international treaties and agreements ratified or adopted by the country	8.1.1. International treaties and agreements relevant to the REDD+ program are indentified. 8.1.2. National and local laws relevant to the REDD+ program are identified 8.1.3. Any possible areas where REDD+ program does or may not comply with the relevant local and national laws and international treaties and agreements are identified and monitored.

The Table (Principle 1, 6 and 8 and its Criteria and Indicators) help the assessor to seek the secondary data document, which all over are based on three basic question elaborates in the RATA manual;

a. The specific location of the land and resources (the object of REDD+ program)

b. The actors who has the claim on the land and resources (the subject of REDD+ program)

c. The legal and legitimate bases of the actors (subject) to claim the lands and resources

The steps for RaTA use to conduct field assessment in four KHM locations (Laham, Nyuatan , Damai, Long Bagun Districts (see Figure 2).

1. The specific location of the land and resources (the object of REDD+ program), using:

   a. Mapping Tenure and Conflicting Claims over Resources Use (Annex 3)

   b. Competing Claims Time Line (Annex 4)

2. The actors who has the claim on the land and resources (the subject of REDD+ program), using

   a. Conducting an Actor Analysis (Annex 1)

   b. Actor Identification Mapping (Annex 2)

3. The legal and legitimate bases of the actors (subject) to claim the lands and resources, using Guide Line Question for Semi –Structured Interviews (Annex 5)

   a. point 4 Local Knowledge of Land Laws and Land Rights,

   b. point 5 Governance and Land Policies Issue,

   c. point 6 Definition and Recognition of Property Rights

4.1.3. Timeframe

If the secondary data is available, and the primary data (actors) are willing to express their views, a time frame for trained or skilled assessor, without participation of civil society, a pre assessment could be done as described on table 6

Table 6. Time frame for research and activity

No	Person day/Activity	Sociologist	Lawyer	Research Assistants (3 person)	Location
1	Secondary Data Collection	2	3	4	
2	Workshop	3	2	2	Province, main actors and the assesors
3	Field Work	12	-	15	Field Work
4	Write Up	10	10	15	
5	Presentation	3	3	3	Capital City
	Total Days	30	18	24	

4.2. Case Study 2: Hot Spot of Emission and Confusion - Land Tenure Insecurity, Contested Policies and Competing Claims in the Central Kalimantan Ex-Mega Rice Project Area[2]

4.2.1. Background and Objective

As the host of the 13th Conference of Parties ('COP') under the international climate change convention in 2007 that committed to a 'Bali Road Map', the Government of Indonesia is committed to piloting schemes to reduce emissions from deforestation and degradation (REDD), to build a national framework for long-term implementation and to resolve outstanding methodological issues. The 15th COP in December 2009 is expected to sanction international REDD schemes and provide international funding mechanisms. Details are still under negotiation and include

[2]This study is heavily drawn from G.Galudra, M. van Noordwijk, Suyanto, Idris Sardi, and U. Pradhan. 2009. Hot Spot of Emission and Confusion: Land Tenure Insecurity, Contested Policies and Competing Claims in the Central Kalimantan Ex-Mega Rice Project Area. Technical Report Submitted for AusAid.

the 'scope' of mechanisms that so far have been based on the concept of forest (deforestation and forest degradation) that may or may not apply in peat land areas.

The peat dome of Central Kalimantan can be a key site to explore effective ways of reducing emissions and bring peat land emissions into the emerging REDD scheme. There is a widespread consensus that this type of emission reduction is technically feasible, urgent (high emissions) and probably cost effective. Emission reduction here implies ecological restoration, reversing the government plans for a landscape transformation that is now understood to have brought little 'development' relative to its environmental destruction. The various stages of government policy and programs that entailed mobility of people, however, have left a trail of actors with claims of 'rights'. New layers of claimants have been added without the resolution of previous contests over rights.

Historically, the rivers of the peat domes in Central Kalimantan have been the only entry points for human use, with a string of settlements and a tradition of upstream-downstream mobility of the various ethnic groups, practicing 'swiddens' along with shifting village locations. Specific ownership claims over parts of the river banks and hinterland depended on details of the settlement history. The construction of drainage canals for the ex- Mega Rice Project and establishment of transmigration settlements not only brought a new influx of people with claims on land ownership, but also changed many communities' institutional arrangements and the existing land tenure system. The local government policy to invite oil palm and mining companies to this area not only caused problems and changes to the land tenure system, but also contradicted the shift in national policies and the decision to conserve and protect the peat dome from land use. These two policies have caused multiple claims over the forested land and resource rights.

REDD and the expectation of 'carbon markets' have raised new issues on 'rights'. Key issues in the REDD debate are: (1) who has, or can claim, the right to 'sell carbon' or ask for co-investment in emission reduction efforts (local communities, concessionaires, forest management units, local government, national government); and (2) who has, or can claim, the right to receive payments for avoided damage. These issues demand clarity and procedural justice through the resolution of land tenure and forest management rights and actors' rights over forested land and resources. This clarity does not yet exist in many landscapes. In a peat dome landscape, a specific form of collective action is needed as drainage of the 'sponge' through any side, affects the hydrology of the dome as a whole. So far, no institution or concept of rights and responsibilities has emerged that matches the scale of the resource. This study summarizes and focuses on clarifying rights in the context of emission reduction and REDD implementation.

4.2.2. Study Location

The tenure study was designed in parallel with studies on livelihoods, the institutional development around REDD, and options for tree-based livelihood improvement. The study sites in Block A (south) and Block E (north) in the ex-Mega Rice Project area, Kapuas District, Central Kalimantan were chosen to represent degraded forest and forested area. Administratively, these villages belong to two sub-districts (*kecamatan*) of the Regence (*kabupaten*) Kapuas: Kecamatan Mantangai and Kecamatan Timpah. Overall, there are 14 settlements along the Kapuas River.

4.2.3. Policies and Regulation: From Past to Present

4.2.3.1. Emergence and Recognition of Adat Law in Pre-Colonial and Colonial Times

In Central Kalimantan, the emerging village structure level recognized the *Damang* (an *adat* council) as an Adat Judicial Institution (Biro Pemerintahan Desa, 1996). Dutch colonial rule came late to large parts of Kalimantan, as the limited resource base was not deemed worth the effort required. Control over the coastal areas and its trade had priority over territorial claims. In the Tumbang Anoi negotiation in 1894 between the Dutch Indies colonial government and local powers, the role of the *Damang* was extended to provide help and support for the governance role. The *adat* land-use rights, however, were not explicitly part of the legalization process. It was not until 1928 that the *adat* authority over land use rights was recognized by the colonial government.

Following recognition, the *adat* institution could issue land use rights (*surat segel*) to the local community and its households. Several *adat* land-use rights that existed and were recognized during this period and are currently still being practiced are (Usup et al., 2008; WALHI, 1997; Biro Pemerintahan Desa, 1996):

1. *Eka Malan Manan Satiar* is a right for a local community to hunt animals, open the forest for cultivation, and collect non-timber forest product such as damar, gemor, jelutung, rattan, and panting. The area, designated as land used by the community, typically covered five kilometers around the community settlement.

2. *Kaleka* describes an ancient *adat* community settlement that has been abandoned and has returned to secondary forest. The area was considered a sacred area and determined as having communal adat land rights.

3. *Petak Bahu* is an ex-swidden that has been returned to (agro)forest, mostly planted with durian, *cempedak*, rubber and rattan, along with natural forest regeneration. Only the previous cultivator, based on *hak terdahulu*, could use and collect the forest products.

4. *Pahewan/ tajahan* and *sepan* are sacred forest areas, where the local community had rights and obligations to protect the areas from any land use activity.

5. *Beje* describes a fish pond made by the local community to trap and store fish during the dry season. The pond may be owned either privately or communally.

6. *Handil* is the right of a local community to construct small drains to open up land for shifting cultivation. The work is usually based on group activity and each member of the group receives two hectares of land alongside the small drainage banks. Ownership is considered communal.

7. *Tatas* is the right to construct small drains to collect timber and non-timber forest products in forested land and for fishing. The *tatas* holders could levy a tax or toll on any forest products collected by local communities that crossed the drainage canals. Usually, the levy collected was not greater than 10% of the value of the forest products being transported.

In the initial period following the independence of the Republik Indonesia, the status quo on local rights persisted. In 1953, the new government continued to endorse *adat* jurisdiction. *Adat* land-use rights were still recognized and legalized within the legal framework of the Government of Indonesia through Agrarian Law No. 5/1960. As the 1960 Agrarian Law has not been repealed, these clauses are important for the current debate on 'legality', as subsequent laws provided different interpretations. During that period, the government tried to integrate the land-use rights of the existing communities harmoniously into the state land law. The 1965 emergence of the 'New Order' shifted power to the central government.

4.2.3.2. The Rise of the Forest Concessions and the Demise of Adat Law

During Soeharto's reign (1965-1998), the government gave out many permits to international and national companies allowing them to exploit forested land, even though there was the unsettled question of how the government would consider *adat* land-use rights under the state law. A study, conducted by the Directorate General of Agrarian Affairs in the 1970s, investigated the existence of *adat* land-use rights in Central Kalimantan and declared that the *adat* institution had been diminished. In the end, this declaration meant that existing community land use could not be recognized as land-use rights (Abdurrahman, 1996). In the late 1970s, the government promulgated Law No. 5/1979, which consequently abolished the traditional process and replaced the role of the Damang as a community leader with the government-appointed village (*Desa*) leader. This new law broke the *adat* system of law and decision making, and undermined people's confidence in the *adat* institutions.

Several scholars have challenged this interpretation (Abdurrahman, 1996; Mahadi, 1978; Yanmarto 1997), but the government still adhered to their position that adat land-use rights could only be recognized if there was still an existing *adat* institution that governed the community, and that absence of such an institution justified 'concessions' issued by the central government. The study, and enactment of the 1982 Forest Allotment Consensus (*Tata Guna Hutan Kesepakatan*), gave a basis for the government to designate Central Kalimantan forested land as state land. In the same year, several notes issued by the Ministry of Home Affairs (Ministry of Home Affairs Note No. 26/1982 dated 13 May 1982) and the Ministry of Agrarian Affairs (Ministry of Agrarian Affairs Note No. 586/1982 dated 17 July 1982), instructed the governor to support the consensus. These policies laid a strong basis for the logging companies to operate on the forested land.

To support the operations of logging companies, several regulations were issued to limit adat land-use rights within the logging companies' concessions, such as Government Regulation No 21/1970 and Government Regulation No 28/1985. The limitation of the adat community's land use in the forest concession area was also supported by several ministerial decrees, such as Ministry of Agriculture Decree No. 749/1974 and Ministry of Forestry Decrees No. 194/1986 and No. 251/1993. Within the power structure of the time, these regulations provided a legal basis for the logging concessions to control the *adat* community's activities and gradually overthrow their land-use rights (Pramono, 1990). The 1960 Agrarian Law, with different stipulations, was considered out-of-date, but was not formally repealed.

In 1984, the Ministry of Home Affairs passed Ministry of Home Affair Decree No. 593/5707/SJ that cancelled the authority of village and sub-district leaders (camat) to provide formal notification on land-use (surat keterangan tanah) to local communities. Consequently, the communities no longer had legal protection over their historical land-use rights and their land fell more and more under the control of the forest concessions as many concession areas overlapped with community land-use areas.

Many sacred and communal areas mostly were occupied by the logging companies and now have been converted into private ownership as many local communities opened the forest under *handil* or *tatas* rights. Thus, a major impact of the forest concessions was the abolition of sacred and communal rights over specific areas and the conversion of those rights into private rights. The role of the state in reconfiguring property rights and relations is quite clear. What we cover by way of multiple claims is the complex dynamics in place over time and social relations evolving as proactive and reactive forces to internal dynamics and external actions, mainly those of the state and companies. At the end of 1995, the government had

allocated 715 945 ha of forested land in the study area to 12 forest concessions (Central Kalimantan Forestry Regional Office, 1995).

4.2.3.3. The Mega Rice Project: Planned Disaster

Self sufficiency in rice production, a goal achieved in the early part of the New Order and considered a strategic national interest, slipped away in the early 1990s. To ward off this threat, president Soeharto provided strong support to the idea to build a 'mega project' in Central Kalimantan by converting logged-over peat forest into paddy rice fields, through a network of drainage canals and the transfer of Javanese production systems, facilitated through a transmigration influx of people from outside the area. The project became known as the Mega Rice Project and was endorsed in 1995 through Presidential Decrees No. 82 and No. 83 (Hidayat, 2008; Departemen Kehutanan, 1996; Departemen Kehutanan, 1997).

From a 'selective, sustainable logging' management regime (at least on paper), a switch could be made to a 'salvage logging' or clear felling regime through Ministry of Forestry decree No 166/1996 (Bappeda, 1996). Consequently, logging rights were transferred to project developers of the Mega Rice Project. Ironically, one of the major reasons for the implementation of the Mega Rice Project was because the area was considered to be state land and thus to be free of land use claims and rights held by the local communities (Pemda Kalimantan Tengah, 1996). This belief certainly was not based on reality on the ground.

Between 1997 and 1999, many demonstrations by communities occurred, demanding that the government compensate them for their land and respect and rehabilitate their land rights. In 2001, the Kapuas Government Regency issued a Regency Head (Bupati) Decree No. 17/580.1/BPN.42.2001a that ordered the National Land Regency Agency and other regency government offices to inventory community land uses that had previously been exploited by the Mega Project and authorized them to give the communities a 'fair' compensation for the loss of their land. However, the government only inventoried and compensated areas that were within 90 meters for community plantations and 150 meters for beje/tatas/ handil of the drainage-canal banks developed under the Mega Rice Project (Yayasan Petak Danum, 2002). This policy certainly disappointed the local communities who had been using the land well beyond these distances, particularly as the National Land Regency Agency in 2003 had acknowledged community land use and occupation beyond the compensated area.

The inventory process was difficult, as many of the natural boundaries that had helped to delineate areas under community land use had been destroyed by the construction work of the Mega Rice Project. Conflict surrounding this issue has still not been settled and many communities are still demanding that the government

provide 'just' compensation for the loss of their land-use rights. The consequences of the Mega Project for the communities have not only been the loss of community livelihood, but also the uncertainty of continued community access and use as well as their rights. The lack of a legal basis for government-sanctioned activities caused a problem later, when central policy objectives shifted.

4.2.3.4. The Aftermath of the Mega Rice Project during the Decentralization Policy: an Era of Open Access

After the end of Soeharto's reign, through several presidential decrees, such as Presidential Decrees No. 80/1998, No. 74/1998, No 133/1998 and No. 80/1999, the central government decided to stop the Mega Rice Project permanently and handed the management rights to the provincial government. This heralded the commencement of a period of 'local autonomy'. The government issued Regulation No. 62/1998, granting authority for a number of forestry affairs to the regency heads (*bupati*). When the decentralization policies came into effect in January 2001, the Kapuas Regency Government was quick to issue as many small-scale concession permits as possible, and started to impose charges on existing companies. During this period, the *bupati* and the governor were allowed to give annual timber harvesting permits of 100 ha and small forest concessions of 10 000 ha to private landowners, communities and *adat* forest owners. The Kapuas Regency Government also began to levy fees on all manner of forestry sector activities, collecting timber fees, log export taxes and timber transportation fees, amongst others. The area of the ex-Mega Rice Project at that time was thus subjected to further severe loss of forest cover and degradation of forest quality by these policies, as around 41 small forest concessions operated in the ex- Mega Rice Project Area.

Under massive and fierce criticism of the 'deforestation' and 'illegal logging', in February 2002, the Ministry of Forestry (MoF) withdrew the authority of the regency head to issue small-scale concession permits. Subsequent regulations issued by the central government, such as Ministry of Forestry Decree No. 6886/2002, Regulation No. P.03/2005 and Regulation No. P.07/2005, effectively reaffirmed its perceived authority over forest matters. These regulations restored the authority of the MoF to issue new forestry concessions rather than local government. However, none of the regulations for the area mentioned ex-Mega Rice Project management issues, especially regarding allocation rights.

In 2003, a Provincial Government Regulation No. 8/2003 was issued on Provincial Spatial Planning that gave a legal basis for regency government activity to use and allocate the forest zone for oil palm plantations and mining activities. After the central government revoked the power of the regency authority to allocate small

forest concession permits, the regency authority resorted to different regulations to exploit the land that still had forest cover. Around 369 000 ha of the ex-Mega Rice Area were subjected to oil palm concessions, while about 41 536 ha were allocated for mining concessions (BP KAPET DAS KAKAB, 2009). Interestingly, both permits overlapped causing confusion for the permit holders.

The policy adopted by the local government to exploit the ex-Mega Rice Project area was in contrast to the central government's policy. In fact, the regency government claimed scientific support for its position. Based on a study by the Agricultural Research and Development Office in 1998, around 327 853 ha and 345 340 ha of ex Mega Rice Project land were considered suitable for cultivation for oil palm and rubber plantations, respectively (Balai Penelitian dan Pengembangan Pertanian, 1998). This study certainly affected the regency government policy and also was in line with its interests. However, it contradicted many national regulations.

The post-Mega Rice Project era was also the beginning of the recognition of the adat institution. The regency government passed Kapuas Regency Government Regulation No. 14/1998 that recognized the existence of the adat institution (*kadamangan*) and gave several governance roles to the institution. However, it did not contain any clause that related to adat land-use rights. In 1998, the governor of Central Kalimantan province released a statement saying that a distance of five kilometers from the river banks should be given back to the communities under adat land-use rights, although his statement did not have any legal standing. Consequently, it was uncertain what level of protection the statement gave to adat land-use rights during this period of policy confusion, which appeared to be one of open-access competition and the start of multiple claims over the area. Everyone had an interpretation of who should rule and use the land in the ex-Mega Rice Project area. At the policy level, the central and local governments were competing and had their own views on allocation rights to the area. Such ongoing conflict further complicated the land tenure system in the area. It was also one of the major constraints impeding the recognition of adat land-use rights.

4.2.3.5. A Recognized Hot Spot: Local Government Reaction toward National Revitalization Policy

Publication of estimates on carbon dioxide and other greenhouse gas emissions from Indonesia put the country on the spot as one the largest emitters in the world, with more than half of the emissions coming from peatland areas. In 2007, the central government passed a Presidential Decree No. 2/2007, which concerned managing and allocating ex-Mega Rice Project areas for conservation, rehabilitation and plantation. To support the decree's initiative on conservation and

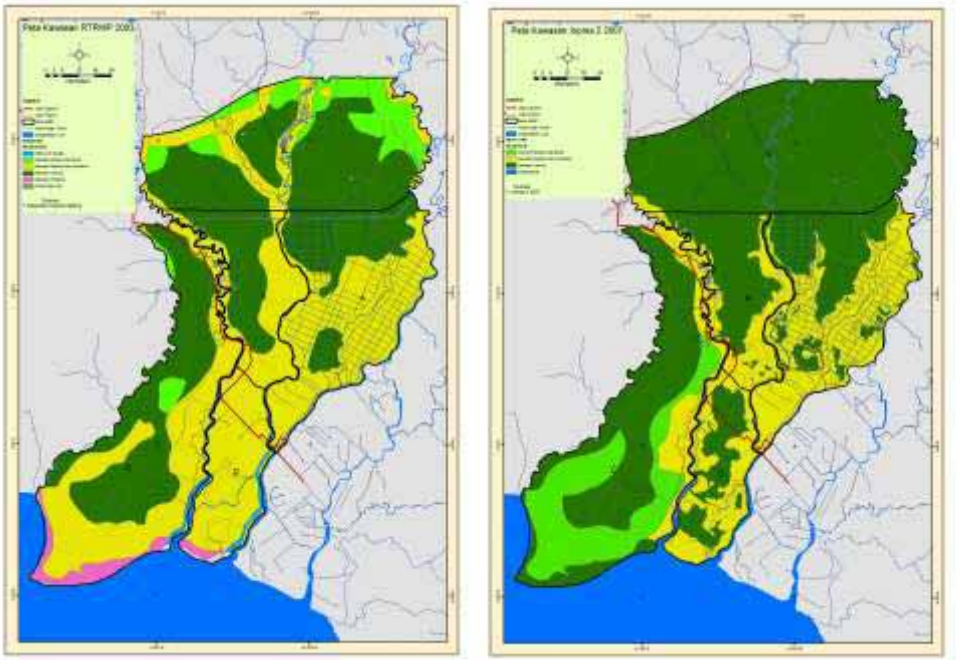

Figure 3 and 4 .Comparison of Provincial Spatial Planning Map, done by the Central Kalimantan Provincial Office and National Revitalization Map, done by the Ministry of Forestry

rehabilitation, in 2008, the MoF passed Ministry Decree No. 55/2008 that contained a master plan for the conservation and rehabilitation of peatland for 10 years (2007-2017). The two decrees cemented central government control over the area by placing the area under their conservation and rehabilitation programs. However, they certainly overlapped with the interest of local government. Under the new decrees, only a small amount of the area could be allocated for crop-estate plantation, with 10 000 ha for oil palm and 7 500 ha for rubber plantations, compared with the 2003 Central Kalimantan Spatial Planning Regulation, which allocated around 369 000 ha for oil palm and 41 536 ha for mining (See Figure 3 and 4).

To stop the overlapping interests from spreading, in July 2008, the Provincial Government circulated a note to the Provincial and Regency National Land Agencies, ordering both not to process any request for land certificates/rights until conflicting land use allocation in Central Kalimantan had been settled. Although most of the oil palm concessions were waiting to process their land certificates, the note did not automatically stop a concession from becoming fully operational.

Due to this national policy, the regency government annulled several oil palm concession permits (Kapuas Regency Government Decree No. 89/2009), an action

supported by the provincial government (Central Kalimantan Provincial Government Note No.525/05/EK dated 20 January 2009). However, not all of the concessions were cancelled. Closing down the operational activities of all the oil palm concessions would have been a difficult task for the regency government because many of them had already received location and land-clearing permits (*arahan lokasi* and *ijin pembukaan lahan*) long before the provincial government's note was circulated.

Ironically, only a small number of the concessions had finalized their environmental impact assessments (*Analisis Dampak Lingkungan*), to satisfy a further legal requirement. Ministry of Environment Decree No. 5/2001 demanded that a concession holder had to finalize the assessment before becoming fully operational, but it seems that neither the regency government nor the oil palm concession holders adhered to this policy. Certainly, the policy that restored the authority of the central government and cancelled the local government's allocation rights in the ex-Mega Rice Project area did not solve the problems associated with the existing multiple claims, but rather worsened the situation.

4.2.4. The Impact of Policies in Practice

4.2.4.1. Clear as Mud: So Who Rules the Land?

The preceding account of the peat bogs being subject to ineffective policies may demonstrate that the area is not only a hot spot for CO2 emissions, but also a hot spot for conflict in the triangle between local communities, local government and central government actors. The historical contest between policies and institutions transformed the pre-colonial land tenure system into one with a high degree of land tenure insecurity for all actors in the Central Kalimantan ex-Mega Rice Project area. The current impact of the policy changes is confusion regarding who actually rules the land and is entitled to issue rights to the land. If efforts to reduce emissions from ongoing peatland oxidation are to be successful, a resolution of these conflicts may well be the highest priority, requiring an approach that is sensitive to all perspectives, but that also finds ways to let higher-level goals be reconciled through negotiation.

In the past, the area was under the control of the adat institution, which allocated several rights to local communities to access and use the forested land. The allocation rights were respected and recognized by the Dutch Colonial Government and also by the new republic. However, the rights were gradually changed subsequently, especially when forest concessions began to operate in the area. Several policies in the 1970s and 1980s reduced the authority of many *adat* institutions, so that the concessions could operate more easily. The government did

not realize that many local communities still held on to *adat* rights and had upheld adat institutional authority until this time. Operators of the forest concessions at the time had the power to remove any *adat* land-use rights and claims.

The impact on the area was that many local communities saw new opportunities to challenge the existing land access regime and joined with the forest concessions to open up and cut the forest. Many communities then constructed small drainage systems to transport the logs from the forest, consequently obtaining *handel* and *tatas* rights from such work, which certainly changed the land tenure situation. Prior to this, many communities only had ownership rights that extended not more than five kilometers from their settlements, but the drainage works extended land ownership much farther than this and certainly changed the previous land tenure system.

The most destructive period was after the cessation of the ex-Mega Rice Project. The land use practices of many communities were destroyed by this project and ironically, no compensation was given at that time simply because the government believed that the communities did not hold any land-use rights over the land within the area. However, when the ex-Mega Rice Project was halted and the government tried to give 'fair' compensation to communities for their lost land-use rights, the boundaries that identified where the rights had existed had been destroyed by the project, resulting in difficulties for the government and the communities to resolve the land-use rights issues and ownership. Many land claims by the communities increased in size each year and some of them had obtained a formal notification of land-use (*surat keterangan tanah*) from the heads of villages. Even though the local government had acknowledged the existence of *adat* land-use rights in 1999 and 2008, recognition was never converted into practice.

The confusion over who ruled the ex-Mega Rice Project area was also evident among policy makers at the local government (regency and provincial government) and the central government levels. In 1999, the government handed the ex-Mega rice Project management rights over to the provincial government, who used their newly acquired power to allocate areas to mining and oil palm concessions. However, the government then took back these rights in 2007. Confusion reigned as much of this land had been already allocated by local government to mining and oil palm concessions since as early as 2004, with some areas under active operation. Then, in 2008, the central government allocated land for conservation and rehabilitation purposes. To date, there is still considerable uncertainty on the best means to settle the confusion over management and allocation rights.

4.2.4.2. Existing Land Conflicts and Disputes

The major impact of the different interpretations and competing policies has been conflict and competing tenure claims that have occurred between and within the communities of the ex-Mega Rice Project area. Consequently, these conflicts and competing claims have affected the land tenure system and caused land tenure insecurity.

In 2004, an oil palm plantation company used some land located within the area managed by the Mantangai Hulu, Kalumpang and Sei Ahas villages. The main concern from the communities was that the concession involved land two to three kilometers from the river banks that certainly overlapped with land-use claims by the communities over land within five kilometers of the river. The conflict worsened as much of the concession land had not only been planted with oil palm, but it also had been distributed to people from outside the villages (migrants). Thus, there was the potential for horizontal conflict in these areas between the local communities and the migrants. The communities had tried to consult on this matter with the regency legislature and the *bupati*, but no resolution had been achieved. This sort of conflict has not only happened in the three villages mentioned, but also in the other villages within the Ex-Mega Rice Project area. Many oil palm companies are operating in villages within the ex-Mega Rice Project area and these companies are in conflict with the villagers. These companies cover around 55 000 ha of land.

Another major conflict existing in this area is associated with village borders. Conflict concerning several village boundaries has been reported in villages including Mantangai Hulu, Kalumpang, Sei Ahas and Katunjung. After the ex-Mega Rice Project was halted, the local communities began to use the abandoned land for cultivation. Previously, the communities had opened up and used the area through *handel* and *tatas* rights dating back to the forest concession era. When they heard that their cultivation areas had been allocated to oil palm concessions by the regency government, members of the local communities raced to strengthen their claims over land by receiving formal notification on land-use (*surat keterangan tanah*) from the head of their village. Unfortunately, many of the formal notifications caused conflicts between the villagers because they were issued without considering village boundaries.

4.2.4.3. Land Rights and Carbon Rights: Both may be Insecure

The study has shown that tenure insecurity is a major issue in the area. Tenure security is a fundamental element of climate change mitigation. The study has also highlighted the role of uncertain land rights and tenure in causing conflict in the ex-Mega Rice Project area, as the land tenure system that rules and governs the area is

still uncertain. Local communities hold several *adat* rights on the use of and access to the lands, but it is quite uncertain how they will be recognized and protected by the government. Some of the local communities hold formal land-use notification from village leaders (*surat keterangan tanah*), but these rights somehow overlap. Conflicts between villages have occurred because the rights issued by the village leaders did not consider the village boundaries. These unresolved and disputed tenure rights may hinder the REDD scheme.

Although the *adat* rights are being acknowledged by local government, the recognition does not provide any legal protection for the communities. The oil palm concessions have used part of the land without community consent. Conflicts have occurred in many places. The adat rights are also not being included within the Provincial Spatial Planning process, resulting in many oil palm concessions operating in conflict with adat land-use rights. Adat rights are excluded from the Provincial Spatial Planning process because there is no recognition by the government of these rights. The government has failed to recognize the collective customary rights of adat peoples over their ancestral forests, or has recognized only a small portion of their traditional lands, legally defining the remaining forests as so-called 'State Land'.

Confusion regarding land rights has also occurred among policy makers. The local government and the central government are currently in dispute over how to use the ex-Mega Rice Project area. The local government has indicated it prefers to use the area for developmental purposes by inviting operators of mining and oil palm concessions to the area and has provided legal protection for these concessions to operate. On the other hand, the central government has allocated the area solely for rehabilitation and reforestation purposes. The central government intended to protect the peat dome from any land-use activities, since fire hazards were common. The central government has withdrawn the perceived local government' rights over the area. It is currently uncertain when this conflict will be settled.

4.2.5. Conclusion

The Ex-Mega Rice Project area involves many problems, such as different interpretations of, and overlaps between, policies on allocation rights between local government and central government, institutional arrangements, uncertain recognition of adat land-use rights, land conflicts and management caused by competing policies and unrecognized adat land-use rights, and the livelihood strategies of local communities.

At the very basis of the current environmental problem is the governance structure with its contest between levels. The land use planning and forest classifications are

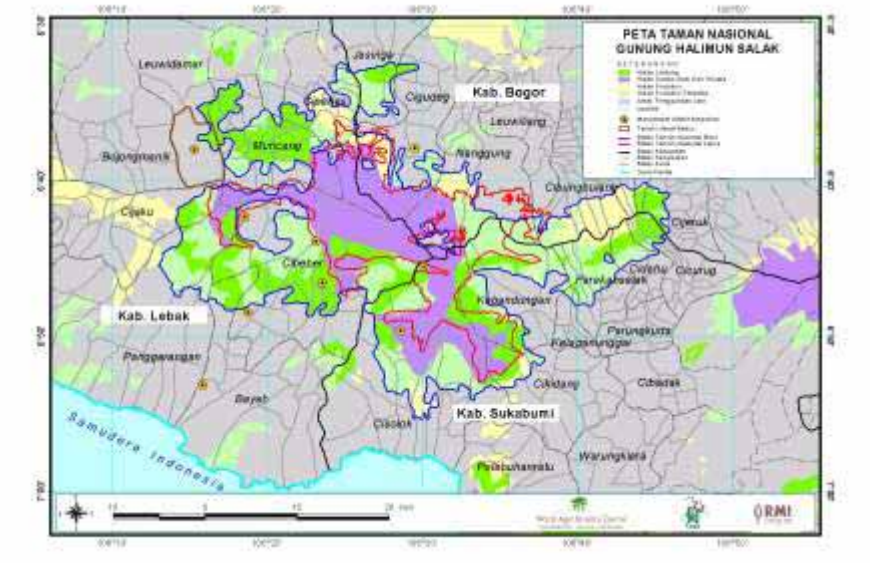

Figure 5. The Mount Halimun-Salak National Park

still in dispute, and may be a problem requiring a delicate touch to resolve and then implement an REDD scheme. The history of government planning for the area, however, creates an additional, and probably exceptional, level of complexity. Current policy tries to assert central government authority and as such may in fact worsen the situation, through the implementation of outdated forest policies that strengthen the demarcation of the protected forest area, which in the first place may not have resolved the multiple claims within that area.

4.3. Case Study 3: The Misty Mountain of Halimun-Salak – a Confusion of Legal Rights from Multiple Historic Claims[3]

4.3.1. Introduction

The Government of Indonesia (GoI) declared the Mount Halimun-Salak Area to be a national park in 2003, based on its ecosystem richness and hydrological function. Administratively, it is located in the West Java and Banten provinces within three regencies (Bogor, Sukabumi and Lebak) covering an area of 113 357 hectares

[3]This study is heavily drawn from G. Galudra, R. Nurhawan, A. Aprianto. Y. Sunarya and Engkus. 2009. The Last Remnants of Mega Biodiversity in West Java and Banten: an In-Depth Exploration of RaTA (Rapid Land Tenure Assessment) in Mount Halimun-Salak National Park, Indonesia. ICRAF Working Paper nr 69. Bogor: World Agroforestry Centre.

(Picture 5). The national park itself can be reached within four hours from Jakarta, the capital of Indonesia, by travelling toward the interior and Rangkasbitung City, the capital of Lebak District.

When the government changed the status of Mount Halimun-Salak into a national park, the people living within its boundaries saw this as an infringement on their land rights. Fearful of being evicted, from 16 to 18 October 2003, the people from 31 villages within the national park held a meeting in Bogor and refuted the government's declaration. The resistance by the local people and the refusal of the government to recognize the rights of the local people was reported by many national and local newspapers (Kompas, 2003a).

These conflicts became worse in early 2008 as the Regent of Lebak pleaded to the national legislature (Dewan Perwakilan Rakyat) to exclude 15 000 hectares of designated national park land. The district's leader used several laws and policies as the basis to claim land within the designated national park. One of the reasons for the failure to settle these conflicts is that none of the institutions studied the actors' perceived legal claims toward the national park land. Therefore, the objective of this research was to study the perceived legal claims of each actor who used and controlled any of the designated national park land.

4.3.2. The Scientific Rationale and Its Historical Discourse behind the Mount Halimun-Salak National Park Designation

The history of preservation in Indonesia began in the 1880s under the Dutch colonial regime. Perhaps, the best known preservation regulations issued by the Dutch were those in the 1941 Ordinance for Nature Protection (*Natuurbeschermings Ordonantie* 1941) that recognized the rights of indigenous people and mandated they had to be taken into account when establishing nature reserves (Danusaputro, 1985). However, it was still uncertain how the rights of the indigenous people could be addressed.

At that time, the Mount Halimun-Salak area had not yet been designated as a nature reserve, but rather as a protected forest (Hoemacommissie Bantam, 1932). Several gazettal and delineation processes were conducted during the period from 1906 to 1939 in order to determine the forest boundary between state and non-state forestland (Galudra et al, 2005a; Galudra et al, 2005b). In early 1940, the Dutch colonial government began the process of considering Mount Halimun-Salak as a nature reserve, but this action did not continue after independence. Nevertheless, the preservation narrative still remained in the minds of Indonesian foresters, university lecturers and policy makers.

During the reign of the New Order, which occurred throughout the period from 1967 to 1997, preservation remained the dominant narrative for the management of protected areas. In 1979, by using forest gazettals during Dutch colonial rule, the government declared Mount Halimun as a nature reserve, covering an area of 40 000 ha. The declaration was enacted through Ministry of Forestry Decree No 40/1979 (Ryadisoetrisno, 1992). However, the actual size was then reduced to less than 38 000 ha due to a protest by Perum Perhutani (a state forest logging concession) (Badan Planologi Archives, unpublished).

In February 1992, the government decided to change the area into a national park. The changed status, however, did not accommodate some conservationist concerns on the Halimun-Salak forest corridor. The conservationists feared that this forest corridor would be degraded and deforested due to logging activities and community encroachment, causing many protected species to be endangered. Their fears seemed justified as the corridor lost nearly 50% of its forest, declining from 666 508 ha to 347 523 ha within the 11-year period from 1990 to 2001 under the Perum Perhutani management.

It was not until after several disasters that the government was alerted to the deforestation and wildlife issues. In 2001, more than 60 000 people became refugees when around 102 villages in Lebak, Pandeglang and Serang Regencies (western part of Halimun-Salak area) were flooded. The natural disaster in the surrounding Mount Halimun-Salak area gave the conservationists justification to push the government to declare the whole area as a protected area (Kompas, 2003b). Furthermore, deforestation had been also used as evidence of Perum Perhutani's poor management (Kompas, 2003c and 2003d). Within the period from 1989 to 2001, the Mount Halimun Salak area lost 22 000 ha or 25% of its forest cover due to logging activities and illegal agricultural expansion, causing a water crisis in the surrounding areas and disenfranchisement of wildlife habitats (JICA, 2006).

Based on these reasons, in 2003, the government issued Ministry of Forestry Decree No. 175/2003 that designated all of the Mount Halimun Salak area as national park. The Perum Perhutani tried to resist, but failed, as it had already lost its legitimacy to control the area due to 'poor management'. This decree meant a triumph for the conservationists, but the outcome of government control over this area under national park management will certainly be different..

4.3.3. What Lies Beneath? The Competing Claims on Forest Access and Ownership

4.3.3.1 The Legal Claim of the Forest Department over Mount Halimun-Salak National Park Designation

At first, the basis of the legal claim of the Forestry Department to designate the Mount Halimun-Salak area was uncertain. Previously, hydrological function and biodiversity richness were the reasons driving the claim to make Mount Halimun-Salak a national park, but these claims were based on scientific and political arguments rather than legal claims. Ministerial Decree 195/2003 and Ministerial Decree 419/1999 stipulated that the Mount Halimun-Salak area within West Java and Banten Provinces was a forest zone. Although these two decrees provided a legal claim for the Forestry Department, another decree (Ministerial Decree 175/2003) urged the government and local government to delineate and gazette the Halimun-Salak area, before it could be declared as a state forest zone.

The urgency in the ministerial decree led other government entities and NGOs to believe that the area had still been delineated and gazetted (WG-T, 2005). Even the Forestry Department believed that only 68 km from 539 km of the newly designated national park border had been delineated, leaving the rest unprotected in terms of its legality. However, this information was misleading.

Table 7. Forests registered by the Dutch colonial government (1905-1930) in the Mount Halimun-Salak area.

No	Registered Forest	Government Decree	Date of Final Gazettal	Size (ha)
1	Jasinga I	Gov. Decree No 14/1927	13 July 1934	5.800
2	Jasinga II	Gov. Decree No 14/1927	23 May 1934/14 Sept.1939	2.865
3	Nanggung	Agric. Dir. No 3613/1930	28 Mar. 1934	-
4	Salak Utara	Gov. Decree No 17/1925	1 Mar. 1926	-
5	Salak	Ind. Staatsblad 562/1911	1 Aug. 1906	-
6	Halimun	Ind. Staatsblad 42/1905	17 Sept. 1914	-
7	Sanggabuana Utara	Gov. Decree No 6/1915	4 Jan 1933	4.568
8	Sanggabuana Selatan	Gov. Decree No 6/1915	30 Sept.1924/11 Nov 1935	30.023
9	Bongkok	Gov. Decree No 6/1915	9 Oct. 1919	6.646

Source: Perum Perhutani Unit III West Java-Banten Archives

In fact, based on Perum Perhutani archives, most of the Mount Halimun-Salak area had been designated, delineated and gazetted during the Dutch colonial period (see Table 7). The finalized gazettal processes provided the legal basis for the Dutch colonial government to register most of the forest area at Mount Halimun-Salak as a state forest zone based on the Forestry Law of 1927 and Government Regulations of 1932. Therefore, in terms of legal structures, the state forest zones were well protected until now.

During the Japanese Occupation, some policies still maintained some parts of the Dutch colonial legacies, like in the Mount Halimun-Salak area. Based on Government Decree 4/1924, the Japanese rulers expanded the Mount Halimun-Salak state forest zone by reforesting 91 ha of local peoples' dwellings and 370.7 ha of private crop estate plantation in Lebak Regency.

Dutch colonial legacies still continued even after Independence. The Ministry of Agriculture in 1954 issued Ministerial Decree No. 92 aiming to designate 68 000 ha in Java that had been abandoned by the owners as private plantation land, including the Mount Halimun-Salak area, to become part of the state forest zone. Some 14 562 ha of private plantation had been gazetted by that year. Two state forest zone designations to identify private crop estate plantations in the Mount Halimun-Salak area were carried out in 1967 and 1992. In total, about 419 ha of private plantations were gazetted also during that period.

In conclusion, to date, out of 1280 km^2, nearly 1170 km^2 of the Halimun-Salak area have been delineated and gazetted since the Dutch colonial era. Within this gazettal, land belonging to many local communities and to crop-estate plantations were excluded from the forest land. Consequently, this fact was used by the Department of Forestry as a legal claim for the Halimun-Salak designation. An idea to re-gazette the national park as an alternative land conflict resolution (Galudra, 2005; Galudra *et al*., 2005a; Galudra *et al*., 2005b) was rejected by the Forestry Department, simply because all of the state forest zone in the Mount Halimun-Salak area that had been registered during the Dutch colonial rule and then gazetted during the Independence Period could not be re-gazetted.

4.3.3.2. The Legal Claim of the Local People over Mount Halimun-Salak National Park Designation

About 343 hamlets are located within or surrounding the designated national park area (JICA, 2006). There are issues associated with the local people using the forest area of the park, for example, taking non-timber forest products (rattan, bamboo, etc.), timber, and converting areas through agricultural and mining activities (Galudra, 2003a; Galudra, 2003b). However, there has been no settlement of the legal land claims by these local people.

Some of the perceived legal claims from local people do not stem from a legal aspect, but rather are related to the local people's socio-cultural interaction with the forest. The shifting cultivators claimed national park land based on their ancestal land rights or customary rights. They claimed that they have opened up and cultivated this area since the 1920s. Others claimed that this area has been used and accessed since the 1940s. These shifting cultivators, (*kasepuhan*), claimed their ancestors were part of an elite army of the Pajajaran kingdom. They practiced their shifting cultivation applying their own environmental knowledge to classify the forest into three types: *leuweung geledegan/kolot* (primary forest and protected areas), *leuweung titipan* (ancestral forest) and *leuweung sampalan* (man-made forest, including grassland and fallow areas) (Adimihardja, 1992; Galudra, 2003b). Unfortunately, there is no conclusive study on how many people claim this heritage within the park and how many hectares of park land are subject to such claims (Santosa et al., 2007).

Some of the legal claims by the local people are based on private ownership rights issued by the National Land Agency in the 1960s. This claim was discovered in Bogor and Lebak Districts. Historically, the distribution of ownership rights to local people in the 1960s was part of a national policy on agrarian reform. People who cultivated the land were the main target for agrarian reform and received a land certificate to provide tenure security. During the 1950s and 1960s, they were invited to register their land before receiving land ownership rights (Nurhawan et al, 2006). Although the National Land Agency Regency defended its certification process by claiming that the forest boundaries were still unclear, the Department of Forestry still maintained its claim and progressed this problem through the litigation process.

Before the area was designated as a national park, in the period from the 1950s to 1970s, the forest authorities tried to solve these overlapping claims. They allowed the local people to farm the land on condition that they shared 25% of their farming profit/harvest with the forest authority. This mechanism was implemented from the 1950s until it was abolished in 2003, after the area became a national park (Galudra et al., 2005a; Galudra et al., 2005b). The mechanism certainly provided land tenure security and a basis for the legal claim by the local people to farm the lands, even though its legality was in doubt.

4.3.3.3. The Legal Claim of the Local Government of Lebak District over Mount Halimun-Salak National Park Designation

Unlike other local government regencies, the Local Government of Lebak Regency has certain interests over Mount Halimun Salak land and its resources. In early 2008, the head of the Lebak Regency (*Bupati*) presented his case to the national legislature (*Dewan Perwakilan Rakyat*) on the Mount Halimun-Salak land tenure

issue. He requested the exclusion of 15 000 ha of national park land in the Lebak district for mining, plantation and infrastructure development. The national park authorities feared that this request would have serious negative ecological and hydrological impacts, including the loss of an important block of forest habitat for endangered species.

Others were concerned that the *Bupati*'s request would reduce the forest area in Banten Province to 186 000 ha (22.7%). This reduction would be contrary to the efforts to save the remaining forests in Java, which according to the Forestry Law of 1999 (based on a carrying capacity assessment of the island) should cover at least 30%; however, as a result of the claim the remaining coverage would be only 17.2%.

The *Bupati*'s legal claims were actually based on the historical use of this area for mining activities. Since 1936, an area of approximately 8000 ha had been used by the Dutch colonial government for mining activities, before it was closed in 1991 because of the unproductive gold yield. However, it remained under the control of the mining company (PT Aneka Tambang), based on Government Law No. 91 of 1961. Unfortunately, there was open-access to the area and many people started their own gold-mining activities (Suhaeri, 1994). In the middle of 2007, the mining company abandoned the area, leaving no one in control.

This historic evidence led the *Bupati* to claim the area for mining activities and other uses. Moreover, he also alleged that the national park designation had caused fear in the local people as many of them were being evicted following the national park designation. The Forestry Department countered this allegation and responded that this area had been gazetted since Dutch colonial rule. Ironically, it is uncertain who has the correct legal claim to that area, since each party is using the same map to claim the land.

4.3.4. An Historical Approach: Unraveling a Truth Beyond the Perceived Legal Basis

As has been previously explained, the forest gazettal of the Mount Halimun-Salak area began in the Dutch colonial period. During the period from 1905 to 1996, several forest gazettals were declared to determine forest boundaries to address claims by the local people. According to Contreras-Hermosilla and Fay (2005), the finalized gazettal process gave legality to the government's claim over the area as a state forest zone. In the Mount Halimun-Salak case, the area can be considered as a state forest zone.

On the other hand, the competing claims within these forest boundaries still exist today. The local people have laid claim to the area using historical usage. This raises the question of why these competing claims have arisen. Historical analysis was

used to explain and understand the competing claims. This analysis helps to understand the persistence of these disputes and questions the legality of the gazettal processes by the government.

Before the government published forest gazettals within the Halimun Salak area, many local people were using the area for shifting cultivation. The Dutch Government tried to control the shifting cultivation through several government regulations like Government Decree No. 6/1900 and No. 8/1909 in 1896, but they did not address the legal rights and tenure security for the shifting cultivators. The Resident of Banten took the initiative by legalizing their land use through Resident Decree No. 10453/7/1924. This decree allowed the cultivators to farm their lands based on rental rights and gave the village leaders the authority to allocate and distribute the land to the shifting cultivators. From 1901 to 1925, the Banten Residency had distributed about 101 140 ha of land for shifting cultivation (Kools, 1935; ANRI, 1980; Galudra, 2006); his decrees certainly provided legal tenure security for the shifting cultivators to farm their land.

Regrettably, the Dutch Forest Service subjugated the designated shifting cultivators' land into the gazetted forest area. Based on the map of the gazetted area, the forest service tried to control via imposing severe punishment on those who accessed the gazetted forest area 'illegally'. In 1922, about 3000 shifting cultivators were jailed. The Resident objected to the gazettal processes since he believed that land that was subject to the rights of many local people was being seized for inclusion in the state forest zone. He identified that about 3000 ha of land under shifting cultivation had already been subsumed into the state forest zone and most likely even more. He also condemned the Dutch Forest Service's carelessness in not seeking the local people's consent to the forest gazettal and claimed that even the forest authorities themselves could not prove where the state forest boundaries were, causing confusion to many local people and the Regent (ANRI, 1976; ANRI, 1980). He also claimed that the Forest Service had broken the law because all the shifting cultivation land had been secured legally through Residential decree (Kools, 1935).

The Dutch Forest Service defended their claim that during the forest gazettal process, no local community property rights had existed within the state forest boundaries. Their claim was based on the state domain of Agrarian Law 1870 and the usual practice of interpreting state forest as all land that could not be proven to be owned (individually or communally) by villagers (i.e. land that was not currently under tillage or that had lain fallow for more than three years). At that time, the fallow period was six to seven years (Kools, 1935), so therefore, it would not legally fit into the definition of individual/communal land ownership.

The current government appears to not even be aware of this historical dispute. The Forestry Department thinks that all of the forest registered during the Dutch colonial rule had been gazetted in accordance with the law, but it does not realize that there are still competing claims over parts of the state forest zone from the shifting cultivators whose land rights historically had been legalized by the Resident. The people currently still perceive that the Forestry Department has weak legal claims over the Mount Halimun-Salak area, creating land tenure confusion in the area.

The weak legal claim by the Forestry Department eventually resulted in land reclamation by the local people. A report in 1955 showed that around 1576 ha of the state forest zone in the Mount Halimun-Salak area had been converted to dwellings and farming systems by 2546 households. The report also stated that the conversion was based on the villagers' claim that the area previously had belonged to their ancestors who practiced shifting cultivation, before it was converted into part of the state forest zone by the Dutch Colonial Government (*Baplan-Dephut*, unpublished). Another similar study reported a similar situation (Galudra *et al*., 2005b), even during the Reformation Period (Nurhawan *et al*., 2006). The current government appears to be unaware on this historical evidence and certainly should resolve the legal issue regarding these claims, before designating the area as a national park.

4.3.5. Conclusion

In essence, the definition of forest land ownership and the forest gazettal processes based on Dutch colonial regulations have been the cause of the land disputes in the Mount Halimun-Salak area. The current government appears to be unaware of this condition and has preferred to generally maintain the Dutch colonial policies, even expanding on the colonial regulations concerning forests, as these provided a readily available basis for the expansion or consolidation of state control over land and its resources in the Mount Halimun-Salak area. Consequently, when the government declared the Mount Halimun-Salak area as a national park based on the gazettal process undertaken during the Dutch colonial rule, several actors repudiated it.

4.4. Case Study 4 - Moving Beyond the Impasse - Seeking Spaces for Tenure Security in the Eastern Buffer Zone of the Lamandau River Wildlife Reserve, Central Kalimantan[4]

4.4.1. Background

With a steady degradation of Indonesia's tropical forests and reduced confidence in the protected-area model, some attention has been turned to the potential role that community-claimed forests could play in carbon sequestration and biodiversity conservation. However, the lack of *de jure* rights of ownership and access to designated forest areas in Indonesia has proven to be the major stumbling block to these movements. In such instances, strengthening local tenure in collaboration with local residents can be considered as a valid endeavor to establish spaces where biodiversity, carbon and community interests might coexist.

The Lamandau River Wildlife Reserve (LRWR) forest conservation and community development project is one of a portfolio of twenty-one proposed REDD demonstration projects. It aims to demonstrate how REDD projects can contribute to helping forest-dependent communities move out of poverty, to conserving tropical forests, and to ensuring real reductions in GHG emissions in association with land use, land cover changes and deforestation.

The proposed REDD demonstration project site comprises 77.600 ha, made up of 54.000 ha in the Lamandau River Wildlife Reserve (LRWR) and an additional 23.600 ha between the Lamandau River and the eastern border of LRWR. In the first half of 2009, a new RATA study was conducted in the eastern buffer zone of LRWR. This study summarizes the study on competing claims and the possible collaboration in the context of emission reduction and biodiversity in the buffer zone area of LRWR. The paper aims to:

1. Disclose the possible forest land use claims and rights in the eastern buffer zone of LRWR,
2. Acknowledge the potential for synergy between strengthening forest tenure, conserving biodiversity and carbon sequestration.

[4]This study is heavily drawn from G. Galudra. 2009. Moving Beyond the Impasse - Seeking Spaces for Tenure Security in the Eastern Buffer Zone of the Lamandau River Wildlife Reserve, Central Kalimantan Technical Report submitted for Clinton Foundation.

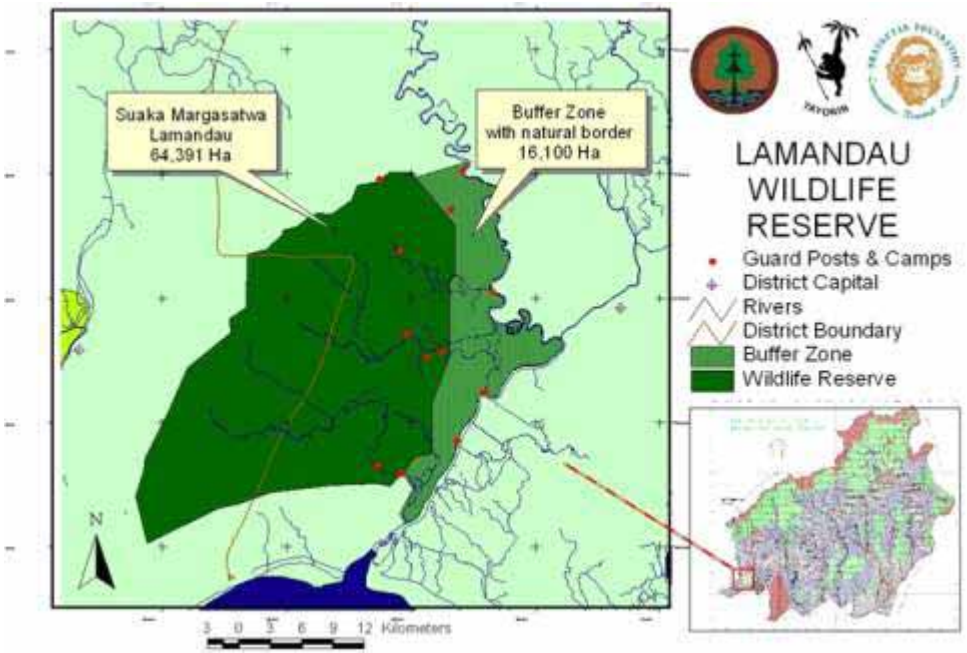

Figure 6. The Lamandau River Wildlife Reserve and its eastern buffer zone.

4.4.2. Study Location

The Lamandau River Wildlife Reserve (LRWR) in Central Kalimantan refers to the large area in the lower reaches of the Lamandau River, an area in the southwestern-most tip of Kalimantan. Administratively, it is located in two regencies, Sukamara Regency covering the western part of the Reserve, and Kotawaringin Barat Regency covering the eastern part. The Reserve is 76 000 hectares wide, and was created based on the Ministry of Forestry Decree No 162/1998 on 26 February 1996 (Figure 6).

4.4.3. One Landscape, Three Competing Interests

4.4.3.1. Biogeographical and Conservation Significance

Globally, Lamandau is of considerable conservation significance. It is believed to rival Tanjung Puting National Park in terms of plant endemism and species diversity, particularly within the pockets of endangered orang utan (*Pongo pygmaeus*) throughout the area. In 2004, based on this conservation importance, the government decided to delineate and gazette a designated wildlife reserve to protect the reserve legally and legitimately. The gazettal process was completed in 2005, but the size of the reserve decreased to only 56 584 ha. The reason for this

reduction was that much of the area, physically, could not be classified as a wildlife reserve due to the development of oil palm and community settlements (Departemen Kehutanan, 2005a; 2005b). A new plan then was proposed to expand the conservation area to the eastern part of LRWR. Around 23 600 ha of the eastern part of LRWR was designated and managed by this organization as a buffer zone. The buffer zone was previously managed under two forest concessions, but at that time it was abandoned and became an 'open access' area. So far, it still contains some preserved forests, and several scattered habitats of orang utan can be easily found in that area.

4.4.3.2. Community Claims to Land and Forest

The eastern part of LRWR comprises four villages with a combined population of 20 789 people, centered at the mouth of the Arut River and the lower reaches of the Lamandau River (BPS, 2007). The people in these villages work mainly in fishing and wet-rice/dry-rice farming. The forested land is an important source of firewood and building materials (bamboo, rattan and wood). The seasonality of cash income makes the forest both a lifeline and a safety net for local people.

Generally, the local people in these villages assert customary claims to forested land that their forefathers used for clearing and farming, hunting, and the collection of forest products. Many people had previously cleared land and were farming according to the traditional system. Evidence of old rubber trees, rice-fields, and old settlements have been forwarded to support their customary claims. Jelutung trees are also viewed by this community as part of their customary claim, since this product was previously under customary control and local values (Dinas Kehutanan, 2008). Another claim made by these villagers was for a communal traditional right. They declared the area up to 2.5 km from the banks of the Lamandau and Arut Rivers as their ancestral land. This claim was apparently being supported by the Governor of Central Kalimantan (Biro Pemerintahan Desa, 1996).

Beside customary claims, the area contains an influx of migrants from Java, Banjar and Bugis. These people have settled mostly during the forest concession era and transmigration program in the 1980s, and they claim some part of the forested land as their cultivated land. Around 91 people claim this area based on land ownership certificates that were issued by the National Land Agency. However, their claims cannot be confirmed by the local National Land Agency as land administration is still a problem.

4.4.3.3. The Legal Status of the Buffer Zone Forest and Oil Palm Interest

There are common viewpoints among the policy-makers regarding the legal status of the buffer zone forest. Provincial Regulation No 8/2003 allocates the buffer zone

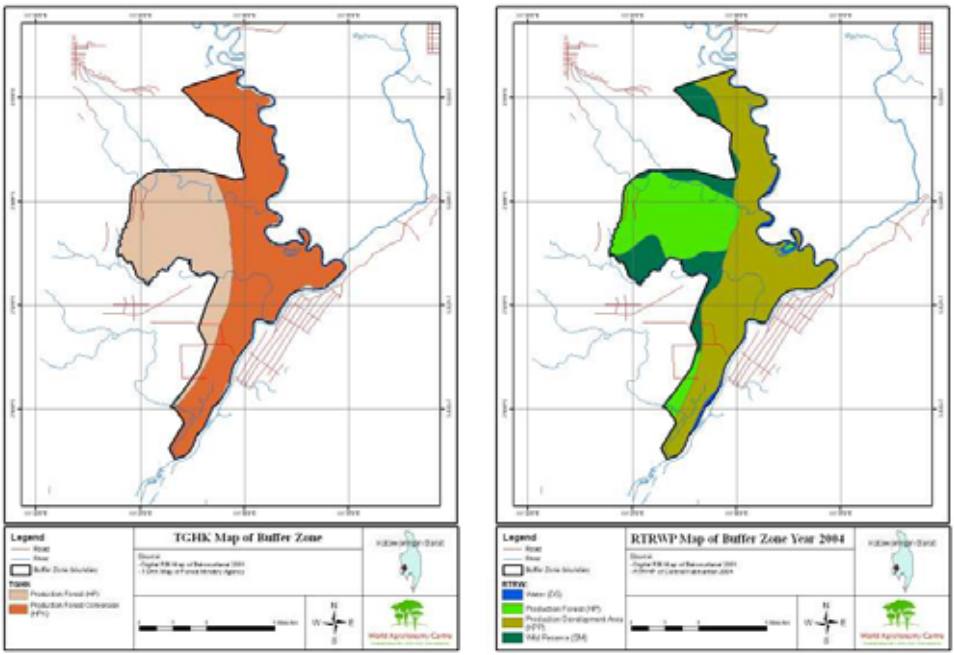

Figure 7 and 8. Buffer Zone Status based on TGHK and RTRWP Maps

mostly as a Production Development Zone (*Kawasan Pengembangan Produksi*), while the Ministry of Agriculture Decree No 680/1981 designates the zone as Convertable Forest Production (*Hutan Produksi Konversi*) and Forest Production (*Hutan Produksi*) (Figures 7 and 8). These zonings provide a legal status for forest conversion into crop-estate plantation, transmigration, etc., as they are explicitly defined by the Government Regulation No 44/2004 and Ministry of Forestry Decree No 53/2008.

The legal status encouraged an investor to seek the opportunity to build an oil palm plantation and mill within this forest. Fortunately, the investor decided not to invest because of difficulties with terrain and a lack of supporting infrastructure, such as a road network. So far, the only oil palm concessions that currently operate are located in the northern part of LRWR. Nevertheless, they probably will seek opportunities to exploit the buffer zone forest for oil palm plantations in the future, unless the legal status of the buffer zone forest changes.

4.4.3.4. Significant Threats of Conflict

The imperative to secure biodiversity in the forests of LRWR intensified with the profound changes in the surrounding landscape since 2006. By this date, any community access to the buffer zone forest had been under controlled by the Natural Resource Conservation Agency (BKSDA). The community was allowed to

access and use the forest for collecting *jelutung, gembor*, and *nypha* as well as fishing and rattan, but only if they had a permit issued by the Agency. However, the Agency prohibited the community from using the forest for shifting cultivation, hunting and tree harvesting. The Agency is trying to control the unsustainable exploitation of forest resources by the communities as there no institution has jurisdiction over the area. Consequently, this prohibition has changed the community's livelihood from land-use based to fishing. Nevertheless, the communities are concerned that this restriction could undermine their livelihood options. The Agency must be aware of the community's livelihood dependency on the forest. If not, conflict might arise.

4.4.5. Teasing Out the Tenure Situations for Biodiversity and Carbon

4.4.5.1. Strengthening Customary Law to Govern Rights and Access

The shift to proprietary rights has to be carried out in a way that does not undermine the importance of shared forest resources (Li 1996; Stevens 1997). Traditionally, for the Mendawai community, in common with many other people living in Central Kalimantan, rights to a territory were held by individuals, and these rights could be asserted on an area designated as communal traditional territory. Within this territory, any village member was allowed to clear the forest to make a swidden. If an individual cleared a patch of forest without knowing the history of clearance, he and his descendants could lay claim to this land (Abdurahman, 1996). A hundred years later, an influx of migrants from Java, Banjar and Bugis, through spontaneous transmigration during the forest concession era and the government transmigration programs of the 1980s, lived in this area and changed the existing communal traditional territory.

There are contrasting points of view about traditional land territorial claims. The Mendawai community claims an area up to 2.5 km from the Lamandau and Arut River banks as their traditional right. Their claim is in line with a statement in 1998 by the Governor of Central Kalimantan province, saying that a distance of two and a half to five kilometers from the river banks should be given back to the communities under customary land-use rights, although his statement did not have any legal standing. However, not all community members are aware of their territorial right, and whether this right was actually held and passed on from their ancestors by custom or whether it was only introduced by the local government during the reformation period. In the transitional period during '*reformasi*', opportunities arise to exploit ambiguities and for confusion in translating customary claims into legal title. The superimposition of statutory legal systems on customary systems creates new windows of opportunity for people to take advantage of multiple systems to claim resources (Peluso, 1995).

The study did not find any customary institution that currently occupies this area. Nevertheless, some members of the community recall the customary rule on tapping jelutung; a villager, who first discovers an unmarked jelutung tree, can tap and own the tree. This tree can be then regarded as a private right. According to customary law, others who tap these trees without the owners' consent will be fined. Historically, there was an existing customary institution that controlled and governed community access. It also shows that the communities have a significant claim toward the trees within the forest.

Strengthening customary institutions to govern rights and access may be an option for tenure security, but it will require a great effort, as currently there is no customary institution in this area, because of the current condition of the diverse members of the community. Some may argue that this situation has arisen because local authority over customary lands and resources has been undermined in recent decades. The absence of tenure security and the impacts of monetization and opportunism during the forest concession era have weakened the community institutions. Support from local government through Provincial Regulation No. 16/2008 can help revive the strong customary institution, but how this institution will be implemented with regard to biodiversity and carbon sequestration still needs to be worked out.

On the other hand, the buffer zone has also been accessed by other people from outside the villages, specifically the Kumai people, which settled within the buffer zone forest and collected *jelutung*. So far, there has been no competition with regard to the use of *jelutung* trees between the local villagers and this people. Consequently, to revive a strong customary institution requires a thorough understanding of who has rights to access and use the forested land, what kind of rights need to be given, and what kind of rules and sanctions need to be imposed. A failure to understand these issues, could result in a horizontal conflict erupting.

4.4.5.2. Community Forestry under the State Policy

The study in LRWR also demonstrated the potential of collaboration in conserving conservation forests. Government officers, conservation practitioners, palm oil concessions and, of course, local people have the potential to complement and reinforce each other's contributions. The Lamandau Consortium (KPEL) had successfully facilitated an agreement between two palm oil concessions that operate in the northern part of LRWR, PT Sungai Rangit and PT Bumitama Gunajaya Abadi. Both concessions owners will allocate their concession area as a buffer zone along the border of LRWR. They have committed to having no operations within this designated buffer zone.

Such a commitment and agreement can be made with local communities who access the buffer zone forest. Those who directly depend on the forest are naturally perceived as having a greater right to defend their livelihoods and living environments. Indirectly, they stand to be a voice for forest conservation. Some immediate options based on government regulations can be taken to improve current policies and practices governing the management of the buffer zone forest. The Forestry Department has issued a number of regulations concerning the management and control of the forested land by the local community. Table 8 shows several community forestry schemes within the production forest based on government regulations. These regulations provide tenure security for local communities to access and use the buffer zone forest resources.

Table 8. Government regulations on community forestry schemes in production forest (*Hutan Produksi*).

Community Forestry Schemes	Governing Institution	Type of Right Held	Duration of Rights
Community forestry (*Hutan Kemasyarakatan*)	**Forest Farmer Groups**, but after 5 years, must create **Farmer Economic Enterprise (*Koperasi*)**	**Group utilization and harvesting rights.** A quota for these rights is imposed each year. ? Planted timbers 50 m^3 ? Non timber products 20 tonnes	**35 years** and more. Evaluation every five years
People plantation forest (*Hutan Tanaman Rakyat*)	**Individual** or **Farmer Economic Enterprise (*Koperasi*)**	**Private** or **group utilization and harvesting rights.** No certain quota is imposed.	**60 years** and can be extended for another **35 years**
Village forestry (*Hutan Desa*)	**Village institution *(Lembaga Desa)***, based on village regulation	**Management right.** A quota for these rights is imposed each year. ? Planted timbers 50 m^3 ? Non timber products 20 tonnes	**35 years** and more. Each 5 years are being evaluated.

Source: MoF No 22/2009; No 18/2009; No 49/2008; No 5/2008; No 37/2007 and No 23/2007

Even though these schemes offer legal tenure security for conservation, carbon sequestration and community participation, it is still uncertain how these schemes can fully integrate with customary rules and the local tenure system. Yet, these schemes certainly help to settle land tenure conflicts. Several case studies such as in Lampung, Jambi, Gunung Kidul, and Lombok, show the success of minimizing land tenure conflicts and settling the competing claims and interests among different actors (Nurka et al., 2006; Suyanto, undated; Wiyono and Santoso, 2009a; 2009b).

Based on these experiences, community forestry schemes may offer a promising way to synergize different and competing interests for biodiversity, carbon and livelihood.

4.4.6. Conclusion

Across the globe, the spaces reserved for biodiversity conservation are decreasing dramatically and very few wilderness areas can be considered free from land claims. Each party has a different interest and these interests manifest into land claims. The most agreeable solution is for each party to acknowledge the interests of the others in order to come to a synergistic solution. The danger for conservation entities is that it is often too easy to preserve the forest and overwhelmingly take on the concerns of biodiversity values without assuring that community rights and livelihood retain primacy.

The solution is for the communities to assume some responsibility for biodiversity and carbon. Integrating the community value and norms on forest access and use can benefit these efforts. However, the government has a prominent role to play in providing tenure security and supporting compatible economic activities in such an area. The current policy has the tendency to undermine the community's rights to access and use the forest. It cannot protect the forest from being legally converted to other land uses. Community forestry schemes that integrate with the community's rights, norms and values can offer tenure security in this area.

5. Final Remark

The management and use of land and its resources with multiple products and users and are usually being undertaken in pursuit of multiple objectives. At Hence, land and resources management seldom fall neatly into private, state or common property categories. As land tenure is highly contentious, conflicts and disputes abound as the creation of land tenure excludes and includes certain users usually from outside the users group. Land tenure is often characterized with multiple claimants to the access and use of the land in question. From the case studies already presented, we found several issues that related to land tenurial and multiple claims study.

1. The understanding and resolution of overlapping claims is further complicated as tenurial situation is constantly changing and evolving. The situation is exacerbated further by the unsatisfactory nature of the broader legal framework. The extent of this complexity is illustrated in Ex-Mega Rice, Central Kalimantan (Case Study 2). In this case study, there is no single body of law dealing with land tenure. Instead, it is covered by parts of the laws concerning organizations and administrations. The legal basis for land tenure therefore is often very ambiguous and open to legal challenge. The case study also shows that the legal status of land and forest resources becomes unclear, causing confusion not only about who hold the rights to use and access the land and forest resources, but also regarding who are the ones who have the rights to determine those rights. Based on this case study, the task of establishing the legal basis is made more difficult by overlapping and poorly reconciled systems among the national land law and between community land law and custom.

2. The struggle over land tenure has illustrated discursive strategies among the conflicting parties. The Halimun-Salak case study depicts how local people claim national park land with mythical stories of the past and claiming land with good deed and stewardship from the previous land owners. Despite this struggle, the local people used these claims as a strategy to renegotiate land tenure. In contrast, the government used not only laws and policies, but also biodiversity and conservation significance of the area. The conflicting parties choose to argue with the mixture of legal, political, historical, sociocultural, and moral arguments

to support their claims, depending on which discursive frame they think they will work best at the time. Therefore, to understand land claims, it is not sufficient to focus only to legal aspect, but also the historical, political and economic development repertoire being used to determine the land claims and the potential for these to transform into disputes or remain latent.

3. The tree tenure is a different form of land tenure. The Lamandau case study illustrated how tree tenure can add to the complexity of carbon rights. The negotiation processes that give land access rights to villagers in this area may bring further conflicts especially when the tree owners are not automatically the same as the land owners. Understanding land tenure must also be equipped with the understanding of multiple use and access of rights to the land and trees and other resources within the land. The community forestry schemes offered to give access for the communities surrounding the forest might be helpful in solving the overlapping claims of resource access and use. However, we need to be cautious while defining this scheme so as not to jeopardize the shared property rights with other forest users.

Annex 1. Conducting Actor Analysis.

In RaTA, actor analysis uses and adapts the methods described by Rietberger-McCracken and Narayan (1998), Mayers (2005) and Mayers and Vermeulen (2005). It involves four steps:

1. *Identifying* key actors.
2. Investigating actors' *interests and potential impacts*.
3. Identifying patterns and *contexts of interaction* between actors, including their perceptions of other actors' access to natural resources. In other words, this involves mapping actors.
4. Accessing actors' *power and potential* roles in assessing land and influencing land tenure conflicts.

Identifying key actors is achieved by emphasizing the aspects of the beneficiaries of the initiatives (see Box 8 for actor identification). The identification can be done in various ways, including identification: by the actors *themselves*; by *other actors*; by *knowledgeable individuals or groups*; by *field staff*; based on *demography*; and based on *written records* from previous projects.

Box 8. Actor Identification

Who are the legitimate actors to take part in land tenure conflicts? Consider who:

1. Has existing formal or informal right to land or natural resources.
2. Has some degree of economic and social reliance on the resources.
3. Might sustain potential or real losses, damage, or other negative impact from decisions about the resources.
4. Is influenced, presently or potentially, from activities associated with the resource base.
5. Has relationship continuity with the resources.
6. Has an historical or cultural relation with the resources at stake.
7. Has shown some degree of effort at, and interest in management.
8. Has experience or expectation of the policy/institution intervention.
9. Has the resources to mobilize or is willing to mobilize.

Adapted from Borrini-Feyerabend and Brown (1997) and Mayers (2005)

Once actors have been identified, their interests and potential impacts need to be better understood. Several methodologies to undertake such an analysis include: *brainstorming* to generate ideas and issues within a actor group; a *semi-structured interview,* in which an informal checklist of issues is used to guide an interview with the actor group; *sourcing a variety of recorded material* and *timelines* of the actors history of links and impacts of particular policies, institutions and processes, with discussion of the causes and effects of various changes.

The third step involves identifying patterns and the context of the relationship, which aims to understand the relationships between actors and to investigate factors involved in the conflict and cooperation, e.g. authority relationships, ethnic, religious or cultural divisions, historical contexts and legal institutions. The final step of the analysis is conducted to assess actor power and their potential roles to access land or natural resources. Power to access land can be achieved through t*echnology, capital, market, labor and labor opportunities, knowledge, authority, social identity,* and *negotiation of other relations.*

For ease of analysis, all the information above is 'stored' in matrices. The outcomes of steps 1, 2, and 3 are entered into Table 9. The last step (actor power analysis) is summarized in Table 10.

Table 9. Identification of actors: their interests, interactions and perceptions

Actor	Main Interest in Relation to Land	Effects of Their Interest on Conflicts			Degree of Interaction*	Perception to other interest		
		+	0	-		+	0	-

* = Rank with: U = Unknown; P = Partnership; and C = Conflict

Table 10. Actor Power Analysis

Actor	Roles of Actor in Land Claim Conflict Output	Impact on Other Land Access			Degree of Power of Actors to Access Land*
		+	0	-	

*= provide a ranking/number based on: U = Unknown; 1 = Little/ No; 2 = Some; 3 = Moderate; 4 = Significant; and 5 = Very Influential.

Annex 2. Actor Identification Mapping.

Purpose: To identify and assess the dependency and power of different actors in a conflict.

Application: Actor identification mapping helps to identify the actors' involvement or effect on the conflict; how powerful they are; and what relations there are among them. It is different from the previous actor analysis, as it also helps to picture the actor relationships.

Preparation: Flip chart and Colored pens
Colored poster paper
Glue sticks

Box 9. Points for Discussion

1. Who are the holders of rights for each land area?
2. What does this tell us about each actor's and power and influence?
3. Can you categorize which actors have claims to the area and those who affect the competing claims process?
4. Were there any disagreements about who was and who wasn't a legitimate actor?

Annex 3: Mapping Tenure and Conflicting Claims over Resource Use

Purpose: To identify and show territories and resources in the area of interest and to identify several broad tenure niches.

To address the issues arising about how the community manages the resources at its disposal.

To show geographically where land or resource use conflicts exist or may exist in the future.

Application: Mapping is always useful to gain an understanding of the spatial dimension and geographic boundaries of land and resources use. It is helpful to involve actor groups in the process, structuring discussion about tenure issues and giving actors a more active role in the process of analysis.

Each territorial zone has different uses and may be characterized by different tenure arrangements. Tenure rules are among the principal mechanisms that communities use, first to define their territorial space and then to manage the resources within that territory. Useful historical information can also be obtained using the map as the basis for discussion.

Preparation: Flip chart and Colored pens
Maps can be drawn on the ground so that they are easier to correct and change. The final map should then be documented on paper.

Box 10. Points for Discussion.

1. Does the village being studied have its own territory or does it share a territory with other actors?
2. How clearly delineated are the boundaries? Are there any areas that are less clearly demarcated? Any possible conflicts should be noted.
3. What is the history of the delineation?
4. Do outsiders use the territory? For what purposes?
5. Within the territory, what are the different important land use areas: fields, fallows, forests, pastures, etc.? Which are being held as state, commons and individual land?
6. How has the village's territory changed over time?
7. Who is the holder of the rights for each land area?
8. Who actually uses it? Are there any actors who have right of use claims to the same land? What are the relationships among those actors?
9. Is the land characterized by different tenure relations? What rules characterize these arrangements?

Annex 4: Competing Claims Time Line

Purpose: To assist actors examine the history of competing claims and to improve their understanding of the sequence of events that led to the claims.

Application: The competing claims time line is a useful tool for clarifying the dynamics of the competing claims and spelling out the key issues. In particular, it may be useful as a warming-up exercise and involve actors in the process. The timeline may help to understand the root cause of the competing claims and the actors involved directly or indirectly in the competing claim process. It also helps to analyze the dynamics and evolution of the local land tenure system.

Preparation: Flip chart and Colored pens

Box 11. Points for Discussion.

1. What have you learned about the competing claims from the time line?
2. What have been the most significant events in escalating or broadening the claims? Why?
3. How have the events affected the competing claims and the relationship among the parties?
4. What are the events that changed the local land tenure system? How and why?

Annex 5. Guideline Questions for Semi-Structured Interviews

These questions can help the user to focus on the 'big picture' by thinking pragmatically about the detailed information collected. The questions will guide the user to understand and analyze the vast amounts of information.

A. Tenure Claim Insecurity

- What is the nature of your land interest? Are you satisfied with the extent/nature of that interest?
- What is your evidence of ownership or other interest? Can you describe it?
- Do you believe your land interests and rights are enforceable against others (including the government)? If yes, why? If not, why not? Who might violate your interest?
- Are others in the same situation as you and do you think it would be useful to act collectively to protect your interests?
- Does anyone else (individuals or groups) have access to your land? If so, who?
- Do you know of any institutions or organizations designed to protect your interest? Who?
- Do you believe those institutions/organizations function fairly and independently and do you have access to them?

B. Competing and Conflicting Land Uses

- Are you free to use your land as you see fit? If not, why not? Describe the conflicts and restraints.
- Is your community free to use its common resources? If not, why not? Describe the conflicts and restraints.
- What is the impact of any restrictions on your land use? Have you or anyone in your community ever had a violent confrontation over the conflicts or restraints?
- Are there mechanisms, people, organizations or institutions for hearing and resolving the conflicts? What are they? Formal? Informal? Would there be an agreement that satisfies both sides or would there be a winner and a loser?
- What/who governs your land use? Who should govern your land use? Why?

C. Power Degree on Land Claim

- Are you/your community doing anything to preserve, enforce or reclaim that right?
- Do you have confidence that these methods will bring about the desired results?
- If you are unsuccessful, what will the consequences be to you/your community?

D. Local Knowledge of Land Laws and Land Rights

- Are landholders clear about their land rights? Is there (some) confusion or competing notion of rights? Is there a common understanding, which is contradicted or undermined by law or other rights holders?
- Do rights holders have documents to support their claims? What other types of evidence do they use that are considered acceptable to prove claims?
- Does a lack of access to land result in informal or illegal settlements on public or private lands?

E. Governance and Land Policies Issues:

- What are the principal institutions with responsibilities related to land and property issues? What is their general mandate? Are the main governmental institutions relevant to land and property issues doing an adequate job? Are specific institutions particularly weak? If yes, in what areas? Are specific services regarding land issues needed but not available (i.e., are specific institutional roles not provided)?
- Is the law and policy regime regarding land and property matters adequate? Do important gaps or other weaknesses exist in terms of legislation and/or policy (on paper)? Is the relevant legislation and/or policy being applied in practice?
- What kind of legislation exists on agrarian issues at the national and regional/international levels that improves or worsens land tenure security for marginalized groups?
- Have there been any recent changes in the law or government policies regarding land rights? Do you know the details? Are you asked (and able) to carry them out or to enforce them?
- Have all government structures been accommodated on land policies? Is the tenure situation easily understood and enforced or is it nebulous and open to abuse?

- Have there been any recent national/regional/local events that have impacted this community's land interests?
- Is there adequate institutional capacity to manage or resolve land disputes? What types of conflict resolution mechanisms need to be strengthened (e.g., the courts, alternative dispute resolution processes)?

F. Definition and Recognition of Property Rights

- Are individual or communal rights to land poorly defined? Do the holders of land rights lack assurance that property rights are enforceable?
- Is there legal or de facto recognition of common property access and rights? Do groups who have traditionally used common property resources have continuing access to these resources?
- Are the definition and enforcement of broad-based land rights being hampered due to a land administration system? Is there a lack of public trust in the use of the land administration institutions? Are the land administration institutions inefficient? Is there a lack of access to land administration institutions? Are land records accessible?
- Are de facto rights to land and resources recognized? Have long-term users been evicted because of a lack of formalization of land/resource property rights? Is incompatibility between formal and customary systems contributing to tenure insecurity?

G. Conflict Resolution

- Who resolves conflicts concerning land, trees, water, fauna, etc.? Do these same individuals or institutions make the rules?
- How have resource conflicts been resolved in the past? Have there been changes in conflict resolution procedures over time?
- Are there cases of conflicts that have not been resolved? Why?

Annex 6. Matrix of Tenure Claims

A matrix used in analysis is a powerful technique that can be adapted to many different kinds of information needs. The tenure claims matrix is used to depict the actors' basis claims and looks at the various factors that influence their basis claims. The matrix can be made for a series of comparisons. It helps to explain what kinds of claims are being used by each competing actor.

Several examples, based on the case studies above, elaborate on the use of the matrix. The forms of rights being used to claim the land are depicted in this matrix. The basis claims, defines what the actors use to exert their power to 'legally' claim the land or counter others claims, whereas influential factors are defined as external/internal influences that drive actors to make the claim or become involve with the competing claims.

Table 11. Matrix of tenure claims in the case study on the Ex-Mega Rice Area.

Competing Actors	Rights Basis	Basis of Claims	Influential Factors
Central government	State right to control forest area	Presidential Decree No 2/ 2007 and Ministry Decree No 55/ 2008 Procedure of Forest Release (based on Forestry Law No 41/ 1999; Ministry of Forestry Decree No 166/ 1996) Environmental Impact Assessment (based on Environmental Law No 23/1997; Ministry of Agriculture Regulation No 14/2009)	Peat dome protection and fire hazard (based on Ministry of Environment Academic Report of 2007)
Local Government (Provincial and Regency)	Local government to control and allocate rights	Provincial Regulation No 8/2003 Regency Regulation No 3/2002	Scientific study by Agricultural Research and Development Office of 1998
Community	Customary right Private right	Customary communal rights Formal statements on land ownership (*surat keterangan tanah*), issued by head of village *Tatas* and *handil* rights	Governor of Central Kalimantan statement in 1998 Ancestral custom/ rule Forest concessions' influence

Table 12. Matrix of tenure claims in the case study on the Mount Halimun-Salak National Park.

Competing Actors	Rights Basis	Basis of Claims	Influential Factors
National Park Agency	State right to control forest area	Ministry of Forestry Decree No 175/2003 Ministry of Forestry Decree No 195/2003 Ministry of Forestry Decree No 419/1999 Forest gazettal and designation process from 1905 to 1934	Hydrological importance (based on Hoemacommissie Bantam of 1932) Species diversity and conservation significance Conservation Law No 5/1990
Local Government (Lebak Regency)	Local government to control and allocate rights	Historical evidence (based on Government Regulation No 91/ 1961) Forest gazettal and designation process from 1905 to 1934	Mining significance
Community (adat and local)	Customary right Private right	Ancestral land rights Land ownership right certificates, issued by the Land Agency of 1960 Profit-share mechanism	Customary law Agrarian reform in 1960 Perum Perhutani's influence

Table 13. Matrix of tenure claims in the case study on the eastern buffer zone of the Lamandau River Wildlife Reserve.

Competing Actors	Rights Basis	Claims	Influential Factors
Government/ Conservation entities	State right to control forest area	Ministry of Forestry Decree No 162/ 1998 Forest gazettal and designation process of 2005	Plant endemism and species diversity, especially *orang utan*
Community	Customary right Private right	Customary individual rights of land use Tree tenure (*jelutung*) Customary communal rights Land certificates Ex-rubber trees, rice field, and old settlement	Governor of Central Kalimantan statement in 1998 Ancestral custom/ rule
Oil palm concession	Derived use right	Provincial Regulation No 8/2003 Ministry of Agriculture Decree No 680/ 1981	Government Regulation No 44/ 2004 Ministry of Forestry Decree No 53/ 2008

Annex 7: Key Informants: who can provide information on this tenure claim issue?

- Land encroachers and occupiers of informal settlements
- Variety of landholders (including squatters), resource users (including pastoralists), and landless people (including men, women and minority group members)
- Cadastre offices (land and resource) and/or land administration offices
- Officials overseeing forested and/or protected areas
- Officials charged with resource allocation or concession granting
- Government land distribution or reallocation units and beneficiaries of such programs
- Institution or organization protecting customary property rights
- Resource concessionaires
- Groups traditionally occupying forested or protected areas
- Local government (provincial, regent, district, town) planning offices
- Local dispute resolution bodies
- Local community or customary people leaders
- Non Government Officials (NGOs)

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Land tenure conflicts arise from perceptions and the different interpretations that people give to their rights over forested land and resource. It is often cited as a root cause of communal or even separatist violent conflict. Although it is unclear what is really at stake behind the 'ethnic' or 'religious' conflicts that have erupted, it is commonly stated in various forms that land and natural resources issues are the main cause of these conflicts.

The Manual is primarily an educational instrument for readers looking for new, efficient and adapted methods and tools. It aims to obtain immediate results by offering a tried and tested methodology for immediate field use. The Manual offers practical tools developed all over Indonesia in World Agroforestry Centre-South East Asia projects and used by other development agencies in the past few years. It should also contribute, however, to improved investigation and development skills amongst those carrying out field studies. This is even more important because it is also a self-training process for those carrying out the project.

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