

Case study: The Misty Mountain of Halimun Salak - a confusion of legal rights from multiple historic claims

An 113,357 hectare of Mount Halimun-Salak area was declared as a national park in 2003 due to the forest ecosystems richness and hydrological function. Signposts declaring the national park were posted near its boundaries, causing much concern among the people who claim to have the traditional access rights to the designated land, despite being disregarded by the national park authorities. What is not legal as perceived by national park authorities is not perceived illegal by the local people.

The land claims dispute to this area was not only between the national park authorities and the local communities, but also with the District Government of Lebak. Around 15,000 ha of designated national park land were claimed for mining operation, crop-estate plantation and infrastructure development. These competing claims create uncertainties on property rights in Mount Halimun-Salak area.

Based on interviews, legal documents and policy analysis, the national park authorities' claims are based on the gazette and delineation processes during the Dutch Colonial period and then during the Independence period in 1950s, 1970s and 1980s. From 1280 km of designated land boundaries, only 110 km have not yet been gazetted and delineated; the rest is legally protected.

On the other hand, local people have their own claims based on history, livelihood and traditional legality. Historically, the designated land had been previously used by the people for shifting cultivation since 1920s, before being declared by the Dutch Colonial government as state land. However, in legal terms, the government at that time until now have rejected the land use system by the local people and considered shifting cultivation as open access and not being part of any legal property rights.

In addition to ancestral claims, some people also have land ownership certificates as legal proof. These certificates were issued by the National Land Agency in 1960s as part of national land reform. Others view their dependency for livelihood as their legal claims. As part of RaTA, PRA tools were used in four villages inside the national park area to understand the conflicting claims. The findings show that large proportion (70%) of local people's livelihood sources depend upon their access to the designated national park. This dependency is one of the reasons why local people defend their claims so strongly.

The District Government of Lebak has also different claim to this area based on historic and policy interpretation. The 15,000 ha area was under a mining company since 1958 under the Government Regulation No. 91 of 1961.

This law did not mention about state forest zone, and therefore, it should be considered that the land is under the control of the state, but not as a state forest zone. Unless these differences in both claims and policies interpretation are resolved and the needs and interests of all concerned stakeholders are accommodated, conflicts are likely that will jeopardize the rich biodiversity in the area.



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Contacts:

TUL-SEA Project
WORLD AGROFORESTRY CENTRE
 Southeast Asia Regional Office
 Jl CIFOR, Situ Gede, Sindang Barang, Bogor 16115
 PO Box 161 Bogor 16001, Indonesia
 Tel: +62 251 8625415/ Fax: +62 251 8625416
 E-mail: icraf-indonesia@cgiar.org
<http://www.worldagroforestrycentre.org/sea>

Credits:

Authors: Gamma Galudra, Gamal Pasya and Martua Sirait
 Photos: Gamma Galudra, Soetrisno, and Gamal Pasya
 Design & Layout: Vidya Fitriani and Diah Wulandari

RAPID LAND TENURE ASSESSMENT (RaTA):

A Tool for Identifying the Nature of Land Tenure Conflicts

Trees in Multi-Use Landscape in Southeast Asia (TUL-SEA)
 A negotiation support toolbox for Integrated Natural Resource Management

Land access: rights, conflicts and cooperation

Deforestation, forest fire, illegal logging and land conflicts with indigenous people are often major problems in forest resource management. Many scholars related these problems to land tenure issues, but few studies provided detailed analysis of competing claims of access and use rights on forest land. The main source of these competing claims can be traced 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 stakeholders' involvement in discussions and legal reform. Land tenure conflicts arise from perceptions and the different interpretation that people give to their rights over forest land and resource. Unlike other guidelines that only identify existing land tenure systems and general conflicts, the Rapid Land Tenure Assessment explores competing claims among different stakeholders as these competing claims are often related to competing land tenure policies, developed in different historical periods and for various purposes.

Ten Sources of Competing Claims on Land Tenure

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, to integration in a unitary state with formal law, has left a patchwork of claimants to rights on various part of the landscape
2. The duality of tenure systems 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 for the same land due to differing objectives, interests and jurisdictions of various government departments or under different legal regimes
5. Lack of recognition on 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 for 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 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.

RaTA Objectives and Analytical Framework

RaTA aims to seek and reveal the competing perceived historical and legal claims among the stakeholders, who hold different rights and interests. Five objectives are used to engage land tenure conflicts, namely general reading of land and conflict, stakeholder analysis, various forms of perceived historical and legal claims, linkages of these claims to policy and (customary) land laws, and mechanism for conflict resolution (see Table 1).



Adat Community Claim Against Sugar Plantation in Way Kanan District, Lampung

Table 1. Objectives of the study on RaTA

	Aims	Questions
Objective 1	Describe general reading of land and conflict linkage to a particular context; political, economic, environmental etc	When did this land conflict erupt? How this land conflict occurred? Can you describe the driving factors that lead to the land conflicts?
Objective 2	Identify and analyze stakeholders	Which actors are directly involved or influence others in this conflict? How these competing stakeholders interact and relate to each other?
Objective 3	Identify various forms of perceived historical and legal claims by stakeholders	What types of evidence do they use or are considered acceptable to prove claims? Do they believe their land interest and rights are enforceable? Do they know of any legal institutions/organizations protecting their interests?
Objective 4	Identify and analyze the linkage of various claims to policy and (customary) land laws	What is the (customary) legal law and policy regime regarding land and property matters? Do rights holders have support from existing policies? Are there any competing policies and legislation?
Objective 5	Determine policy options/interventions for conflict resolution mechanism	Is there any policy to manage or resolve land disputes? What types of conflict resolution need to be addressed? What level of intervention is required?

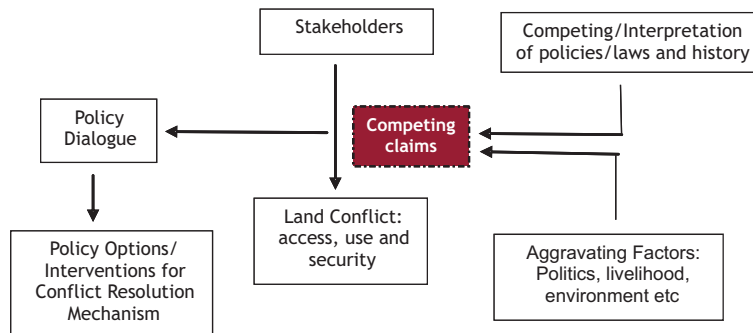
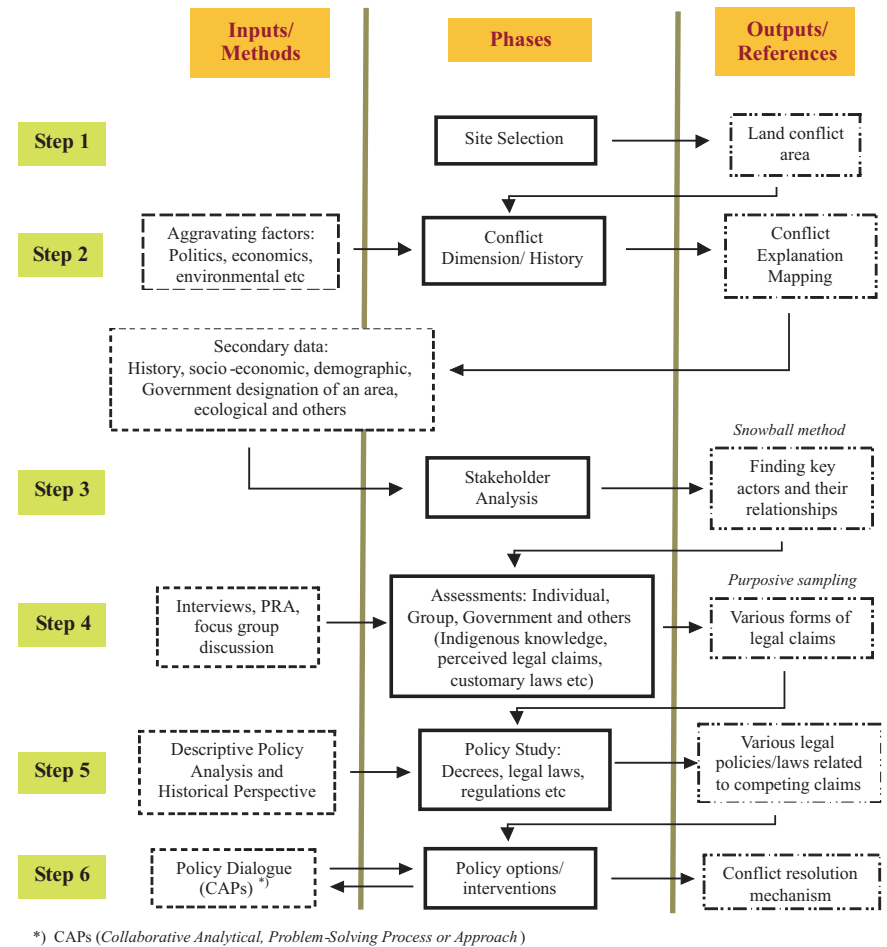


Figure 1. Analytical framework for RaTA

As an analytical framework (see Figure 1), RaTA offers guidance on the important things in locating and obtaining initial data necessary for policy makers/mediators to develop conflict resolution mechanism based on policies. As a tool, RaTA consists of six steps (see Figure 2). Different techniques such as Participatory Rural Appraisal (PRA), stakeholders analysis and exploration of legal policies/laws are amongst the methods that have been taken account in different phases of RaTA.



*) CAPs (Collaborative Analytical, Problem-Solving Process or Approach)

Figure 2. Step wise approach of RaTA



Interview, dialogue and community activities during RaTA process