



Agroforestry and Forestry in Sulawesi (AgFor Sulawesi) series

# Beneath a leaking (legal) umbrella: an experiment in collaborative management of the *TAHURA* (Grand Forest Park) Nipa-Nipa



## Main messages

- In implementing forestry schemes, officials tend to follow more the letter of law and the structure, rather than the intent of the law or function.
- Agreements for collaborative forest management, even when legalized through government regulations, are not enough for effective implementation. Such agreements need to include official procedures and sanctions for non-implementation, and define clear roles, authority and responsibility. Most importantly, agreements need to be developed collaboratively by the involved parties and not imposed through regulations.
- Budget and time need to be allocated by all parties. If all community/group members cannot be present at consultations with the Park Technical Implementing Unit (UPTD), representatives need to be appointed and empowered to participate.
- Facilitation for institutional building and technical training for further implementation of collaboration between the UPTD and the forest conservation farmers groups (KTPH) needs to be continued beyond the enactment of regulations. More efforts need to be spent on understanding cultural differences and attempts to overcome these.

## Implications

An available 'legal umbrella' is not sufficient to provide confidence to regional authorities to build partnerships with local farmers groups to manage the forest. Furthermore, even when partners reach an accepted agreement legalized through district regulation, this alone is still not sufficient for implementation. While necessary to adjust to changing laws and regulations, experience is showing that PERDAs alone do not make collaboration. Experience demonstrates, that beyond reaching the agreement, further facilitation of the process is needed, iteration of negotiation and more efforts to understand the legal framework as well as the underlying interests and conflicts.

## Introduction

In 1999, an area of 7877.5 ha located on the slopes above Kendari town, was designated as “Grand Forest Park” (Taman Hutan Raya or *TAHURA*) Nipa-Nipa (Ministrial decree No. 103/Kpts-III/1999), with the function to protect the town from landslides and floods and for biodiversity protection. However, although the area had been designated as forest since 1958, parts of the forest had been settled, mostly by migrants. Its declaration as a protection forest and conservation area in the 1980s did not consider these people and their local management; consequently leading to a long series of conflicts. Already in 1974, the provincial government started rehabilitation efforts and forcefully moved hundreds of people to Sambuli and Anduonohu villages in the area of Kecamatan Poasia, Kendari City. However, within a few years most of the families had returned to Nipa-Nipa and since then have resisted all efforts to relocate them. As in other conservation areas, efforts to ban people from ‘encroaching’ on the *TAHURA* area has met with little success, worsening relationships between local authorities and communities.

In 2001, a local NGO, LePMIL, with support from the Department of International Development of the United Kingdom (DfID) through the MultiStakeholder Forestry Progam, intervened to renew the negotiation process (see Wiyono, 2006 for detail process). A long and intensive multi-stakeholder process resulted in (1) an agreement on collaborative management, (2) legalization through PERDA (District Regulation) No. 5/2007 regarding the management of *TAHURA* Nipa-Nipa, (3) the establishment of a technical implementing unit (UPTD) in the provincial forest agency, and (4) the organization of 1030 families into 17 forest conservation farmer groups (Kelompok Tani

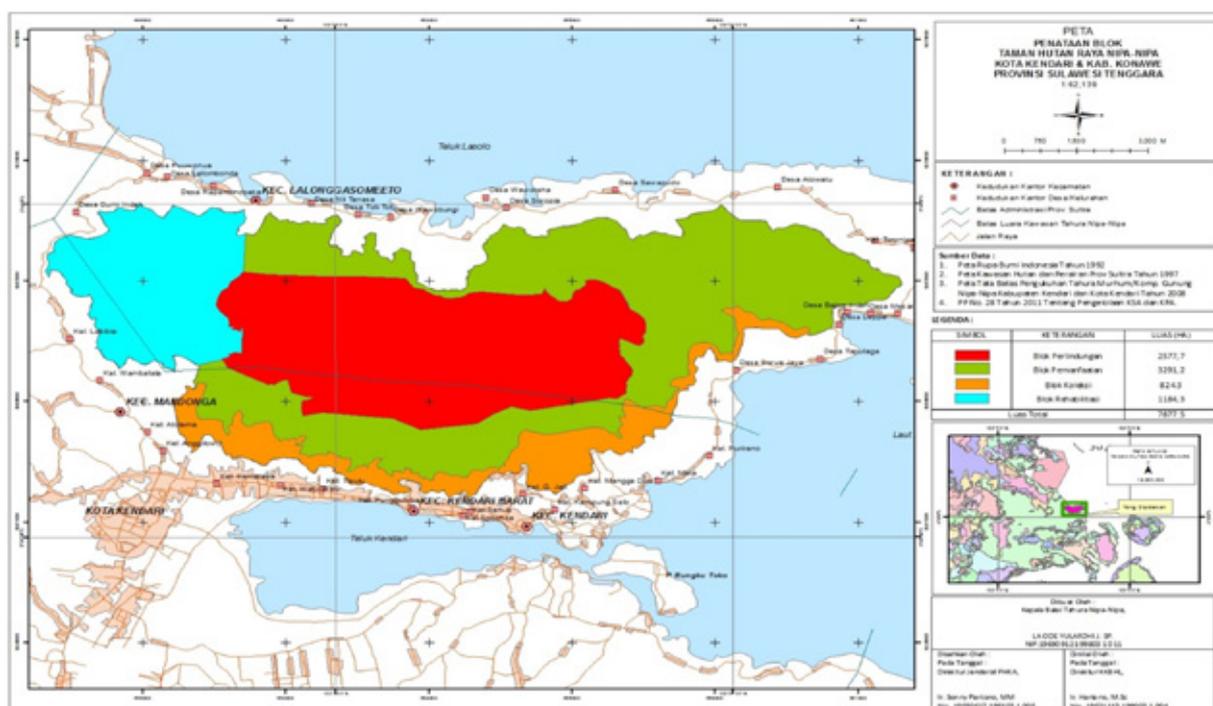
Pelestari Hutan or KTPH) ready to manage 525 ha of the *TAHURA*. Regrettably, the regulation was never implemented.

The case of *TAHURA* is not the only one where, even with a legalized regulation, agreements could not be initiated and enforced. To understand why and seek a way forward, the current UPTD leader (who started in 2014) and The Agroforestry and Forestry in Sulawesi: linking Knowledge with Action project (AgFor) organized a reflection workshop in June 2014. Encouraged by local interest, AgFor initiated a process to facilitate the revision of the PERDA, including a series of further meetings and consultation between the UPTD, the farmers, the local parliament and other stakeholders. Unfortunately, in December 2014, the Governor issued an instruction to relocate local people. Conflicts re-erupted. This brief tells the story of *TAHURA*, its conflicts and attempts to develop a fair and equitable collaborative management scheme and the lessons learned from the process.

## Success and failure

The case of the *TAHURA* Nipa-Nipa can be showcased as a great success. An agreement was reached and legalized by District Regulation, one of the first such regulations in Indonesia. A forum for communication among and between stakeholders, community groups and the UPTD, was established.

However, the case of the *TAHURA* Nipa-Nipa is also a great failure. Despite having reached agreement, legalized through a Provincial Regulation and sanctioned by law, the agreement was never implemented. Conflict was renewed and the parties continued in a business as usual mode.



Zoning of the *TAHURA*. Source: UPTD *TAHURA* Nipa-Nipa



Left: Erosion on steep slopes of TAHURA Nipa-Nipa. Right: Small dams and pipes were installed without concern for the environment. © World Agroforestry Centre/ Center for International Forestry Research/Hasantoha Adnan

### What went wrong?

Several key problems are recognized. First there was a change in leadership. Right after the agreement was legalized in 2007, leadership changed to a less flexible and more bureaucratic regime adhering strictly to the legal conservation principles which provide little space for community involvement.

Secondly, participation in the earlier process appeared to be limited to the then leader of the UPTD and did not sufficiently involve the staff. Thus when the leader was replaced, with little institutional memory and involvement, his policy was not continued.

Thirdly, when LePMIL's involvement stopped, facilitation of the KTPH groups also halted. Without facilitation, KTPHs became disorganized and lost the motivation to develop solutions.

And lastly, there was no effort to discuss alternative management options that could fulfill both conservation and economic needs.

Several other issues were highlighted: broken trust, the involvement of politics, to name two. Additionally, technical issues emerged as priorities, resulting from the lack of governance which had led to competition and conflict over resource use, especially the use of water.

### A first step

The reflection workshop in June 2014 brought together 55 participants representing local government agencies from Kota Kendari and Konawe, farmers groups, several NGOs and some private companies. The workshop ended in agreement that:

- The main purpose of the *TAHURA* Nipa-Nipa area is conservation, without neglecting community wellbeing,

- Management of *TAHURA* Nipa-nipa has to be collaborative, and
- There is need to have the collaborative management regulated, including clarification of who collaborates with whom, what are their roles and responsibilities within the framework of management and use allowed in a conservation area, and how to obtain permits to get involved.

Participants also agreed that a lack of communication had been a major constraint, leading to broken trust, poor understanding of the issues, and mutual rejection and suspicion. Although at the end of the workshop all stakeholders had agreed to share information and to communicate more widely the role and importance of *TAHURA* Nipa-Nipa, it was obvious more needs to be done for this to be achieved.

### A question of rights

One important underlying issue is the question of rights. Having claimed the land since the 1950s, local people established their rights without clear opposition. These people, however, are not one community. They arrived in different waves, from different areas and many do not live on or depend on the land but earn their living in town. Recognition of rights by the state, on the other hand, are based on the assumption that local communities are those with social, economic and cultural ties to the land since ancestral times.

This question of rights is an important issue, especially with the demand to re-structure customary or adat lands. While adat community's rights to management their forest resources should be recognized, it is equally important to realize that non-indigenous people have settled in some areas for decades without significant opposition and thereby developed rights to the land.

## Other constraints

Lack of funding is cited as the most important constraint. P. 19/2004 states that funding for collaboration is based on an agreement between the parties. But neither the UPTD nor the KTPH have access to sufficient funding, not even enough to hold the meetings necessary to discuss how collaboration should be structured. P. 39/2013 states that expenses for facilitation and monitoring are to be paid by government, while funding for actual implementation is based on the agreement between parties. Willingness to share the expenses, however, is a function of trust, commitment, as well as access to funds.

A new regulation replacing P. 19/2004, P.85/Menhut-II/2014 is even vaguer. It only states that funding needs to follow existing law and regulations.

An additional significant constraint, is the high turnover rate of staff. Often new staff are not aware of past conditions and view local people as always in opposition of the government, which is not conducive to build collaboration.

The lack of communication does not help. As mentioned earlier, with the cessation of facilitation, the communication forum was also disbanded and the communication channel broke down.

## Conflicts

Lack of coordination and communication, between and among government agencies and local people, but also communication based on regulations which are not well understood often leads to conflict. Such was the case in *TAHURA* Nipa-Nipa. In the midst of

attempts for reconciliation and partnership development between the UPTD and local people, the provincial government continued efforts to relocate people from the park. Since 2009, the government issued several instructions to relocate people who had settled on and around the Punggaloba village which were ignored. Development projects were stopped and water and electricity services were cut. Still the communities ignored the government.

In December 2014, the Governor of Southeast Sulawesi ordered 255 families to be expelled from the *TAHURA* area. Those instructions resulted in violent protests and demonstrations. Despite efforts by the government to explain that Law 5/1990 on Conservation, Law 41/1999 on Forestry and Law 18/2013 on forest encroachment forbid people from living in conservation areas and the threat of heavy penalties, the people did not accept the relocation.

The people of Punggaloba refused relocation and instead demanded that the land provided for resettlement be clear and certified with adequate housing and religious, education and health facilities available. On 28 May 2015 they organized a march through town of over 500 people.

AgFor organized a coaching clinic in conflict resolution for the UPTD on 2-3 June 2015. The UPTD took on the role of mediator, promoting negotiation to resolve the conflict and developing alternatives for the relocation of people, community development as well as the long term planning of the Park itself. They made visits to government stakeholders, held meetings with local people, harnessed media through press releases and organized field trips and public discussions.



Street protest against eviction from the *TAHURA*. © World Agroforestry Centre/Center for International Forestry Research/Hasantoha Adnan

Early on two important decisions were reached. First, full disclosure (all regulations, decrees and decisions pertaining to *TAHURA*, all maps and other relevant data) will be given to representatives appointed by the people. Secondly, UPTD will prepare a full report including history, social and economic conditions, all relevant rules and regulations, as well as the facts of the most recent conflict (reason for relocation, status of Punggaloba, plans for post relocation).

A hearing with the parliament was conducted on June 24<sup>th</sup> 2015. Although the hearing was preceded by preparatory discussions where it was agreed that the process would be open, dignified and neutral leading to a binding legal agreement, the actual hearing was a disappointment. No real dialog occurred, the people were not willing to listen and the parliament sided with local people without considering law and regulations. They proposed an enclave as in the case of the Baduy in Banten or to change the status of the forest to allow legal land rights for local people. In the end it was decided that the Provincial Government should postpone the relocation and a fact finding team was established to analyze the conflict.

This conflict demonstrates the perceived contradictions between conservation and development rights, and between law enforcement and conflict mediation. It is also a reflection on the difficult position of local conservation agencies within a system where rights are unclear and ambiguous, where encroachment has long been ignored, and where no one has been willing or able to take a strong stance in enforcing the law.

In this situation, building partnerships seems unrealistic but at the same time a necessity.

### A 'leaking' umbrella

With autonomy, local governments have the authority to issue regional regulations. Often, however, solid understanding of the required legal basis is lacking. The uncertainty of many agencies over the extent of their decision making authority, has been further exacerbated by a new law (Law 32/2014) which reallocates the authority over state forest areas to the provincial level.

In Southeast Sulawesi, the difficulties should have been less as the *TAHURA* extends beyond one district area and thus was within provincial purview since its inception.

Yet one of the most common complaints is the unclear 'legal basis' (the 'payung hukum' or legal umbrella). In the case of *TAHURA*, the current UPTD leader felt there were significant deficiencies in the PERDA which only regulates the mechanism for collaboration but does not explain its scope. He also felt that the higher level laws (Law 41/1999 on Forestry and Law 18/2013 on the

prevention and elimination of forest degradation) were not properly referenced.

When LepMil started the process in 2001, P.19/2004 on collaborative management of protected area had not been issued yet. When PERDA no 5, was issued in 2007, no references was made to this regulation, either because the actors involved were not aware or ministerial decrees at that time were considered to have no legal standing.

A first step to solve the stalemate in management of *TAHURA* Nipa-Nipa was a call to revise the PERDA and thereby consider several new regulations, a.o. on procedures for cooperation for the management of conservation areas (P.85/Menhut-II/2014), on Partnership in Forest Management (P.39/2013), on management of nature tourism (Permenhut P. 48/2010), on management of nature tourism in Wildlife Reserves, National Parks, Grand Forest Parks (*TAHURA*) and Nature Tourism Parks, and environmental services, on the formation of Forest Management Units (Government Regulation PP No.28/2011, on the management of conservation areas).

The new regulation, P.39/2013 concerns production forests and aims to ensure that local communities have access to a share of the benefits. Since *TAHURA* is a protected area established for conservation purposes, P.85/2014 would have been the more appropriate to use.

Government Regulation PP 28/2011 on the management of conservation areas could also be used as legal basis. In addition to stating the need for collaboration (article 43) it also includes a chapter on empowerment and community participation (Chapter VII, article 59-60) stating that 'government, provincial government and district/municipal government are obliged to empower communities in and around protected area in order to improve their wellbeing'.

Both the UPTD and KTPH have difficulties navigating among the multiple rules and regulations. They are not alone. The 'legal umbrella' is indeed broken with the spines bend in many directions. Yet, in the field there is a belief that collaboration needs to be regulated legally and that a simple agreement to do things right is not enough.

Meanwhile, progress has been achieved with the parliament approving the PERDA on collaborative management of *TAHURA* Nipa-Nipa (PERDA No. 6/2014). The waiting is for a governor decree on the mechanism for collaboration to clarify procedures to initiate partnership and the respective roles and responsibilities.



Left: Women's group discussion on natural resources conflict; Right: Men's group discussion. © World Agroforestry Centre/Center for International Forestry Research/Hasantoha Adnan

### From participation to partnerships

The need for collaboration has become obvious. The government cannot manage conservation areas, or even forest alone. Involvement of other stakeholders is a necessity to achieve good governance (Carter and Gronow, 2005) and sustainable management.

Partnerships involve special challenges, such as defining overarching goals, levels of give-and-take, areas of responsibility, lines of authority and succession, how success is evaluated and distributed, and how equal the partners are (Carter and Gronow, 2005). In regulation P. 39/2013, these principles of partnership are defined in article 5: 'empowerment of local communities through partnership in forestry should use the following principles: parties are bound by an agreement; have equal legal status in making decisions; mutual benefit; agreements are locally specific; based on mutual trust; transparent and active participation'.

Unfortunately, official regulations describe partnerships as a tool to empower local people rather than collaboration for more effective management. Thus, perhaps a more fundamental constraint has been a conceptual failure where the road towards building partnership and collaboration was perceived as necessarily mechanistic: stakeholder analysis, identification of the problem and developing a solution which involved a permit system to be allowed to 'collaborate'. There was no real interest in understanding the underlying conflict or the social practices and interests. There was no attempt to establish 'real' communication (Leeuwis, 2000).

The new PERDA (No. 6/2014) on management of the *TAHURA* provides the UPTD with sufficient authority and discretionary powers to organize different forms of cooperation. It defines collaboration as different from partnerships. Collaboration focuses on empowerment

and local participation whereby the different parties contribute to effective management legalized through a MoU. Partnerships, on the other hand, are considered enterprises making use of the natural resources: water, other environmental services and nature tourism. Partnerships are based on a permit system for both commercial and non-commercial purposes depending on scale issued by the Head of the UPTD or the governor. Partnerships are thus seen as a source of revenue to be reinvested in *TAHURA*'s management.

### Agreements

While partnerships should be based on a contract, collaboration requires a general agreement formalized through a MoU. It thus requires collective action.

A successful collective action requires the following elements (Ostrom, 1990; van Ast et al 2014): clearly defined boundaries for users and resource; congruence between appropriation and provision rules and local conditions; collective-choice arrangements (information and ability to modify the rules); monitoring users and resources; graduated sanctions for violators; conflict-resolution mechanisms that are rapidly accessible; minimal recognition of rights to organize and nested enterprises, in case of resources that are parts of larger systems. This requires that all 17 KTPHs need to collaborate with each other and with the UPTD, and agree on rules and regulations in accordance with Ostrom's 7 elements as well as how to fulfill these. To reach such an agreement, a negotiation process needs to be established (Leeuwis, 2000). A negotiated agreement can result in different interests come together voluntarily to achieve some common purpose. Clearly partners to co-manage forest do not have equal skills, funds or confidence, but when trust is established leading to commitment, collaboration should lead to solid partnership.

The UPTD and KTPHs of *TAHURA* Nipa-Nipa are now in the process of re-building collaboration. Facilitated by AgFor and starting with four pilot KTPHs (Tumbuh Subur, Subur Makmur, Medudulu dan Pokadulu 2) a process to build agreements is underway. Discussions are focused on defining management areas, and which species are best for soil and water conservation but provide adequate economic benefits. Agreements reached will be formalized through an MoU.

Meanwhile the UPTD is also involving representatives of the four KTPHs in deliberations on the revision of the provincial regulation and in the public consultation to discuss the 10 year management plan. In turn, one KTPH (Tumbuh Subur), involved the UPTD in the process of changing leadership and the group action planning. The KTPH also informed the UPTD when encroachment occurs and volunteered to accompany the forest guards to prevent social unrest. This case then led to a proposal to establish collaborative patrols.

### Institutional Building

Collaboration and partnership building need strong institutions which in turn need some degree of organization. In the case of *TAHURA* Nipa-Nipa, the facilitation process in the early 2000s gave birth to two institutions: the UPTD and the KTPHs. Facilitation to strengthen the institutions is needed to develop partnerships, not only between KTPH and the UPTD but also among the KTPHs. The government, however, often lacks the capability to facilitate and relies on third parties. Strengthening government institutions is therefore also important.

The UPTD is a unit of a government agency and is populated by civil servants. It therefore follows established government structures and regulations. UPTD is under the local government, but it is uncertain to what degree they can build collaboration or partnerships with others. Can the UPTD or the local government decide to manage an area collaboratively? What are their roles and what are the roles of the provincial government and the forest management units (KPHs)?

Respective roles need to be clarified and explained to all parties. Where there is overlap, mechanisms for coordination need to be developed and agreed on.

### The need for technical input

HKM, Village Forest and Partnerships are accepted as tools for empowering communities living in and around the forest and imply collaborative management. One form of collaboration, especially in conservation areas, would be the establishment of a 'conservation village', where people agree to live according to conservation principles (P. 16/2011). For *TAHURA* Nipa-Nipa, the collaboration would be with groups

and not the village. Nevertheless, whether it is forest farmer groups or whole villages, facilitation is key. Facilitation for empowerment is mandated by law as a right of local communities and the duty of local government to provide. However, in the process of facilitation, technical aspects in forest management, especially in small-scale group forest management and improving technical capacity in nurseries, tree/system management and marketing (Roshetko et al, 2008) are often neglected. Technical knowledge is also empowering and can help achieve an acceptable solution to manage the contested resources. In the case of *TAHURA* Nipa-nipa, while the UPTD holds firmly to conservation principles, there is no effort to seek technical solutions which fulfill these principles. Improving planting techniques, selecting species and mix of species, soil and water conservation measures, regulation for harvesting and post-harvest techniques should be part of the package.

### Next steps

Three ideas to manage the park collaboratively are being developed. A spatial plan whereby the area of the KTPHs is to be designated as special use zone; an MoU between UPTD and KTPHs on collaborative management; and a Governor decree to regulate the implementation of collaborative management. To this end, in November 2015 representatives from the UPTD and government visited the Gunung Halimun Salak park where a special use zone and collaboration with local communities are well established. These ideas and the on-going policy processes might make *TAHURA* Nipa-Nipa an important learning center for social forestry in protected areas.

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