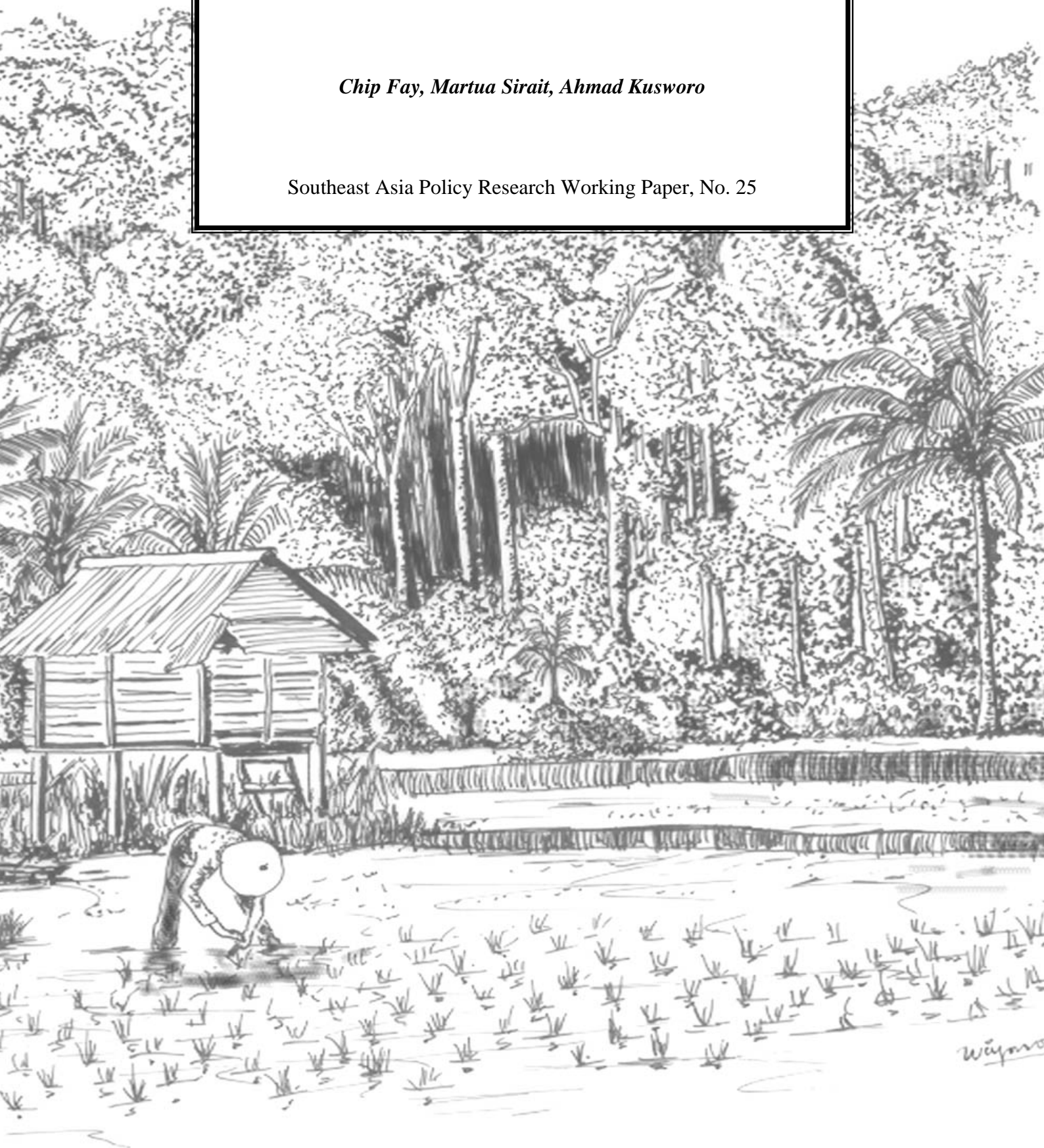


**Getting the Boundaries Right
Indonesia's Urgent Need to Redefine
its Forest Estate**

Chip Fay, Martua Sirait, Ahmad Kusworo

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Further information please contact:

ICRAF SE-Asia
Southeast Asian Regional Research Programme
PO Box 161
Bogor 16001
Indonesia
Tel: 62 251 625415, fax: 62 251 625416
Email: icraf-indonesia@cgiar.org
ICRAF Southeast Asia website: <http://www.icraf.cgiar.org/sea>

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Illustration design: Wiyono

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Getting the Boundaries Right Indonesia's Urgent Need to Redefine its Forest Estate

Chip Fay, Martua Sirait, Ahmad Kusworo¹

I. Introduction

The results of a one day seminar on the forestry sector, organized in Jakarta this past March by the Coordinating Minister for the Economy and the World Bank, revealed that the state of Indonesia's forests is far worse than the government was willing to admit during the Suharto period and that conflict between local forest dependent people and the wood industry continues to increase. Should existing deforestation rates continue, Indonesia will cease to be major supplier of wood products early in the 21st century and it is likely that few conservation areas will remain intact.

An important part of the process of coming to terms with the crisis in Indonesia's forests and reversing the trends, is to determine exactly what and where these forests are then how, in places where it still possible, to assure their protection. While some work has been done to improve management in some natural forest settings, little attention has been paid to defining just what is and isn't a forest in Indonesia. Related to this, is the urgent need to assess the methods the Department of Forestry and Estate Crops MoFEC uses to define the forest estate and their implications on how these areas are managed. There is little doubt that the way the forest estate has been defined has led to widespread and increasing conflict on the ground between local people and forest industries who have been awarded rights over areas where in fact, traditional or adat rights apply². Surprising many in the audience, in his opening remarks at the March seminar, the Coordinating Minister challenged the logic behind the government's classification of 88% of Indonesia's outer islands as State Forest and questioned the ability of the MOFEC to adequately manage such an enormous area.

This paper argues for a redefining of the State Forest Zone in order to achieve two central objectives:

1. To determine priority areas of natural forests and watersheds that need focused attention in their management and protection and;
2. To address conflict by recognizing and securing the rights of smallholders whose lands have been misclassified as State Forest.

We provide a history of the establishment of the State Forest Zone and demonstrate how millions of hectares of smallholder agroforestry systems were made invisible to government forestry regulatory framework and how this has threatened the existence of these systems and the welfare of millions of farming families. Particular attention is given to experience in Lampung Province in the south of Sumatra.

A recent World Bank commissioned paper on Indonesian forestry notes that "any analysis of the forestry sector requires, as its starting point, an assessment of existing forest resources"³ It goes on to detail the various figures that can be cited as to how much and what type of forest is under that control of the Ministry. These vary from 147 million hectares (out of Indonesia's 189 million-hectare land base) to 119 million hectares the Ministry at times claims to

¹ International Center for Research in Agroforestry, Bogor, Indonesia, with gratitude to Tom Tomich and Hubert De Foresta for their contributions to this analysis

² See Fay Siriat, Barber etc

³ Forest Use Policies and Strategies in Indonesia: A need for Change, James Fox, Marilyn Wasson, Grahame Applegate (latest versions May 2000), page 7.

have negotiated with provincial governments. While attention is often paid to which figures are best to cite, little or no attention has been paid to:

- a) How did such an enormous percentage of Indonesia come to be classified as State Forests?
- b) What is the legal basis for such a classification? and
- c) What does Indonesia mean by a forest?

Ministry data itself reveals that large areas of the forest estate is not forested and evidence on the ground reveals that much is actually covered by imperata grasslands, agroforests such as rubber and mixed fruit gardens, rice fields and villages⁴. For example, the 1984 forest classification for the province of South Sumatra showed three times more forest area than what the Dutch identified on their colonial maps. This appears to be largely due to having small holder agroforests classified as State Forests⁵.

Other important questions emerge from this, such as how do foreign donors and the World Bank define the “Forest Sector” in Indonesia? It appears the operational definition is all that happens within, or emerges from, the 78% of the landbase the government claims as State Forest. By accepting this definition, it can be argued that when the World Bank stopped being a player in the forest sector (most of the 1990s) it reduced its sphere of influence and impact to only 22% of Indonesia that is not forest lands. Given that millions of Indonesia’s poorest people live within the State Forest Zone and the Bank’s strong poverty focus, it is surprising that addressing forest lands classification and jurisdictional questions don’t receive greater attention in the Bank’s policy dialogue with the Indonesian government.

II. The Origins of the State Forest Zone: Procedures and Implementation

Ambiguity of Land Tenure

Indonesia has never had one clear land tenure concept which existed nationwide. During the Dutch colonial period, there were two tenure systems which existed side by side. Indonesians have used their own customary (*adat*) systems which are used and respected by adat communities while the Dutch introduced a western tenure system.

As more territory fell under Dutch colonial control, the Dutch tenure system expanded and was formalized through the Dutch Indie law. The first Forestry Law was issued in 1863 before an Agrarian Law. This law gave authority to the Forestry Department (*Boschwezen*) to control all Natural Forest, Forest Land and the Forest Labor (Supardi, 19...). Adat tenure system was respected only for areas not yet under the Dutch colony. In 1883, when the first Agrarian Law was established, no revision was made to the Forestry Law in order to accommodate to the Agrarian Law. Forests in five regions (all on Java) were categorized during Dutch administration and some provinces such as Lampung nearly completed the forest delineation process.

After the independence, the Basic Agrarian Law was signed in 1960 and differed significantly from the Dutch Agrarian Law. Domain theory --that gave the legal basis for the state to own land--was discarded, and adat tenure systems became the basis for the law. As a result, adat territories were respected as private lands. Unfortunately, the concept of Dutch Forestry Law was still embedded on the minds of the Indonesian foresters who prepared the Indonesian Forestry Law in 1967. In this law, adat forests are claimed as state land, adat land and resource tenure are not recognized as formal tenure systems and adat practice of forest management does not appear as legitimate forest management. Though the Forestry Law was revised in 1999 (UUK

⁴ Ibid

⁵ As cited in The Challenges of the World Bank Involvement in Forests: An Evaluation of Indonesia’s Forests and World Bank Assistance Jan. 2000. Page 7

41/1999) there has been little improvement in terms of tenure rights. While the new law allows adat forests to be a new classification, it is still within the context of the State Forest Zone, controlled by the MoFEC.

Four years after issuing regulations on forest utilization and awarding timber extraction licenses to 350 concession private companies, the government issued the main Government Regulation on Forest Planning (PP 33,1974). This Regulation gave authority to the Directorate of Forestry to define what is state forestland is and what it is not.⁶ It should therefore not be surprising that when the forest bureaucracy was tasked to determine how much land it believed should be under its jurisdiction, it responded by saying roughly three quarters of the entire country.

The areas already awarded to the logging concessions were automatically made State Forest Zone, whether or not they met the subsequent criteria (see below). The ambiguous tenure status of the land was used by the government to strengthen their hold over these lands by declaring all the concession areas as state forest land and neglecting the private adat rights which, according the agrarian law, are to be respected.

Biophysical Scoring Criteria

Based on the Forestry Law, in the 1980s the Ministry of Forestry developed criteria used to define the State Forest Zone for the remaining 22 provinces, in the outer islands. This process was the Tata Guna Hutan Kesepakatan (Forest Land Use by Consensus). These provinces were added to the 5 regions in Java and Madura where the forest zone had been classified (Arbani, 1992). The criteria developed were based on the forest conditions, water and soil conservation and national and local social economic interest. There were several indicators: forest vegetation coverage, topography, type of soil, climate, existing and community development (SK Mentan 680, 1980).

The main three biophysical indicators, in order of priority, were slope, soil type, and climate. For example, for slope at 0-8% scored 20, a 45% slope scored 100. For soil type alluvial soil scored 15 while Litosol scored 75. Climate scoring was based on the Smith-Fergusson rainfall criteria with scoring from 10 to 50 based on amount of precipitation. While the policy for scoring mentions social and economic criteria, none were developed and therefore were not taken into consideration in the scoring process.⁷ Certain areas were classified as Protected Forest (soil and water conservation) if the accumulated score was more than 175, slope more than 45%, elevation more than 2000 meters etc. (SK Mentan 837, 1980).). Also during the process of classifying conservation forest. Important species or ecosystem to be protected and potential for tourism were considered. (SK Mentan 681, 1990). Areas were classified as Production Forest if the accumulated score was 125 to 175 and for Conversion Forest if the accumulated score was below 125 (SK Mentan 683, 1980)

Result the TGHK proposed by Ministry of Forestry⁸

Protected Forest	30 million Ha
Production Forest	64 million Ha

⁶ At this time this Directorate was with the Department of Agriculture. It became a Department in 1982 (CHECK)

⁷ This Ministerial Decree based on old Type of Soil nomenclature which used the old name, for further reading see Bucman. Harry. O, Brandy. Nyle., 1982 . Currently New Comprehensive Soil Classification mostly used with new names (Arbani 1992)

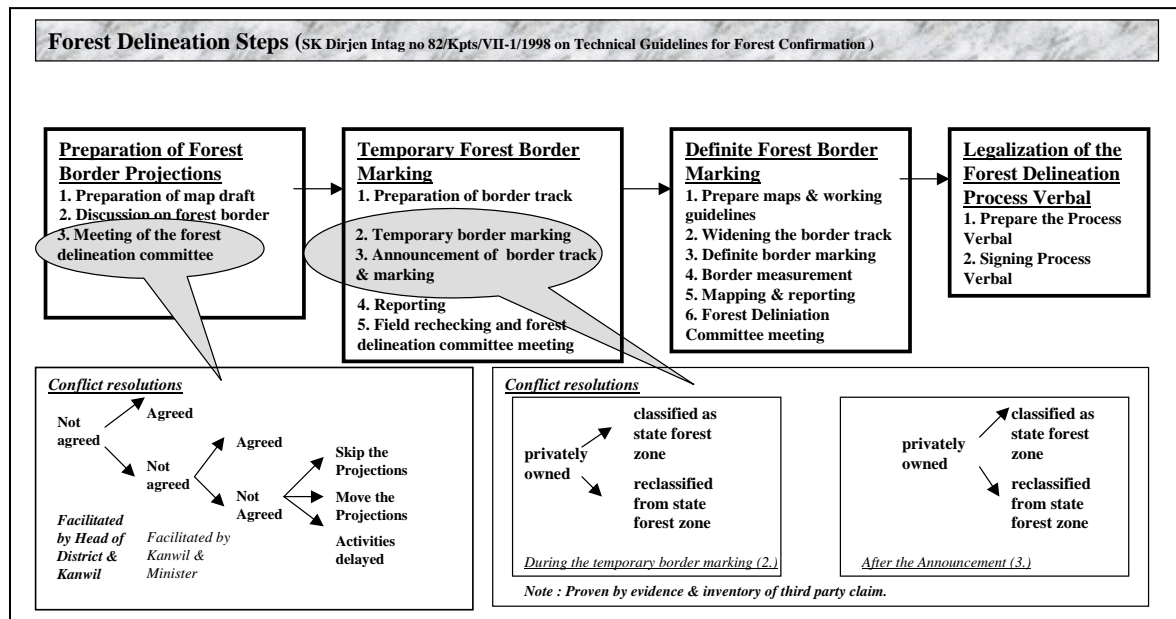
⁸ Source Sastrosoemito, 1990 in Arbain 1992

Conservation Areas	19 million Ha
Conversion Production Forest	30 Million Ha
Total	143 Million Ha

Illegitimate Forest Delineation Process
No Consultation, Prior Informed Consent & Consensus

The first Indonesian forest delineation policy started in 1974 by issuing the Directorate of Forestry Decree no. 85/1974. The policy changed several times until the most recent Ministerial decree no 634/1996 guidelines for forest designation (pedoman pengukuhan hutan), no 635/1996 the Forest Delineation Committee, Directorate Inventory and Forest Designation (INTAG) letter no 724/1994 on Enclaves Process & Directorate INTAG Decree no 82/1998 Technical Guidelines on Forest Designation..

In General the process described here:



The delineation process is long and complicated. During implementation shortcuts are often taken and it appears at times the process is manipulated. Experience in Krui, West Lampung, for example, the community did not know that the Forestry Department was expanding the state forest from its original designation during the Dutch periods. The new forest designations issued through the Ministerial Decree no 67/1991 for example, includes village settlements and damar based agroforests (Repong Damar). More than 29,000 ha. of agroforests and other lands that were not registered as state forest land during the Dutch administration.

The community realized that their adat lands were designated as State land through ministerial decree when the physical procedure of forest delineation started 1995, (forestlands markers).

Examples of violations in the forest delineation procedures in the Krui case are:

1. Before that status of the land was made State Forest the Ministry of Forestry released concession rights to several private timber companies;
2. Classification and delineation of forest functions started before the status of State Forest was completed (see Surat Dirjen Intag no 18/1996, January 8th 1996);

3. Before the forest delineation process began, there were no information provided to the community regarding the consequence of the delineation process especially the legal consequences. In Krui, the delineation process was done by a consulting firm, hired to do the technical delineation without any responsibility to explain or get the people to consent.
4. A community representative was not on the Forest Delineation Team (as required) which prepare the delineation track, the committee consists only of government officials (SK 635/1996);
5. There is no evidence that a public announcement was made (as required) to inform the community of the delineation plan. This announcement should have been followed by a period of time to receive complaints from the local people. There is no record that this was done and community member's claim it was not.
6. The announcement process (Berita Acara Tata Batas-BATB) was not all village leaders signed off on this process. The study in Krui reveals that the few signatures that do exist were forged. Others' signatures were done on blank paper and some signatures were prepared not for the announcement process but for approval of the delineation.
7. In cases when a village leader put his/her signature on the approval of the delineation process it means there are no claims on the land. In reality, village leaders do not have right to represent the community on matters concerning their property.
8. Village leaders involved in the signing the BATB were only from villages along the boundary of the State Forest. Villages inside the designed areas were not involved all. The mechanism to accommodate these areas, is by classifying them as enclaves inside the State Forest (Dijen INTAG letter no724/1994). It means if the village lands fulfil the biophysical scoring criteria requirements, the area will be classified as State Forest. According to the policy, if the village cannot pass the enclave criteria, the entire population must be evicted (Dwikora, Lampung etc).

From the implementation of the forest delineation policy and from the unjust forest delineation process, the state forestland can be considered as illegal and illegitimate. Improvement on the Ministerial Decree being discussed by Intag and other partners (include ICRAF) to improve forest delineation procedures.

III. Forestry Policy Failure and Decades of Violence in Lampung Province

Located just across a straight from Java, Lampung has served as the gateway to Sumatra for hundreds of years. It is also a province well known for its deep-rooted and violent conflicts over the state forestland. Currently, less than 20% of 1.2 million ha. government-designated forestland is actually covered by natural forest. The remaining, is managed by local communities for upland agricultural purposes, mostly coffee-based agroforestry systems. In places where forestry policies have been imposed, resistance by local community has frequently emerged.

This section provides a brief history of forestland delineation in Lampung, the government's policy of eviction of local farmers from the State Forest Zone and the general results of this policy.

State Forest Gazettement: TGHK implementation:

In Lampung Province, the implementation of the TGHK took 10 years (1980-1990). During this time, migration into the upland farming areas and conversion of natural forests continued. The 'new' State Forest Zones with few exception, parallels the forest zone gazzeted during the colonial period. But since the Dutch colonial administration left, many native and migrant communities have developed settlements and farms within this zone.

The Minister of Forestry decree No. 67/Kpts-II/1991 promulgated the Lampung Province TGHK. It was followed by boundary delineation and border sign establishment conducted by the SBIPH (*Sub Balai Inventarisasi dan Perpetaan Hutan*, Forest Inventory and Mapping Agency), a unit under Department of Forestry Representative Office. During the implementation, and in violation of government policy, no community consultations were held. All village territories within the former Boschwezen were delineated as forest zones. In addition, 44,000 ha of customary land and acknowledged as such by the colonial administration, (never designated before as state forestland) was delineated and gazzeted as state forest zone in Pesisir Krui area.

Since the TGHK was adopted as the initial basis for the RUTR (Provincial Spatial Use Plan), enacted as provincial regulation ratified by the Provincial House of Representative in 1993, state forest zone legal status has been strengthen. National parks, nature reserves, and protection forest are classified as 'non cultivated zones', while production forest areas are classified as 'cultivation zones'.

Since within those designated-forest zones large areas have been converted to non-forestry uses, these areas are considered not fitting any more with their planned functions. To address this problem, the provincial government and the Department of Forestry Representative Office are conducting so-called 'integration-harmonization' (*padu-serasi*) between TGHK and RUTR. This give and take process is designed to reach a balance between the interests of the forest bureaucracy and local government. It continues today in Lampung and elsewhere in Indonesia. For example, the MOFEC in Lampung have expressed a willingness to negotiate with local government that villages that existed before the creation of the State Forest Zone, could be reclassified.

Establishing Control through Eviction of Upland Communities: A Policy of Intimidation:

Following the designation of TGHK, the main policy regarding the forest protection in Lampung Province was to evict as many communities as possible from the newly established State Forest Zone.

Since early 1980's, resettlement schemes have been implemented through government sponsored transmigration program. The objective is to clear any settlement in the State Forest Zone, help distribute population more evenly, and populated and develop isolated regions. The first regulation issued by Lampung Governor was decree No. 133/DPD/HK/1979 together with the implementation guidelines of resettlement program. It was then changed into decree No. 062/Bappeda/HK/1982 about local transmigration in Lampung Province. As a follow up, and Organizing Team was set up, targeted locations and the destination, and eviction schedule to be regulated by Governor decrees. The Directorate General of Rural Development implemented the program until 1990, with the Department of Transmigration continuing afterward.

At the initial stage of the local transmigration program implementation (1979-1980), approximately 30,000 households who had settled in the protection forest zones were targeted for eviction. However, in the first 15 years of implementation, more than 65,000 households were evicted while 31,000 households remain inside the protection forest zones.

Village Abolition:

In 1982, the provincial house of representative (*DPRD*) passed Provincial Regulation No. 1 concerning the establishment, division, and unification of villages. It states that a prerequisite for a village establishment is that the village is not located within the state forestland. This article became the basis for Governor's decrees abolishing villages within the government-designated forest zone.

The Use of Military Operations:

To enforce village abolition and evictions the government called upon the military for support. Such operations were often followed by government promotion of the local transmigration program. During these armed attacks, crops and houses belonging to local communities were destroyed.

Examples of the operations are:

- During 17 September to October 1990, forestry and military authorities performed *Operasi Senyum* (Operation Smile). This operation forced the eviction 1,735 of households or 6479 people from Pulau Panggung protection forest zone, in South Lampung. Their crops and houses were burned, the people offered to join local transmigration to Rawajitu, North Lampung.
- In January-February 1995, *Operasi Jagawana I* (Operation Forest Ranger) was performed in Register 34 Tangkit Tebak protection forest zone in North Lampung, following Governor's decree No. 225/0287/04/1995,. The operation destroyed 4.000 ha of coffee farms and houses of 474 households or 2,400 villagers of Dwikora, Bukit Kemuning. In addition to military forces, this operation also involved trained elephants that helped to destroy houses and coffee farm.

Similar operations have been conducted regularly in various times and places, for example Gunung Balak (Central Lampung), Gunung Betung (South Lampung), Wonosobo (South Lampung). Sumber Jaya (West Lampung).

Protecting the State Forest Zone

In November 1975, the Head of Lampung Forest Service issued decree No. 1691/I/3/75 abrogating all permits for state forest opening. All previous permits issued by the same Forest Service and by other institutions were considered illegal. Since the promulgation of *Peraturan Pemerintah* (Government Regulation) No. 28 1985 dated 7 June 1985 on forest protection, law enforcement has been implemented from time to time in an effort to stop people's activities inside state forest. Below are few example of cases that went to court:

- 1989—1990, Kotabumi Court sentenced to jail 13 farmers who used the Register 45B protection forest zone in Sumber Jaya.
- August 1991, Kalianda Court sentenced two men in jail. They were settling in the Register 19 Gunung Betung protection forest.
- March 1992, Kalianda Court sentenced four farmers, who settled in Register 28 Cukuh Balak protection forest, to five months in jail
- Early January 1994, Kalianda Court sentenced one man to six months in jail for having harvested banana and *petai* fruits in the Register 23-forest zone in Padang Cermin.
- End of May 1997, Metro Court sentenced two men to five months in jail to for having cut reforestation trees in Register 38 Gunung Balak protection forest.
- Early September 1998, Kalianda Court sentenced two villagers of Kubang Badak, Padang Cermin to five months in jail for having damaged the forest of Register 19.

Reforestation Efforts

Reforestation programs are conducted to rehabilitate forest zones, that are not covered by any forest, primarily protection forest zones. Prior to 1980's, reforestation projects were implemented only by the Forest Service office. Between 1980 and 1995, private firms, parastatal firms such as PT Inhutani V, and military participated in the reforestation projects. Since 1995-1996, only Inhutani V remains involved together with the provincial forestry service.

In 1983/1984, military force was requested by the MOFEC to support reforestation projects in areas of conflict. Starting in 1995, MPTS (Multi Purpose Tree Species) planting scheme has been initiated with limited local community participation in a locations such as Sukoharjo in Central Lampung and Sumber Jaya in West Lampung.

In 1977, of the 336,000 ha. of protected forest zone in Lampung, about 120,000 ha were deforested (Forestry Department Representative Office, 1986). Nevertheless, the reported area of protection forest areas that has been reforested through various project from the 1970s until today is 180,000 ha, or 60.000 ha more than the deforested area in 1977. With those massive reforestation efforts, there should be no more deforested protection forests. Yet, in fact deforested areas in protection forest zones more than doubled during the same period, being estimated today at 278,000 ha or 83% of the total area of protection forest zones. After all the evictions and human suffering, it is clear the reforestation programs failed. Villagers plant crops and agroforests in the protection forest zones in an effort to meet their living needs. Reforestation trees are cut down by the local community because those trees have to be removed to allow cultivation.

Lessons Learned:

The government claims that great effort has been made to protect the forest zones. Yet it has failed to reduce the deforestation rates in Lampung. Currently, less than 20% of the state forest land are covered by any form of natural forest, while the remaining is deforested and farmed by local communities. No natural forest remains in the production forest zones, only 18.5% of 401,910 ha of this zone is covered by trees (including 32,000 ha Krui agroforests, planted by local people). In the protection forest zones, only 16.5% of 318,513 ha. remains forested, the rest is manage by local people (mostly coffee farms). The only natural forests that could be significantly sustained are those located within the national parks. However only slightly more than half of the national parks area (316,570 ha) is covered with natural forest.

The policy on forest management in Lampung Province focuses on protecting the forest lands from local communities, through state forest-land delineation and eviction of local people in order to clear the forest land from any kind of local community activity. Priority was then placed on the rehabilitation of forest biophysical functions through reforestation and timber plantation establishment. The interests of local communities, who derived their livelihood from forest land and resource use, have not been taken into consideration

The objective of forest zone delineation is to provide clear boundaries and status to the State Forest Zone with a basis on maintaining forest biophysical functions. But, most areas in Lampung classified as State Forest have become conflict zones between local people and government institutions because the boundaries and status of these zones are not clear.

Current ways to manage the state forest zone have not been successful. New approaches are needed. A new, more integrated and more pragmatic approach to managing conflicts in the State Forest zones might be achieved through devolving the management of these areas under conflict to local communities and encouraging those communities to limit negative environmental impacts, if any, of the farming systems that have developed. In this context, the settlers would not

need to be evicted, but on the contrary, they would become the main actors, with extended decision powers regarding the management of the land.

Conflicts could be avoided if forestry authorities do not enforce total control of the land classified as State Forest zones. Hundreds of thousands hectares of reforestation trees might be growing well today, if the planting had been done by local communities instead of by forestry officers. Tree species could have been chosen by local people and adapted to their needs, instead of timber species only. Conflicts over land in production forest zones might not have taken place, if timber plantation conversion areas to had also been granted to local communities and not only to large companies.

In Lampung province itself, there are remarkable examples of community-based forest management. For example, resin damar agroforests in Krui, West Lampung, have proven able to fulfill the function of protection forest and production forest. Local community farms which contain trees such as teak, albizia, mahogany, and fruits can be found in all over in Lampung—which are more diverse and environmentally robust than timber plantation. There are also traditional natural forest reserves, which are guarded by customary communities in various places in the province.

IV. Establishing New Forest Boundaries and Recognizing Local Rights

How does the MOFEC define a forest? The new forest law of 1999 says a forest is “a unit of ecosystem in the form of land comprising biological resources, dominated by trees in their natural forms and environment, which cannot be separated from each other” (emphasis added). The law then defines a forest area as “a certain area which is designated or stipulated by government to be retained as permanent forest”. The State Forest “a forest located on lands where there is no ownership rights”. Using these definitions it is clear that only a fraction of the lands classified as State Forest actually qualify as such. It is well established that Indonesia is covered by millions of hectares of community forests or agroforests and large areas of what the MoFEC classifies as natural forest is in fact agroforests on what local farmers claim as private land.⁹

Indonesian agroforests contribute significantly to the national economy. They provide approximately 70 % of the total amount of rubber produced in the country, at least 80 % of the damar resin, roughly 80 to 90 % of the various marketed fruits, not yet estimated but rather important quantities of the main export tree crops such as cinnamon, clove, nutmeg, coffee and candle nut (de Foresta and Michon, 1997). In Sumatra alone, about 4 million hectares have been converted by local people into various kinds of agroforests without any outside assistance (de Foresta et Michon, 1993). An estimated 7 million people in Sumatra and Kalimantan are living from rubber based agroforests that are spread across approximately 2.5 million hectares¹⁰.

Given that most of these community-based agroforestry systems are mis-classified as State Forest, should they be reclassified as private lands, it is not difficult to envision a State Forest Zone that is close to half of the current 143million hectares. Using MoFEC data, we put forward two possible scenarios.

⁹ Michon, Deforesta, Kusworo, Complex Agroforests of Indonesia (forthcoming), see

¹⁰ See Progress Towards Increasing the Role Local People Play in Forest Lands Management in Indonesia Fay De Foresta 1998

Scenario A:

As a beginning, the 35 million of hectares already classified for conversion can be removed. Figures posted on the MoFEC website claim that 39 million hectares of protection forests, national parks and reserves are currently covered in some form of forest, these areas could remain within the forest zone. Fifty million hectares is production forest. Within this 50 million, it is likely that much is, in fact, not forested and under traditional claims and use. A recent study suggests that only 17 million hectares of the production forest is primary forest¹¹ and estimates place the secondary forest as roughly 14 million hectares¹². A more realistic figure for the production forest might therefore be 31 million hectares.

Scenario B:

Also using the MoFEC working data posted on the MoFEC website (interpretation of images from 1996-1997)¹³. The percentage of agriculture land in Production Forest is 30 %. Rights over much of these lands are most likely claimed by adat or other communities. In Conservation areas agricultural lands are 21% and 18% in Protection Forest. If we declassified all the agriculture lands, the State Forest Zone becomes: 45 million ha. for Production Forest; 15 million ha. for Conservation Areas; and 25 million ha. for Protection Forest. Without Conversion Forest the total State Forest Land would be 85 million hectares.

This rough analysis suggests that even using MoFEC data, Indonesia could quickly reduce its forest estate by between 41-48%.

	TGHK, 1982	Scenario A	Scenario B
Protection Forest	30	39	25
Conservation Forest	19		15
Production Forest	64	31	45
Conversion Forest	30	0	0
Total	143 million hectare	70	85

V. Procedures and Options for Local Communities to Secure Rights as Their Lands are Removed from the State Forest Zone¹⁴

Based on the Government Act no. 62/ 1998 on Devolving Specific Tasks to the Local Government, responsibility for forest delineation is devolved to local governments. The final gazettement, however, remains in the hands of the Minister of Forestry in Jakarta. This

¹¹ See Scotland, Fraser, Jewell Roundwood Supply and Demand in the Forest Sector of Indonesia (draft Dec. 1999)

¹² Figure posted on MoFEC website June 2000

¹³ REPPROT Study

¹⁴ The section draws in detail from Reforming the Reformists: Challenges to Government Forestry Reform in Post-Suharto Indonesia Fay, Sirait 1999

devolution requires a revision of the Ministerial Decree on Forest Delineation and the Enclave policy (SK Men 634/1996).

In September 1998, the Department invited non-governmental participation in a working group tasked to improve departmental procedures for redrawing the boundaries of the forest zone. Egos promoted greater participation of local people in determining the boundaries and for the creation of community enclaves within the forest zone. Adat rights proponents joined the working group viewing it as an important opportunity to get large areas of Adat lands excised from the forest zone.

Community Enclaves within State Forests

The policy debate on creating enclaves centered on what types of prior rights would be recognized by the Department and just how far should an enclave extend. Conservative forestry legal staff have taken the position that only lands that have Sertifikat, or the highest form of land title, should qualify and this should only be for immediate settlement areas and fixed agriculture in close proximity of settlements. Adat rights proponents on the working group argued that Hak Ulayat, and not just land Sertifikat, should be recognized as prior existing rights and that all Adat areas, including agroforestry areas and natural forest be included within an enclave. This working group is still meeting and a compromise draft is emerging. Currently the definition of prior rights is more flexible but the “enclavable” areas do not yet include agroforestry lands, arguably the most important component in most Adat land use management approaches. Yet, just as the working group appeared to be making some progress, the Department’s legal bureau sent its own draft enclave policy to the Minister. This draft shows little improvement in the original enclave process and, according to Adat proponents, would do little to address conflicts on the ground. Like other forest policy development processes in the Reformasi era, the new enclave policy is clouded in uncertainty and confusion.

Participatory State Forest Boundary Setting

The issues taken up in the working group’s discussions on procedures for redrawing the boundaries of the State forest are more complicated.

As of February 1999, government figures reveal that only 68 % of the areas the Department of Forestry claims as being State forest zone were actually formally delineated and gazetted¹. As a result, 32% of the forest zone is not yet under the legal jurisdiction of the Department of Forestry. Information as to which areas have completed the formal process of gazettment is unavailable to local communities. In some areas, local communities claim that the process by which their areas were gazetted (part of the 68%) was illegal. Forest boundary delineation and gazettment procedure require that all local communities be informed of the creation of State forest in their areas and community leaders must sign documents saying they were informed. Adat rights proponents estimate that Department delineation of much of the 68% of the area completed, violated this requirement. This may be accurate considering how unlikely it would be for a forestry staff to organize a village meeting to inform the community that the government has classified their village, rice fields and agroforests as State forests under the control of the Department of Forestry, that their occupation of the area is illegal, and a timber plantation might soon clear the entire area in order to plant eucalyptus.

While the major issues were all discussed in the working group, Department staff were resistant to most of the suggestions that would lead to a significantly smaller area of State forest. Still the current draft policy (July 1999) is an improvement on the 1996 policy. The following are some examples of why:

1. The role of local government in the process of forest delineation has increased significantly leading, many hope, for greater participation by local people;
2. The methods to determine State forest are no longer based on a scoring system (consideration of rain fall, slope and type of soil) that was heavily biased towards justifying most anywhere as State forest;
3. Local communities can participate from the early stages of the delineation process;
4. The procedure of delineation will no longer be determined by the length of the border but will be measured by blocks in hectares;
5. Communities who live or have claims inside State forest will be treated the same as a community outside the forest, by being involved in the delineation process.
6. There will be a process of participation and notification that will determine the State forest area is free from third party (community) claims. This will proceed the placing of permanent markers, making it more difficult for Forestry staff to bypass the participation of local communities in the process.

Another policy initiative that stands above and will govern those just described, is a draft PP, or government regulation (*Peraturan Pemerintah*) on Forest Solidification (*Pengukuhan Hutan*). This will be the umbrella law that will allow for new policies on forest delineation and the creation of community enclaves. Consistent with the development of other new forestry policies, the Department has not made an effort to assure the coordination between drafting groups. The draft PP, being developed by an internal Department team, does not yet reflect the progress made in the working group on forest delineation and the enclave policies, leaving those involved in this process confused as to how or even whether to proceed.

VI. A Groundbreaking Policy Initiative from the Bureau of Lands

On March 25, 1999, the Minister of Agrarian Affairs attended the Congress of Adat Communities. He listened to the numerous land conflicts that result from Adat rights being invisible to the government developing planning process. He stated at the time that, he was committed to addressing this problem. Over the next two months the Bureau of Lands (BPN) within his Ministry, with some assistance from Adat land specialists, developed ministerial decree No. 5/1999, or Guidelines to Resolve Adat Communal Rights Conflicts.

This decree sets into motion a process that, similar to the Ministry of Forest policy initiative on Adat, will determine criteria for the recognition of Hak Ulayat. The main difference is that the BPN will accept the registration of Adat lands and treat them as a communal and non-transferable right, unlike the forestry classification that would provide only a management right.ⁱⁱ In addition the policy allows Adat communities to lease their lands to government and the government can in turn transfer these rights to the private sector.

The decree turns over complete responsibility for this process to provincial and district governments. This has led some critics to say the national government has done little more than to pass the problem onto local government. Critics also question why local government should play such a pivotal role in determining whether Adat communities exist or not.

While not completely satisfied with the new policy, some Adat leaders and NGOs have nonetheless decided to test the BPN process and determine what form of recognition can be gained. The foremost question is what happens in the overlapping areas? The State has already given out 65 million hectares to the timber industry; 15 million to plantations and 48 million hectares are set aside as protected forests including national parks. Added to this list are 482 mining concessions and transmigration areas.

VII. Conclusions

The failure of Indonesia's forest policies and management practices to protect natural forest areas and improve the welfare of forest-dependent people is now well accepted. With this acceptance has come increasing consensus among forest policy analysts that what drives the Ministry of Forestry and Estate Crops is the desire to maintain control over as much of the Indonesian land base as possible. When opportunities to profit from the logging of natural forests end in the near future, the control of land for timber plantations and reforestation projects will become the main arena for rent seeking activities. Only after a fundamental shift in orientation towards protecting what remains of the natural forest and privatizing the millions of hectares of lands that cannot justifiably be classified as State Forest, can the Department hope to become a positive force in Indonesia's efforts to remake the nation.

The mechanisms for such a fundamental shift in orientation exist, even within the current legal framework but the political will and leadership in forestry appear to be lacking. Clearly the first step in reinventing forestry in Indonesia is to redefine the State Forest zone. Government must then make a firm commitment to forest protection and develop innovative management approaches that focus on a far smaller forest estate. This would not only increase the potential of government to rescue what remains of some of the world's most important reserves of biological diversity but would also make major advances towards resolving the widespread conflict that results from the Department of Forestry and Estate Crops believing it has the rights over and can manage more than 70% of the fourth largest country in the world.

ⁱ Estimates on the progress in the delineation and gazettement of the State forest zone are based on numbers of notification units (BATB) signed by the Minister of Forestry as February 1999. From total 2531 units identified during the TGHK process that began in 1984, only 1719 units have been signed, leaving 812 units still unfinished (INTAG, 1999 unpublished).

ⁱⁱ There would be no restriction on land transfers within the community. The intention is that land under Adat or Hak Ulayat would not enter the land market.

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