

# FOREST TENURE IN INDONESIA – THE SOCIO-LEGAL CHALLENGES OF SECURING COMMUNITIES' RIGHTS

## SUMMARY

Multifaceted crises in world forestry have led to heated debates about the best model of forest management. Scholars, policy makers and practitioners have criticized strong state domination in forest management for, among others, its contribution to exploitation of forests, its inability to enhance the livelihood of forest communities and respect their social traditions, and its failure to cope with conflicts and violence in forest areas. An alternative model is community-based forest management, which is a term used both as an academic concept as well as a concept of state policy, NGO movements, or community practices. According to this model, forest management relies on a greater role of forest communities to own or use land and forest resources and to decide how they should utilize the forests for their livelihood, based on their own normative system.

The concepts, policies, laws and practices regarding community-based forest management vary in different places in the world and have changed over time. However, the general objective of this model is constant, namely to fight forest destruction and poverty and to resolve conflicts regarding forest tenure. In this book, the objective has been specified as the achievement of social & environmental justice. In the last two centuries, various stakeholders in Indonesia have been struggling to realise this objective. But, it has not been completely successful. The problems of forest destruction, poverty and conflict have continued to recur since colonial to present times (chapter 3).

This study assumes that providing forest communities with secure forest tenure is a way to achieve social & environmental justice. It analyzes a set of factors –legal, social and political –that significantly enable or constrain the strengthening of such security in the policy, legislation and licensing of Social Forest (*Hutan Kemasyarakatan*) – an Indonesian community-based forest management policy broadly implemented during

the post-New Order period. Cases where Social Forest has been implemented have been investigated in Lampung province in Sumatra. With its complex problems of inter-ethnic relations, forest destruction, land conflicts, poverty, and population and commercial pressure on land in its Forest Areas, Lampung presents a challenging picture. The study has tried to understand under which circumstances and how Lampung's colonial and post-colonial regional governments made policies and laws restraining or allowing people to use forest areas (chapter 6).

Legalising community property rights by state law has been a common strategy for securing forest tenure. This study, however, believes that forest tenure security requires more, as it results from an interplay between state and/or community normative systems, actual practices and actors' perceptions. In this respect, legalisation of rights by state institutions is only one facet of security, more specifically legal security of forest tenure. The degree of this legal security will be determined by three elements, i.e. the rights' robustness, proper duration and strong legal protection (chapter 2). Unfortunately, Indonesian national legislation has not been able to achieve satisfactory results on those three elements. The bundles of rights in Forest Areas continue to be limited; communities are not allowed to hold any ownership rights in these areas. The legal basis of the Ministry of Forestry to physically control all land in Forest Areas is also unclear. In addition, legal protection of community rights is weak (chapter 4 and 5).

In Lampung such legal limitations have become manifest since colonial times, as there have been different efforts of legalising community property rights. However, precisely concerning such rights most regional legislation on community-based forest management has lacked precise and proper formulation, sufficient duration and satisfactory protection. The regional legislator found himself caught between the two contrasting positions of central government and local communities. During my observations between 2004 and 2006, I noticed three types of regional legislation regarding community-based forest management in Lampung: (a) focused merely on profit for the regional government, (b) pragmatic following of higher government legislation, so of a low-risk type, (c) integrative models of legislation. Regional politics and social complexities in each district determined these types (chapter 7).

In such a situation, how and to which degree did forest communities actually obtain security of their community forest tenure? Chapter 8 describes the efforts of villagers who live on the borders of a conservation forest, namely in Langkawana village, to develop norms of forest tenure and to practice these norms in their everyday life. As migrants from Java, these villagers transferred forest tenure norms from their home

villages. These norms and practices indicate that a system of community forest tenure can be found not only among an indigenous population but also among migrants.

Langkawana villagers were not able to have long-term security of their forest tenure due to the absence of legalization of their rights. To survive, they resorted to several temporary strategies such as bribing forest rangers or developing good personal relations with other street-level bureaucrats. This uncertainty ended when they obtained a five year license of Social Forest from the Ministry of Forestry in 1999. The participation of community facilitators was central in this process. They assisted the community in setting up forest user groups and rules of forest management, including a mechanism for internal conflict settlement. In addition, a ministerial decree on Social Forest enacted after the end of New Order (Decree 677/1998) made this license possible (chapter 9).

The Social Forest license in Langkawana contributed positively to lower tension between the villagers and the rangers, to reduce conflicts among villagers regarding the utilization of forest land and resources and to improve people's livelihood. The villagers perceived this situation as being secure in their forest tenure, locally expressed in the terms 'safe' (*aman*) and 'quiet, peaceful' (*tenang*). Yet, two years after the license was obtained, the villagers started grand-scale logging on the forest area. They cut trees planted by the government, which were the products of reforestation projects of the state in the past.

This logging scandal raised a question: why had secure forest tenure not been able to motivate people to preserve the forest? Chapter 10 elaborates a number of factors that explain why the logging occurred. One of the findings was people's resistance to the inconsistency of local forestry officials in law enforcement. When the officials turned a blind eye to a few large loggings, the ordinary villagers thought that they could follow their example and remove certain unwanted trees from their gardens.

The case study of Langkawana proves that the security of community forest tenure is not solely a matter of legalization of rights. The enforcement of the rules by the officials must also be consistent. Last but not least, their behaviour must be in line with the interests and views of the community.

Finally, this book also warns that Social Forest licensing would face an additional big challenge if the government would grant licenses on conflict-ridden areas. Chapter 11 describes two cases of land conflict between indigenous people (the Lampungese) and the migrants and between different migrant groups. These parties intended to apply for Social Forest licenses to assist them in (re)claiming the forest land. A lesson learned from these cases is that Social Forest license or any other efforts of legalizing

community rights must take into consideration the specific history of land tenure and conflicts in that area. Moreover, internal conflicts need to be resolved before a Social Forest license is likely to bear any success in increasing social & environmental justice.