EXPLORING REGULATORY FRAMEWORK AND GOVERNANCE OF COMMUNITY-BASED FOREST MANAGEMENT: CASE STUDY OF INDONESIA

MASTER THESIS

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A thesis submitted in partial fulfillment of the requirements for
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Summary

Over the past thirty years, Indonesian national development priorities have emphasized large-scale natural resource extraction from these areas, particularly timber from natural forests. The hundreds of corporations who have received these rights have enjoyed windfall profits from the rapid mining of timber. This has marginalized the community forestry activities. But major changes occurred in 1990s, the central government started to promote the community forestry. It related to civil society struggle on community forestry development. A vigorous civil society movement has emerged to challenge state control of forests including several broad alliances of NGOs and other civil society elements. Furthermore Decentralization in Indonesia has given opportunity and challenges in developing community-based forest management.

This research presents the overview the regulatory framework and governance of community-based forest management in Indonesia. This research is expected to contribute in development of community forest management system. As it has been known that the success of this approach is variable among national governments, understanding regulatory framework and governance is such factor that can influence the success of community forest management. Exploring Indonesian legal framework and governance can be used as lesson learned to other countries in establishing policy on community forest management.

The result of this research is that in general forestry decentralization in developing community-based forest management in Indonesia has clear limitations, but it has delivered valuable lessons about how the regulatory framework could be improved to deliver sustainable and equitable forest management processes to support the development of livelihoods for the country with million forest-dependent people, and how to set land tenure in law and regulation. For groups of NGOs, the lesson learned is how to be more effective they need to attend more to the local realities

Keywords: *Community-based forest management, regulation, decentralization, stakeholders, indonesia*

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CHAPTER 1
INTRODUCTION

1.1 Background

Starting in 1990s, devolution of resource management and access rights from the state to local communities has become an important policy tool in developing countries. It is fueled by the recognition of the limits of highly centralized government bureaucracies in managing forest resources at the local level, which have resulted in massive degradation of natural resources and local livelihood systems. Thus community-based forest management has received considerable attention and is being actively encouraged across the world as a successful strategy in promoting forest resource governance. Community-based forest management (CBFM) is believed as a potential approach for achieving forest sustainability. It focuses on improving the livelihood and welfare of rural people and conserving natural forest systems through local participation and cooperation.

CBFM Approaches is implemented vary from country to country. In some countries, community forest management has moved not only as the pilot project but has become a mainstream policy. But in other countries, it is still as policy initiative and still in its formative stages. This fact becomes an important reason to explore more about community forest management experiences in one country, for example Indonesia, as lesson learned for international practice.

Currently, there are number of community-based forest managements described and reported in the literature. Many of these approaches have taken different forms, terms, concepts, and analytical constructs. Some of the more popular or better-known approaches include co-management, joint forest management, adaptive management, integrated resource management, and other similar terms. While subtle differences exist among these methods, they have fundamental similarities in terms of their general processes and the nature of issues and problems they are designed to address, which generally include: multiple stakeholders and their multiple interests, plurality of perspectives, and the empowerment of local communities and stakeholders. Also common to these approaches is the prerequisite for direct and active involvement of stakeholders in the planning, decision-making, and actual management of the resources.

Interest in community-based forest management is paralleled by recognition and widespread on strong civil society organizations and on the existence of pluralistic societies. This pluralism explicitly acknowledges many interests and perspectives regarding natural resource management, it implies that the aspirations and rights of rural people directly dependent on forest resources have raised attention.

Yet it is interested while this approach has been widely accepted and promoted by many national and international agencies both governmental and non-governmental, but until recently there is a lack of information of regulatory framework and governance of Community-based Forest Management in international practice. It is needed to elaborate and to do research in this particular issue because effectively promoting CBFM requires the enactment of reliable laws and/or the revision and reinterpretation of existing national laws, regulations and policies. National laws and legal processes must allow individuals and groups outside government to obtain information, to express opinions publicly, to disseminate information, to participate meaningfully in planning and decision-making activities that directly impact on their lives and livelihoods and to associate freely and openly with others. The aim of this research is to explore the regulatory framework and governance of community-based forest management (CBFM) with Indonesia as case study. Regulatory framework here is defined as rule/law/regulation system prescribed by government to implement and control the use of forest and its resources.

Actually, the development of public participation on forest management has become discourses since the early 1970s. Participation was addressed internationally by the UN Conference on the Human Environment in Stockholm, 1972 and by the UN General Assembly through the adoption of the World Charter for Nature in 1982, although it did not become a major issue in the international policy arena until the early 1990s.The more recent development of new norms and perspectives encouraging a broad-based, bottom-up approach in the management of natural resources was set out at the 1992 UN Conference on Environment and Development (UNCED).

After UNCED, the changes of forest management and access rights from the state to local communities and user groups has become an important policy especially in developing countries. The change in policy from the traditional top–down approach to the community level is fueled by the recognition of the limits of government

agencies in managing resources at the local level, which have resulted in great degradation of natural resources and local livelihood systems.

Afterward, when looking at the history of forest resource management in Indonesia, the early 70s can be marked as the time of the commercial boom of timber extraction. It occurred at that time because of both domestic factors (the country was bankrupt due to the political instability in 60s) and external factors (foreign debts). To support a rapid economic growth, one easy way to be taken by government is to extract Indonesia's rich natural resource base including forest resources.

Forest area, mainly outer of Java Island, started to be leased to foreign and domestic corporations for logging and plantation use. Forest resource management was mainly large scale and extractive in nature that primarily aim to obtain maximum profits. As a result, the 152 million hectares of healthy forest that Indonesia had in 1950 decreased to less than 95 million hectares in early 90s. Much less attention was paid to conservation and environmental concerns, not to say to the needs of sixty millions of people living in and around the forest who for long have depended on the forest for their livelihood. Forest residents' land and forest rights had often been officially ignored and unmapped (Moniaga, 1998).

But in line with UNCED, major change occurs in forestry policies in Indonesian in 90s. The Department of Forestry policy no longer treats local people in the forest zone as liabilities alone. They are now seen as liabilities that must and can become assets in government efforts to increase timber production and rehabilitate degraded forestlands. The result is increasing openness to involving local people in forest management activities. Government has developed some policies to promote community forest management.

1.2 Purpose

This research is expected to contribute in development of community-based forest management system. As it has been known that the success of this approach is variable among national governments, understanding regulatory framework and governance is such factor that can influence the success of community forest management. Exploring Indonesian regulatory framework and governance can be used as lesson learned to other countries in establishing policy on community forest management.

This research is also expected to enhance academic reference discussing this issue in Indonesian case as few studies of community-based forest management on Indonesian context. This research could be used as input for Government of Indonesia in implementing CBFM policy.

1.3 Thesis Structure

Thesis is divided into six chapters. Content of each chapter can be described as follows:

Chapter 1 : Introduction

This chapter consists of background, research problems, and objective

Chapter 2 : Community-Based Forest Management: regulatory framework and governance

This chapter provides theoretical comprises concepts of CBFM, regulation setting and governance

Chapter 3 : Methodology and Key question

This chapter will present research question and research methodology as underlying for doing analysis

Chapter 4 : Indonesian Community-Based Forest Management: regulatory framework and governance

This chapter addresses institutional and regulation of Indonesian Community-based forest management, attitude stakeholder in institutional and political of CBFM.

Chapter 5 : Analysis of Indonesian Community-Based Forest Management

This chapter analyzes the practice of Indonesia's CBFM, the regulatory setting and governance as answer of research question in chapter 3.

Chapter 6 : Conclusion and Recommendation

The last chapter explore the lesson learned from Indonesian experiences of community-based Forest management to recommend a priority or strategic action in developing CBFM program.

CHAPTER 2
COMMUNITY-BASED FOREST MANAGEMENT AND GOVERNANCE: THEORETICAL FRAMEWORK

2.1. Planning and Community Participation in Forest Management

Collaborative planning is the newest term in planning theory. It has been proposed by Healey since 1980s and crystallized in 1990s. From the experiences in planning, Healey (2003) concludes that planning is an interactive process, planning is a governance activity, planning concerns with maintaining and enhancing the qualities of places and finally planning considers social justice. It involves two levels of governance, which both respectively can be distinguished as *soft* infrastructure (planning process and practice) and *hard* infrastructure (planning system and procedure)(Healey, 1997). Furthermore Healey (1997) discusses how strategies in collaborative approach frame the social relation, build structures and carry power. This approach is built by five *propositions*, which are collaborative approach occurs in multicultural world, emphasizes the importance of both technical-scientific and local-practical knowledge, uses consensus process through collaborative dialogues, builds institutional capacity by creating flows of social capital in social relational webs of participants, and emphasizes the importance of reflective dialogue as an essential part of communicative ethics.

In forestry sector, the collaborative approach has also changed the forestry management practices. Before 1990s, curricula and research programs in forestry field have prepared foresters to scientifically order forest. Foresters were trained as decision makers who were to use rational and scientific methods as tool for forest management (Lee and Filed, 2005). They were poorly prepared to work with a diversity of communities in collaborative decision making for distribution of multiple benefits. But currently the institutional transformation that fostering and protecting social and natural diversity through multiple stakeholders is underway. A new paradigm for managing forest is forming. State controlled forestry is in decline and community participation in forest management is on the rise.

Appeltrand (2002) described that participation is about finding consensus in diversity and reflects a normative shift towards multiple-use values that recognize that forest management should blend multiple management objectives into a coherent set of

practices. Participation is not just a means but also a model for involving those concerned. It should be understood as a pro-active approach for creating an enhanced understanding of objectives, problems and their solution.

Further, Appeltrand (2002) identifies three rationalities for public participation in forest management:

- The first rationale is a pragmatic policy argument drawing on environmental concerns. On this view, the involvement of non-state actors may not only contribute to making bureaucracy think, it may also enhance the informational basis and ongoing scrutiny of environmental matters.

- The second rationale is a deductive one: participative measures are necessary if one accepts the premises of international human rights law. On this view, participatory claims draw from established human rights concepts, such as the right to a fair trial, the right to partake in the political process through voting, the right to information and rights for indigenous people. These more general and established rights could provide the conceptual basis for rationalizing public participation in environmental matters.

- The third rationale argues that public participation is relevant in an environmental context because it constitutes a prerequisite for legitimacy, that is, public acceptance of laws, rules and decisions. Public participation is placed here in a broader context, relating to the democratic aspect of participation. It also reflects structural changes relating to a growing value pluralism creating a normative shift that, in turn, has affected legitimacy factors. Two questions must be asked in this context: 'are participatory elements in decision making processes essential legitimacy factors?'; and 'what makes a policy, a program or a decision legitimate, and thus accepted by those affected or concerned?'

In forest planning, public participation means the recognition that forestry as a specific management intervention either has been changing or indeed needs to change. It focuses not only in having more control over the decision making process but also would prefer to see a different kind of forestry practiced. This means that the community recognizes that various sections of the society can play complementary roles in forest management. Community has a role to play in the three different capacities as enablers, deliverers and users (Buchy and Hoverman, 2000).

2.2. Community-Based forest management

2.2.1. Community Definition

Before exploring community forest management definition, it is important to define what a community is. Dunker (in Bull and Schwab, 2005) proposed six definition of community: 1)geographic location, a human settlement with a fixed and bounded territory; sometimes referred to by economists as a functional economic area 9economic approach); 2) way of life, defined by a set of common values and interests around which institutions are developed and with which residents identify themselves (cultural approach); 3)social system, involving interrelationships between and among people living in the same geographic location (sociological approach); 4) type of relationship, pertaining to a sense of shared identity (psychological approach); 5) source of energy, a place from which a human population obtains the energy it needs to live and survive (ecological approach); 6)holistic approach, a setting in which the people have some sense of place, as well as common interests and goals, and are willing to cooperate or work together to achieve these goal (all of the above)

Meanwhile according to Ter Haar (in Sirait et al, 2000), indigenous communities are defined as community that live according to its custom and regulation, settle in one specific site/area, rule in the full fledged of its own sovereignty, and manage its own actual and potential assets/wealth, where the community members of each unity take part in the daily life as a natural life experience. Every member of this community holds no intent or tendency to disintegrate the nurtured community bonding or to permanently leave the community. Thus, Merchant (1996) described human relation to environmental/natural resources into three paradigms. The first paradigm is called *Society in Self.* Indigenous peoples live together for generations perceive their being as a part of living environment. They don't see nature as unlimited supply of natural resource ready for extraction but as environment with limited resources. The norms and values followed were formed based on their pragmatic life experience and their interaction with natural environment. The second is known as *Self in Society*, whereas in a community composed from diverse ethnicities and are new comers inhabiting a particular site, the communities place themselves as the very core element that determine the welfare of their livelihood. They take for granted natural environment as unlimited resources to exploit as much as possible. And finally is *Self versus Society*. Among the modern communities generally reside in the urban areas, which are easily

changed specially in adjusting with the course of information development; humans change also their understanding about natural environment. This paradigm has been arguable to inquire the relationship with the environment in the same light humans continue to question the values and norms practiced in certain communities. This has caused distance between human beings and the natural environment.

The recognition of indigenous peoples' rights in natural resources has been demonstrated internationally by continuation of a series of world conventions which consider the importance of implementation of customary-based community empowerment (Sirait et all, 2000). Those conventions are:

1. International Labor Organization (ILO) Convention No. 169/1989; Article 6 contains participation and consultation principles in the whole decision-making process which have an impact on indigenous peoples at national level. Article 7 to Article 12 contains various aspects of relationship between "*adat* law system" and "national law system". Article 13 to Article 19 contains the arrangement of "the Rights to *adat* Land".

2. Rio Declaration 1992 and Agenda 21/1992 in Article 22 basically emphasizes the importance of recognition and empowerment of customary-based community in order that they can get a fair and just treatment.

3. UN Document Draft on Indigenous Peoples' Rights (UN's Document No. E/CN.4/Sub.2/1993/29) clarifies the necessity of taking sides with indigenous peoples which have been ignored for so many years.

4. Resolution of World Conservation Strategy, Caring for the Earth 1991 which supports the special and important role indigenous peoples all over the world in caring the earth.

5. Resolution of 18th General Assembly of World Conservation Union, IUCN, which supports indigenous peoples' rights in acclamation including right to utilize local natural resources wisely in accordance with their own tradition.

6. International Tropical Timber Agreement 1994 in ITTO Guidelines stated that the activities of forest management should recognize forest-dependent indigenous peoples' interests and other local forest-dependent community.

7. IUCN working Group on Community Involvement in Forest Management in 1986 recommended that the natural forest regeneration which indigenous peoples always

perform in their natural resources management have to be recognized as an alternative to forest regeneration.

8. Convention on Biological Diversity 1992 has been ratified and legislated in Law No. 5/1994. As an effort to protect indigenous peoples' intellectual property right (IPR), sharing technology, and bio-savety.

9. United Nations Declaration and Program of Action to Combat Racism and Racial Discrimination 1978 in Article 21 recognizes indigenous peoples' right to preserve their traditional economic structure and culture, including their language and special relationship with land and natural resources that can not be taken away from them.

10. World Council of Indigenous Peoples (WCIP) in Kiruna, Swedia 1996 emphasized that indigenous peoples' right to land is a complete property right no matter they hold the legal rights published by government or not.

11. Manifesto Mexico in the World Forestry Congress 10th 1985 emphasized the necessity of recognition of indigenous peoples' institution and its original knowledge to manage the forest including the activity of protection and utilization of forest that is called community-based forest management.

12. The results of 10th World Forestry Congress 1991 in Paris emphasizes the necessity of taking sides with marginalized peoples including indigenous peoples and asserts the importance of action plan called Tropical Forest Action Plan (TFAP) and every country will build its own National Forest Action Plan (NFAP) as a derivative of Agenda 21 article 11 as well.

13. In Basic Principles FAO on National Forestry Action Plan it is stated in principle no.4 concerning Forestry Program Planning that stakeholders including indigenous peoples and women's group should be involved in consultation process, and in principle no.5 on Holistic and Inter-sectoral approach it is stated that Indigenous Peoples and Forest dwelled community have to be seen as an integrated part of ecosystem.

14. Declaration of International Alliance of Indigenous and Tribal Peoples of the Tropical Forest 1996 insists that Indigenous Peoples recognize that for long term interests their lives will sustainably utilize forest natural resources and acknowledge the importance of conservation. Indigenous Peoples also recognize that the capability of conservation organization could be used for developing and

improving self-supporting capacity and getting a mutual relationship based on transparency, accountability, and reliability.

2.2.2. CBFM

Community-based forest management (CBFM) can be explained as a system for forest management, whereby the community that holds traditional rights over the forest resource is the main actor and the main beneficiary of the management of the resource in an area with sufficient natural forest resources still remain, so that their management will contribute significantly to integrated regional development (GTZ, 2002). In community forest management, forests are managed jointly by communities. The CBFM model is designed as a basically self-reliant and self-financing system, it is based on participatory village land use planning, customary land tenure, and simple and profitable cultivation.

FAO describes that community-based forest management involves three kinds of activities. First, it includes people use of forest resources to meet their subsistence needs. This might involve hunting or gathering fuelwood, building poles, fruits, nuts and medicinal plants. Second, it includes activities people undertake to preserve or improve their production systems. This might involve planting trees and bushes in hedgerows to serve as windbreaks or promoting the growth of trees in fields or pasture areas in order to fertilize the soil, protect against wind and water erosion, and provide forage and shade. Third, it considers how people produce goods (based on forest resources) that will be sold or traded. This includes such diverse activities as producing tools and furniture, making rope and weaving mats harvesting timber, collecting wood and preparing certain foods and oils for the market.

Further FAO differs between state forest management and community forest management in term of objective, scale, local use rights, protection system, plan type, technical basis, and planning process. The objective of state forest management usually has single use objective, such as protection or production. But community forestry has a multiple objectives besides production. The scale of state forest is much larger than community forestry. The planning process of state forest is more centralized carried out by forest department staff. Meanwhile the planning of community forestry is more democratic by community discussion. In table below, the differences between

government forest management and community forest management was completely described.

Table 1. The differences of Forest Management

	Government/private Forest management	Community Forest management
Objectives	Timber production or other single-use objective (for example, watershed protection and short-rotation fuelwood); protection of biodiversity paramount over other uses.	Usually multiple production and biodiversity conservation objectives involving all stake holders; developing local skills for forest and conservation management.
Scale	Large management units based on natural biophysical or political boundaries.	Micro-management units corresponding to self-selected or residential units.
Local Use Rights	Usually very limited and frequently ambiguous or temporary.	Extensive, clearly defined rights for local users.
Protection	Policing by forest service guards and fencing, often ineffective and expensive.	By local community, frequently using social fencing; higher local costs but low government costs; local accountability.
Typical Plan	Long rotation of even-aged stands for economies of scale in management and industrial supply; centralized management of protected areas and conservation sites.	Short rotation of uneven-aged stands designed to supply diverse products for continuous income and subsistence needs; community management.
Harvesting Contracts	Generally, large government contracts with administrative pricing mechanisms and subsidized supply arrangements.	Generally combine multiple household marketing arrangements with small-scale contracts for high-value products.
Technical Basis	Based on results of scientific research and single product optimization models.	Based on combination of traditional knowledge and use patterns with forest and conservation service guidance.
Planning Process	Centralized management planning process carried out by forest and conservation service staff.	Plans drawn up by community or household participants with guidance and approval from forest and conservation service.
Plan Revisions	Generally, little flexibility in management prescriptions without cumbersome bureaucratic approvals.	Great flexibility in management prescriptions to adapt to changing conditions and needs.

Source : www.fao.org

Community forest management is important to be protected with several reasons. The first reason, many indigenous communities have a long tradition of community forest management, i.e., where the management of forest resources is the responsibility of a local community and the management practices are carried out through co-operative or collective efforts by the community members. Another reason, CBFM was and is still actively practiced all over the world. The management systems and objectives vary considerably such forest management systems are often based on a traditional, year-round, community-wide largely self-contained and ritually sanctioned way of life. Finally, CBMF differs significantly from the conventional economic or industrial view of forest management in its breadth of vision. Forest dependent peoples generally see their forest landscape from many different perspectives. They may view

the landscape as a space once inhabited by their ancestors, whose influence on the landscape can be traced a long way back. The landscape also exists in people's memories, which are connected to place names, myths and folklore (Ritchie et al, 2000).

The CBFM system can give some benefits. First is poverty alleviation. The majority of the people who occupy forest areas are poor and vulnerable populations. Enabling these people to share in the benefits and the management of forest development and commercialization helps alleviate their poverty and diversify their sources of income. Second is forest productivity. With the benefit of local knowledge, the value of non-timber forest products for food, fiber, medicines, oils, etc can be more exploited. Indigenous technologies, which apply knowledge based on local ecological conditions, can enrich scientific research and serve as potential sources of new products. Finally is sustainability. Besides to generate economic benefits from forest resources, governments are aware of the important role of forests in preserving biodiversity. Participation is often the only way to conserve forest areas for sustainable use and for their environmental values.

CBFM's success is multidimensional. A single indication, such as improvement of forest covers, increase in plantation zones, equity of benefit sharing, or reduction of community poverty, may highlight the success of a certain aspect, but each indication alone cannot determine the sustainability and success of the CBFM (Padgee et al, 2006). Furthermore, Padgee et al (2006) argued that there are three main factors as necessary for the success of CBFM such as well-defined property rights, effective institutional arrangements, and community interests and incentives. Their finding also indicated that decentralization has an association with success of CBFM, as it is significantly related to some of the important characteristics of well-defined property rights regimes. The term 'well-defined property rights regimes' theoretically indicates several variables (e.g., tenure security, clear ownership, enforcement of rules, regulations, and sanctions, clearly defined boundaries, and a congruency of that regime with its ecological and social context) that have a significant relationship with success. Without tenure security, clear ownership rights, and rules and regulations, users can easily perform socially unacceptable activities that will lead to overexploitation of the resources and community conflict. Decentralization, in which local communities are given management responsibility, authority, and recognition, can also facilitate

development of clear ownership and tenure security. With decentralized power and community participation in decision-making processes, the community can identify members who have access and rights to use the resources and who are expected to contribute effort, time, and labor to the community activities. Clear ownership is positively associated with both local responsibility and authority. Other factors identified as important to the success of CFM, such as financial and human resource support, physical features, community features, level of participation, and technology and market influence. Table bellow describes the factor of CBFM's success.

Tabel 2. The factors of CBFM's success

No	Factors	Criteria
1	Property rights regimes	• Security of tenure to a resource (e.g., long-term benefits, legal land holding and title). • Clear ownership to use and manage a resource (e.g., shared and exclusive rights in decision-making). • Clearly defined boundaries of the community resources—physical boundaries of the forest. • Designated areas for specific use of the forest. • Congruence between biophysical of the community and resources and social boundaries (e.g., social norms and rules restricting time, place, technology, and use of the resources). • Rules to regulate the use of forest products both in formal and informal forms.
2	Institutions	• Effective enforcement of rules/regulations to control rule breakers, and brings those rule breakers to justice. • Monitoring methods to assess if institutional framework remains applicable to the community. • Sanctions/penalties. • Skillful and experience administrative members with self-governing resource management. • Strong leadership and effective local organizations with available financial and human resources.
3	Incentives and interests	• Value. A resource obtains value at some degree that is worth it for the community to establish local groups responsible for resource management. • Cost of CFM investment and institutional change. • Expectation that benefits will accrue to villagers when participating in management programs. • Forest dependency. The forest is considered a source of community basic needs (e.g., food, fuelwood, and medicines, as a place to practice community traditions). • Sharing of common interests that will lead a group of people to create community management.
4	Financial and human resource support from both local and outside agencies to run management programs	• Willingness of authorities and staff to implement CFM. • Financial and human resource support from NGO, government agencies, international institutions, and individuals. • Technical assistance from forestry officials to the community.

5	Physical features of the forests	• Forest size in area. Large vs. small sized forest. • Location. Accessibility of the location, easy access to outside communities. • Diversity (e.g., forest types, ecological complexity). High vs. low diversity. • A current level of resource degradation. Severe and not severe. The level of degradation could cause lack of motivation to participate in CFM programs. The trends of forest destruction are increasing, stable, or decreasing. • Predictability of resource flows. (1) Relatively predictable and (2) relatively unpredictable.
6	Community features	• Community size. Large vs. small-sized community. • Location. Close proximity to the forest. • Increasing population growth. • Increasing level of migration. • Presence of conflicts between local people and outsiders. • Social-cultural diversity=heterogeneity. • Economic conditions of community members. • Community experience in cooperative works. • Traditional practices. Villagers maintain traditional techniques to use and harvest forest products.
7	Level of participation	• When the majority of community members participate in a management program, the program seems to become more successful.
8	Degree of decentralization	• Local recognition. (1) Legal recognition of local group=authority in forest management. (2) Informal recognition of local group: no legal status of the local group, but officials work together with the community. (3) Acceptance of local group: no legal status, no cooperative work between officials and community, but local groups is allowed to work by themselves. (4) No local recognition. • Clear procedures for exercising local controls. • Relocation of administrative function to local groups (local responsibility). • Relocation of budget resources of administration (local authority).
9	Technology and market influence	• Technological changes. • Higher market demands for forest products and increasing economic value of some forest products. • Introduction of infrastructures. • Instability and fluctuation of market conditions

2.3. Governance, Decentralization, and Forest

2.3.1. Governance

The concept of governance often uses three system such as political/administrative system, economic system and civil society. UNDP defines governance as "the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizen and group articulate their interests, exercise their legal rights, meet their obligations and mediate their differences".

According to Rosenbaum (1997), governance can be democratic or non democratic, centralized or decentralized. Decentralized governance refers to the term of governance which has been defined above. He has identified some benefit of decentralized governance:

- serves to fragment and disperse political power
- serves to create additional civic space
- helps to create opportunities for emergence of opposition political groups and, in particular, create resources for opposition political parties
- create numerous training grounds for the development of democratic skills and practices
- provides more options for individual citizens seeking a positive response from government
- it more readily provides for diversity in response to popular demands
- often provides the citizenry with a greater sense of political effectiveness
- provides the opportunity for local economic initiative

2.3.2. Decentralization

Over two decades, countries over the world both developing and industrialized countries have engaged in reform processes that have been referred to decentralization. These processes have occurred in a wide range of sectors, including infrastructure, education, health care, fiscal administration, and natural resource management, among many others. Typically, such reform initiatives have been attributed to some combination of the following aims: to reduce central government expenditures; to provide social services more efficiently; to distribute public resources more equitably; to promote conservation or sustainable management of natural resources; and to broaden popular participation in governance processes (Barr et all, 2006).

Basically, decentralization is an ambiguous term. In general it refers to any act by which central government cedes powers to actors and institutions at lower levels in a political administrative and territorial hierarchy (Ribot, 2002). There are a number of reasons why decentralization is considered advantageous such as efficient and accountable administration, better local development, deeper democracy and increased participation of citizens in government processes, protection of minorities, and experimentation and innovation in resource management policies and strategies

(USAID 2000, in Clairs, 2006). The argument that decentralization brings government closer to the people is the most often cited justification for decentralization but it is based on a number of assumptions. It assumes that a close relationship exists between local authorities and the local community, or that local authority officials are working in the best interests of the local community.

In Practice, Decentralization process can be executed in five ways such as democratic or political decentralization, administrative decentralization, fiscal decentralization, devolution, delegation, and privatization (Ribot, 2002). Ribot distinguished between administrative and political decentralization. Administrative decentralization, often referred to as deconcentration, typically involves the transfer of administrative responsibilities from a central government to lower level agencies which are upwardly accountable. In a hierarchical state structure, these might include provincial or district governments to the extent that their leadership is responsible to the central government, or regional offices and local implementing agencies of particular national government ministries. By contrast, political decentralization occurs when decision-making power and control over resources are transferred to authorities representative of and downwardly accountable to local populations.

Political decentralization aims to expand the arena for public participation in governance processes by devolving power and authority to institutions at lower levels. Through greater participation, democratic decentralization is believed to help internalize social, economic, developmental, and environmental externalities; to better match social services and public decisions to local needs and aspirations; and to increase equity in the use of public resources (Ribot, 2002). With this emphasis on rights and participation, furthermore Ribot argues that meaningful analysis of decentralization processes must focus on three critical elements: actors, power, and accountability.

The redistribution of power and resources can take many forms, depending on the objectives and context of a particular decentralization initiative. Agrawal and Ostrom (2001) emphasize the fundamental importance of property rights being devolved to local actors involved in managing or utilizing a particular resource. Specifically, they argue that it is necessary for local users and their representative institutions to possess property rights that transform them into claimants and proprietors to achieve effective decentralization. Further Agrawal and Ribot (1999)

suggest that the success of any decentralization program requires the following three interconnected steps:

- the management of *political relationships* at the level of the central state so that some powerful actors at that level become committed to pursuing decentralization;

- the creation of *institutional mechanisms* at the level of the locality that prevent elite actors at that level from cornering the increased flow of benefits directed toward lower levels of governance and administration; and

- the management of *flows of information and creation of capacities* so that the new information is used appropriately to produce goods and services for people.

2.3.3. Decentralization forest management

Countries throughout Asia, Africa, and Latin America have taken steps to decentralize the management and administration of forest resources since 1990s. Agrawal (2001, in Larson 2005) estimated that central governments in over 60 countries were then devolving at least some elements of forest management to provincial and local institutions. In some contexts, it has also included a formal expansion of local communities' roles in managing or conserving forest resources in their areas. As Larson (2005) points out, informal types of decentralized forest management occurs when forest is not part of national policy or local governments, local people often manage local forest resources, with or without formal mandates to do so.

The reason of decentralization in the forestry sector is various. One of the most important arguments for decentralization relates to the historical exclusion of many local people from access to forest resources, in order to promote commercial logging. Edmunds et al. (2003, in Larson 2005) stated that people living in forest areas have been expected to cope with sometimes drastic limitations on their choices and to yield rights of self-determination commonly enjoyed by others living outside of forests. This applies to exclusion from protected areas as well as from the economic benefits of commercial logging, while, with respect to the latter, often then having to live with the effects of related degradation.

Decentralization of forest administration has been generally argued by experts that it can lead to more sustainable and equitable uses of forest resources (Anderson 2000). It is frequently expected that forests will be better managed in decentralized settings because decision-makers are physically located closer to where their policies

will be implemented. It is hoped to improve understanding of the specific biophysical, social, and institutional conditions influencing forest management at the field level; better capacity to monitor the activities of forest user groups; and greater access to local knowledge about the management and utilization of forest resources (Carney 1995). Besides, decentralization of forest administration can also allow for greater participation on the part of forest communities in decision-making processes, and for more direct accountability of policymakers to peoples whose livelihoods depend on forests (Ribot 2002)

Beside the opportunities, decentralization also carries significant risks. For instance, national governments have frequently devolved administrative responsibilities to lower level agencies without transferring any real decision-making authority. As Larson (2005) stated that in many cases the central government has outsourced costs while maintaining control. When some powers are, in fact, transferred to the local sphere, these usually involve responsibility without authority. It is highly uncommon for central governments to transfer authority over commercial timber extraction to local governments. Far more often, they devolve administrative responsibilities for less lucrative activities such as protection of watersheds or conservation areas, rehabilitation of degraded landscapes, and management of community forests.

Furthermore, the significant concern is the problem of limited institutional capacity for forest administration at the local level. This concern is often cited by central government as a means to justify the status quo (Larson, 2005). Forest resources frequently represent an important source of revenue for national governments which they are generally reluctant to relinquish. Another issue is that of accountability. In many countries, decentralization initiatives of forest administration to local governments have little accountability to the people living within their jurisdictions. In cases where local elites have been strong and traditionally marginalized groups have been unable to organize themselves, decentralization has often strengthened pre-existing power relations, rather than promoting democratic decision-making processes (Agrawal and Ostrom 2001;).

An addition, lack of coordination among forestry departments at various levels of the state hierarchy has been caused by confusing and contradictory legal frameworks in many countries (Larson 2005). In some cases, the rights and responsibilities of

governments at different levels have been poorly specified in forestry sector decentralization laws, leading to ambiguity over how authority should be distributed. In other cases, forestry sector regulations have contradicted broader decentralization laws, creating opportunities for actors at various levels to interpret the laws in ways that they find most favorable to their interests. Moreover, coordination among government agencies at different levels of the state hierarchy is also frequently undermined by a lack of transparency surrounding key aspects of forest administration, such as how permits are issued and how revenues are distributed.

Thus, to be effective, decentralization of forest management requires mutual accountability and operational coordination among government agencies across administrative levels. It requires a clear definition of roles, rights, and responsibilities for governments at each level. So, central governments have an important role to play in administering forest resources by providing technical support, training, and information to their counterparts at the provincial, district, and municipal levels, in addition to ensuring that minimum standards are met across jurisdictions.

CHAPTER 3
RESEARCH METHODOLOGY AND KEY QUESTION

This chapter explains the key question followed by the method of the research in which will used to conduct analysis to answer of the questions.

3.1. Research Questions

Present policies and practices in community-based forest management in Indonesia deals with the issues of land and resource tenure, conflict or overlap of authority, and decentralization (Kusumanto and Sirait, 2000). Therefore there is a research question regarding this problem:

What are the lessons learned of the regulatory framework and governance system of community forest management in Indonesia?

By this question, I will elaborate the regulation system in Indonesia in relation to forest management focusing on community-based forest management. I will also elaborate decentralization policy in Indonesia and the impact of it to community-based forest management in Indonesia and the role of stakeholders in implementing community-based forest management.

3.2. Research Methods

To answer the research questions and fulfill, there are four steps that I am going to conduct in this research:

- First, I will determine the background of the study
- Second, I will describe the literature review which has relevancy with community-based forest management build theoretical framework of this study. The aim of this procedure is to have basic aspect about community forest management as important tools of measuring in the circumstance of Indonesia case in the next procedure.
- Third, I will describe the current community forest management experiences in Indonesia. It also describes the regulatory framework and policies of CBFM in Indonesia, the issues, and its local governance system.

- Fourth, I will analyze the Indonesian Community Forest Management. The analysis use the narrative descriptive analysis meaning by selectively picks and mix the data gathered from literature to describe the current landscape of Indonesian community forest management. The aim of analysis is to gain the lesson learning from Indonesian experiences.
- Fifth, I will construct conclusion and recommendation to explore priorities and strategies in community forest management development in Indonesia.

3.3. Literature review and theoretical framework

In order to find the relevance between theories of community based forest management and decentralization of forest management, I will start the research by finding relevant literature in planning, CBFM, governance, decentralization, and decentralization forest management. Then I elaborate the concept of CBFM, governance, decentralization, and decentralization forest management as the analytical based to study the existing data. Finally I develop framework based on the selected discourse. This review focuses two significant sources, which are journal articles and selected books. An extensive literature review is also used as input for analysis.

The theoretical framework development is begun by discussion on relation between planning theories and community participatory in forest management. Then I will develop theory in CBFM. And finally the discussion is continued to the governance concept, decentralization, and decentralization forest management.

3.4. Data collection

Research method I use in this research is study literature and document analysis. The literature could be books, magazines, articles/journals, newspapers, other documents which relate to the community-based forest management (CFM). This research uses secondary data. It is not necessary to conduct survey or interview because most of actual data can also be searched from secondary sources. It is not practical to conduct survey because my case study about Indonesian community-based forest management experiences is currently too far away from country where I research.

3.5. Research analysis

Analysis emphasizes on qualitative data. Data is gained based on literature review that can be dependent from journal/articles, newspaper, books, official document, etc. first data is compiled and collected. Second is exploring data that has been collected and finally is doing data analysis.

To fulfill the data needs, searching data need is done by using the internet facilities but some references are founded from library that is provided in RUG University. The resource of data emphasis on scientific texts provided by university and research centre, government site and document, and other institutional (FAO, ITTO etc) that related to this research.

The analysis is started by gaining understanding to build theoretical framework of Community Forest management, its regulatory framework and governance. Afterwards, review is continued by giving the explanation of regulatory framework and decentralization of community-based forest management policy and development in Indonesia. Then I will analyze the implementation of regulatory framework and decentralization policy on CBFM in Indonesia. Finally, general concluding remarks will be based on the analysis of theoretical framework and Indonesian experiences of CBFM is used to achieve research question and research objective and recommendation for Indonesian CBFM development in the future will be delivered.

CHAPTER 4

INDONESIAN COMMUNITY-BASED FOREST MANAGEMENT: REGULATORY FRAMEWORK AND GOVERNANCE

This chapter will present the overview first the regulation system in Indonesia in general and then regulatory setting and government policies of community forest management. And second will review the decentralization forest management process and the stakeholder in community forestry development in Indonesia.

4.1. Indonesian regulatory Framework on Community Forest Management

Over the past thirty years, Indonesian national development priorities have emphasized large-scale natural resource extraction from these areas, particularly timber from natural forests. The framework for distribution of concession rights to natural forests has been highly political. The hundreds of corporations who have received these rights have enjoyed windfall profits from the rapid mining of timber. This has marginalized the community forestry activities. But major changes occurred in 1990s, the central government started to promote the community forestry. In fact, the community forestry was recognized in Indonesia law and regulation for long times. The constitution, Basic Agrarian Law, and Basic forestry law recognize the right of local communities to continue to manage their forested lands under local resource management systems and customary law. This sub chapter will elaborate Indonesian regulatory framework and policies on community forestry management.

4.1.1. Indonesian Regulatory and Administration System

Republic of Indonesia adopts unitary state system. The 1945 Constitution of Republic of Indonesia has been a base to determine the form of government. The form of unitary state is legitimised by article 1, paragraph 1, of the 1945 Constitution, which states: "the State of Indonesia shall be a unitary state, with the form of a Republic". The ultimate power resides with central government and consequently authority to make laws is given to central government, in which the laws prevail in all regions. The People's Assembly (MPR) has accomplished considerable amendments on the

constitution in 1999, 2000, 2001, and 2002. However, some fundamental principles are still maintained, included the unitary form of government.

Indonesia adopts three-tier structure of administration which are central government, provincial government, and local government. Local government consists of *kota* (municipality) and *kabupaten* (regency). Before the Regional Administration Act of 1999 enacted, Indonesia adopted a very hierarchical structure of government from central to the lowest tier of government. The higher tier of government has authority to influence the administration in lower tiers. At the same time, the lower tier of government should follow all rules set by higher tiers of government. The Regional Administration Act of 1999 had removed most of these rigid vertical relationships. It put province and local government in the same level of authority. Province and local authority have the same responsibilities but in different spatial scales.

The Indonesian regulation system is complex, the legislation come in a number of forms. Based on TAP MPR No. III/2000, the article 2 issued the following official hierarchy of legislation:

1. 1945 Constitution (Undang-Undang Dasar 1945)
2. MPR Resolution (TAP MPR)
3. Law (Undang-undang)
4. Government Regulation Substituting a Law (Peraturan Pemerintah Pengganti Undang-undang)
5. Government Regulation (Peraturan Pemerintah)
6. Presidential Decree (Keputusan Presiden)
7. Regional Regulation (Peraturan Daerah)

In practice, there are other legislative instruments in current use. They include Presidential Instructions (Instruksi Presiden), Ministerial Decrees (Keputusan Menteri) and Circular Letters (Surat Edaran).

4.1.2. Indonesian regulatory Setting of Forest Management
a. The 1945 Constitution of Republic Indonesia

The 1945 Constitution stated that all natural resources were to be controlled by the state. It was equally clear that the government, representing the state, was responsible for assuring that these resources would be managed to enhance the welfare of the Indonesian people. Strong control of the state over land and property is stated in the 1945 Constitution as follows:

"The land and the waters [and the space] as well as the natural riches therein are (at the highest level) to be controlled by the state (in order) to be exploited for the greatest benefit of the people" (Par. 3, art. 33).

b. TAP MPR IX/2001

After the constitution, the most important Act governing the management and distribution of benefit emanating from natural resources was the TAP MPR IX/2001. This act was signed into law by the People's Assembly (MPR) in 1999. It is generally viewed as the most far-reaching and explicit legal statement on the need for government to fully commit itself to natural resource management and agrarian reform. The Act requires the government to review, rationalize and harmonize all laws pertaining to land and other natural resources. This act has become the most powerful policy tool for the process of reforming the Indonesian Agrarian Law. TAP MPR IX/2001 states that the conflicting laws relating to land and other resource tenure by the government sectors should be discontinued because of their negative effects on poverty alleviation and on natural resource conservation and management. These laws need to be revised, revoked or changed using a holistic approach. At the same time, TAP MPR IX/2001 mandates that conflict be solved through just and fair processes.

c. Basic Agrarian Law no 5/1960

The Basic Agrarian Law 1960 covers the entire Indonesian land base. It guides the government in recognizing and awarding types of rights over land. It translates the right into some basic state authorities concerning the land. First, the state may use and develop the land. As the second authority, the state regulates legal relation between the people and the land. Finally, the state also regulates legal actions of the people upon the land. All parties including the state, according to Basic Agrarian Law of 1960, can use and develop the land. However, since land has inherent social functions, the state must prevent all attempts to run monopolistic private business upon the land. Monopolistic use of land by government can only be executed based regulation. Besides, land title granted by government to individual or legal entity only concerns with interests that directly connected with land uses (Basic Agrarian Law of 1960, Art.4, Par. 2).

The Agrarian Law of 1960 recognizes the right of local communities to continue to manage their forested lands under local resource management systems and customary law as far as they did not in conflict with state's laws. According to this law, local communities are entitled to have their rights legally recognized, registered and honored by government. Furthermore, Basic Agrarian Law of 1960 divides land titles into several categories based on type and degree of control of the holder over the land. Several important land titles need to be distinguished here, which are Freehold Title (*Hak Milik*), Cultivation Rights Title (*Hak Guna Usaha*), Building Rights Title (*Hak Guna Bangunan*), and Right to Use Title (*Hak Pakai*). To a lesser degree, there are also other legal land titles, which are Right to Rent for Buildings, Land Clearing Rights, Forestry Rights, Water Use and Fisheries Rights, Airspace Use Rights, and Land Title for Social and Religious Purposes. All these titles are issued by National Land Agency or BPN (*Badan Pertanahan Nasional*).

Government Regulation 24/1997 provides the procedural framework for the recognition or awarding of the various classifications of land rights.   Under this regulation, lands are divided into two: the first being Customary (Adat) Lands, where rights can be recognized to have existed prior to the enactment of the Basic Agrarian Law, and the second being State Lands, which are open for distribution to private entities.

d. The Forestry Law No 41/1999

The 1999 Forestry Law was enacted to replace the 1967 Basic Forestry Law. It empowers the Department of Forestry to determine and manage Indonesia's Kawasan *Hutan* (Forest Zone). The law does not recognize the term "forest lands". The term forest lands (Tanah Hutan) is not a legal term and is not even an expression that is used in the general discourse on forestry and forest management. The legal term used is "Forest Zones" which is defined as "a certain area which is designated and or stipulated by government to be retained as forest". The law then divides the forest zones into two distinct areas:

• State Forests, where the government (Department of Forestry) has established that there are no private rights over the land and;

• Private Forests, where the land and land cover qualify as being forests but where there are private rights attached.

Article 67 of Forestry law 1999 recognizes customary law community as long as it exists. The commnunities have the rights to collect forest products for daily needs of concerned communities, undertake forest management in accordance with prevailing customary laws which is not contradicting the laws, and be empowered for improving their welfare. Furthermore article 68 mention that community can participate in forest development by providing information, suggestions and considerations for forest development; being informed about plans of forest allocation, forest product utilisation and forestry information; and undertaking supervision regarding the implementation of forest development, either directly or indirectly.

Forest zone can only be legally defined as State Forest Zone when it is established that there are no other rights to the land upon which that forest zone sits (rights as presented in the Agrarian law of 1960). In order to determine the status of local rights with the Forest Zone, a detailed four-step process was created called the Berita Acara Tata Batas (BATB, Forest Delineation Process Document). The step of forest delineation includes:

- preparation of forest border projection including preparation map draft, meeting of forest delineation committee. The members of committee include customary people, village leader besides district and ministry of forestry apparatus;
- temporary forest border making;
- definite forest border making; and
- legalization of forest delineation

BATB has to follow procedures that involved the communities. When communities sign the agreement, it means that they have no claims over the area and that the process was just and fair with a clear explanation of the legal consequences. By signing the BATB, the Ministry of Forestry and BPN (National Land Agency) declare the area legally and legitimately as State Forest Zone.

Figure 1. Forest Delineation process
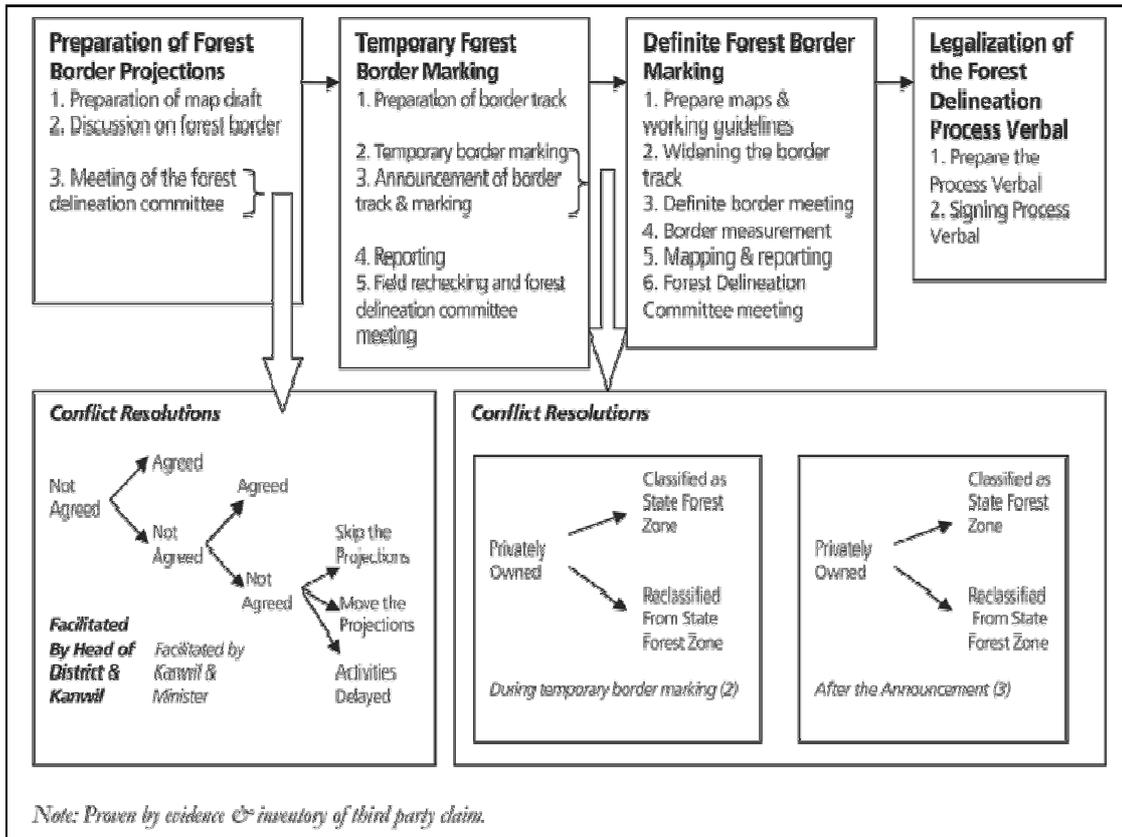
Source : Contreras et al, 2005

4.1.3. Current Government policy on Community Forest Management

In Indonesia, current CFM programs are under the authority of the Department of Forestry, which each has a specific administrative-political mandate according to the designation of forest to different forest types, such as production forest or protected forest. The following is a brief description of current Department of Forestry programs.

a. Pembinaan Masyarakat Desa Hutan Terpadu: Java (PMDHT)
   (Integrated Forest Village Development)

This program, first known as the Java Social Forestry Program, was initiated in 1991 by the Directorate General of Forest Production. It is the latest effort of the State Forestry Corporation (Perum Perhutani), the forest corporation responsible for the management of state forest lands on Java, to increase the participation of local people in tree plantation development and to enhance the socio-economic conditions of forest communities. The social forestry management system is based on ally cropping.

Participating farmers were organized in forest farmers groups (*kelompok tani hutan* or KHT). Farmer participants assist in the development of the timber plantation and are allowed to grow crops in between the tree until the time the tree canopy closes, generally a period of between two to five years. This system is known as Tumpang Sari. The program is currently experimenting with new benefit sharing schemes by increasing the amount of land available to farmer participants for non-timber products. In each Java's three provinces, pilot areas have been developed where 20% of a timber plantation is handed over to farmers to plant trees of their choice. All benefits from these trees, with the exception of timber, go to the farmers.

b. The Hutan Kemasyarakatan Program (HKM): (Community Forestry Program)

Community forest program was initiated by the Directorate General of Rehabilitation and Social Forestry in 1995. According to Fay and De Foresta (1998), it is the government's most advanced effort to increase the participation of local communities in forest resources management, though far more restrictive than similar programs in other Southeast Asian countries and in South Asia.

This program is based on minister of forestry's decree no 622/1995. The program is aimed for the rehabilitation of state forest areas that officially have been designated as production, protected or conservation forest but which do not fall under any concessions. Forest management by the local people is not approved in the concession areas of forests or in industrial tree plantations in order to avoid and to resolve conflicts between the companies and the people. A Ministerial Decree (No. 622) requires communities to plant timber trees while allowing them to interplant the trees in a alley cropping mode with non-timber trees in the proportion of 70% to 30% respectively or with food crops until the time the timber reached the age of two. HKM participants have no rights to the timber from trees they themselves plant. Farmers could not enjoy the benefits from the timber trees they themselves plant since they were only allowed to harvest the non-timber crops. Farmers were therefore not stimulated to seriously care for the timber seedlings and to protect project areas from fires or wild animals.

Researchers and NGOs (international and national) struggled to broaden the programs' scope between 1995 and 1998. This led to a revision of the 1995 Ministerial Decree resulting in 1998 in a new Decree (No 677 and Ministry Decree No. 865/1999). The new decrees allowed participating farmers to harvest forest products which also

includes timber, on the condition that they organize themselves in co-operatives or farmer organizations acknowledged by the government as Utilization Permits, applicable for 35 years. This concession involves production forests (hutan produksi), protection forests (hutan lindung), and conservation areas (kawasan pelestarian alam) such as national parks within the national forests which are free of other rights. All the activities of producing wood and non-wood forest products, including planting, tending, protecting, harvesting, and marketing for the purpose of village consumption and sale, are regarded as community forestry activities.

c. Pengelolaan Hutan Produksi oleh Masyarakat Tradisional (PHPMT)
   (Production Forest Managed by Traditional Communities)

In 1997 the Minister of Forestry introduced the Traditional Community Natural Forest Management Program. The objective of this program is to involve customary communities (*masyarakat adat*) in the management of a production forest area with NGOs and higher educational institutions as community facilitators in the management of forests.

Participants are to be traditional or isolated communities. Candidate sites are limited to less than 10,000 hectares. The customary community involved is given the right to harvest both timber and non-timber forest products. But no contract regulations have been as yet ruled out regarding between communities and the government, bringing about some confusion with the communities involved. The Department of forestry has assigned NGOS and universities in 13 Indonesian provinces to play a community facilitating role in the program. However, these NGOs and universities were assigned by the provincial Forestry Department, however without any preliminary consultation with the communities concerned. In 1999 a new Ministry Decree No. 317 adopted a regulation regarding the harvesting of timber and non-timber products for own use in non-concession forest areas. For being eligible, communities or individuals should form a pra-cooperative or cooperative.

The management of this program has been delegated to mid-level Department officials and its development has been very slow, calling into question the how much of a government priority this approach may be. But it does represent another example of movement within the Department of Forestry towards some devolution of forests management responsibilities to local people.

d. The Creation of an Area with Distinct Purpose

   (*Kawasan dengan Tujuan Istimewa* or **KdTI**)

   KdTI is an area within the State Forest that is controlled and maintained by local communities based upon a right given to the communities by the Department of Forestry. This right is provided according to Ministerial Decree Number 49 issued in 1998. The KdTI policy was applied to provide the customary community of Krui in Lampung, Sumatra Island, with the right to manage and develop their damar (*Shorea javanica*) forest garden on an area of about 29,000 hectares located within the State Forest. The decree recognizes the environmental and social benefits of the prevailing land use system, the role of local or existing institutions that manage this system, and the right of farmers to harvest and market timber and other forest products they themselves plant.

   KdTI was first proposed by local non-governmental organizations, universities and other international researchers in 1994. The objective was to foster collaboration and respond better to the needs of Krui agroforestry farmers. An important factor for these groups was the concern of local farmers that approximately 29,000 hectares of the Krui agroforests are located within the State Forestry Zone. This area had been awarded to forestry Concession Company that covered these lands. This company therefore, held the right to manage this area, including the possible harvesting of an estimated 3 million commercially valuable trees planted by Krui farmers.

   The KdTI right is unprecedented in that (Fay & De Foresta, 1998):

1. it sanctions a community-based natural resource management system as the official management regime within the State Forest Zone;

2. the Department of Forestry allowed non-governmental organizations working with local people to be directly involved in the drafting of a forestry decree;

3. it allows the harvesting of timber from within the State Forest Zone by local people;

4. it allows the limited harvesting of timber from within a watershed, provided the watershed functions are still met;

5. it devolves the management responsibility of State Forest Lands to a traditional community governing structure (Masyarakat Hukum Adat).

6. is a right provided without a time limit

4.2. Local Governance of Community Forest management
4.2.1. Decentralization of Forest management in Indonesia

For more than 30 years, forest management in Indonesia was extremely centralized under the autocratic New Order regime. The ministry of forestry had a big power on forest authority. The department has a branch office until in the district levels. The district forest service has authority only in small private forest; meanwhile large state forests were managed by ministry of forestry and well-connected to companies that were given forest concessions by the central government. Technically, concessionaires were supposed to contribute to local community livelihoods, but more often than not communities received little if any benefits from large concessions operating in their area. In reality, the concessionaries system of forest management systematically marginalized local communities.

Pigure 2. Control over forest before decentralization
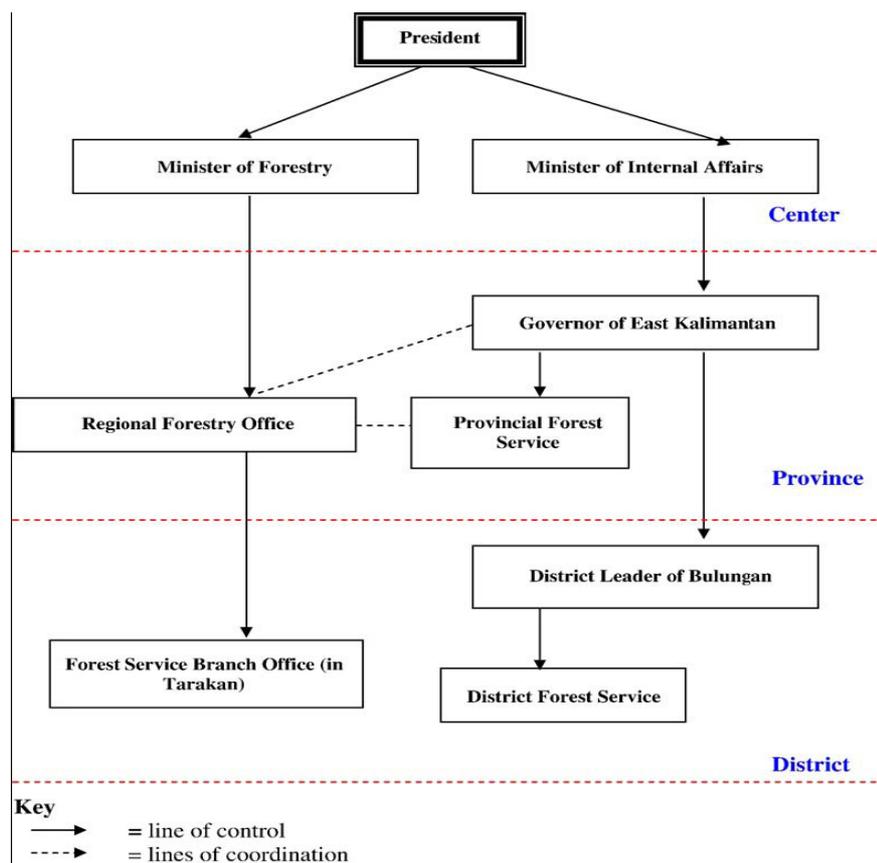
Source : Wollenberg et al (2006)

But in 1998, Indonesia got a momentum for decentralization. The economic and political crises of 1997-1998 generated a new openness in Indonesia's policy

arena. In many parts of Indonesia, actors in the districts and provinces sought to reverse the injustices and inequitable development left behind by Soeharto's three decades in power. Local figures complained that, as most decisions of any significance had been made in Jakarta, government officials and business groups with influence at the center had become rich while local communities had been deprived of their land and natural resources. District and provincial actors wanted a greater role in running their own affairs, particularly with respect to the administration of timber harvesting, mining, and other forms of natural resource extraction within their jurisdictions. In 1999, after the resigning of President Soeharto, Indonesia entered a new era of governance. After more than three decades of being under a highly centralized system, the central government has issued several important pieces of legislation aimed at transferring authority to the provincial and district governments. The foundations of decentralization were laid out in Law No. 22/1999 on Regional Governance and Law No. 25/1999 on Fiscal Balancing between the Central and Regional Governments, both of which were issued in May 1999.

Law 22/1999 uses the term decentralization to refer to the delegation of governance authority by the central government to Autonomous Regions. These regions are including provinces, districts (*kabupaten*), and municipalities (*kota*), which are deemed to be related to one another in a non- hierarchical fashion. The law vests these autonomous regions with authority to govern and administer the interests of the local people according to their own initiatives, based on the people's aspirations, and in accordance with the prevailing laws and regulations (article 1).

In particular, Law 22/1999 assigns district and municipal governments authority to exercise principal governance functions in a wide range of fields, including public works, health, education and culture, agriculture, forestry, communication, industry and trade, capital investment, environment, land, and cooperative and manpower affairs. Except authority in the fields of international policies, defense and security, the judiciary, monetary and fiscal matters, and religion (Art. 7) are retained by central government. It also specifies that the central government has responsible and right to the policies on national planning and national development processes at the macro-level; fiscal balancing; systems of state administration and state economic institutions; human resource development; and utilization of natural resources; as well as strategic technology, conservation, and

national standardization. In forestry sector, control over forests shifted to districts nearly overnight, abolishing the powerful regional arms of the Ministry of forestry (Fig. 3).Channels for central government control over the districts were reduced to informal or party connections. The main role on forest authority was handled by district forest services.

Figure 3. Control over forest after decentralization
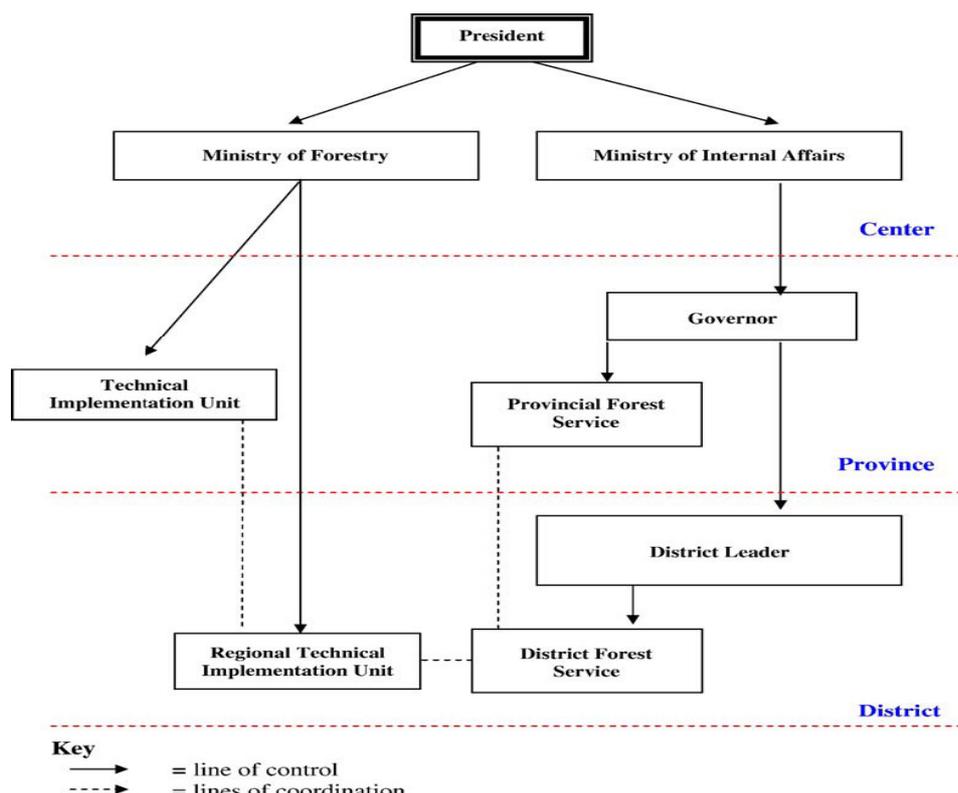
Source : Wollenberg et al (2006)

By contrast, provincial governments are given relatively little new authority. Article 9 specifies provincial authority on three levels. First, provinces are given authority in the field of inter- district and municipality governance, as well as authority in certain other fields of governance. Second, provinces will have authority that is not or not yet able to be exercised by district and municipality. Third, provinces will retain their status as administrative territories (*wilayah administrasi*) through which they will hold authority in areas of governance that are delegated to the Governor in his role as representative of the (central) Government.

In promulgating wide-ranging decentralization of authority, Law 22/1999 also greatly expanded the role of the Regional   House of Representative

(*Dewan Perwakilan Rakyat Daerah,* DPRD) at the provincial, district, and municipality. Law 22/1999 delegated the DPRD with a series of new powers by assigning to it the authority to elect the regional executive (i.e. the Governor, *Bupati*, or Mayor, depending on the level) and to play a more active role in determining the policy of the executive branch of provincial, district, or municipal governments.

In 2004, Law 22/1999 was revised and replaced by Law 32/2004. This law emphasizes on promoting cooperative relations among regional governments and on ensuring effective coordination between regional governments. Law 32/2004 articulates not only areas where regional governments can exercise autonomy, but also areas where they are expected to engage in co-administration functions, together with governments at other levels. Moreover, Law 32/2004 specifies that Governors, *Bupatis*, and Mayors will be chosen through direct popular elections. It emphasizes that the Head of Region and the DPRD occupy positions of equal status, in order to encourage mutual cooperation.

Supporting the law 22/199, Law 25/1999 on Fiscal Balancing provides a framework for the redistribution of revenues among Indonesia's national and regional governments. In particular, the law gives district and provincial governments considerably greater authority and responsibility to manage their own budgets, and to raise their own revenues to help offset the added costs associated with decentralization. Significantly, it also authorizes a redistribution of royalties from timber production and most other types of natural resource extraction among the country's national, provincial, and district governments. In the forestry sector, the fiscal balancing law stipulates that provincial and district governments would now receive a combined 80% of the Forest Resource Rent Provision (*Provisi Sumber Daya Hutan,* PSDH) (up from a combined 45% prior to regional autonomy) and that district governments would receive 40% of the highly lucrative Reforestation Fund (*Dana Reboisasi,* DR) (which the central government had retained entirely prior to regional autonomy).

On May 6, 2000, exactly one year after Law 22/1999 was enacted, government enacted Government Regulation 25/2000 on the Authority of the Government and the Authority of Provinces as Autonomous Regions specifies the division of responsibilities between the national and provincial governments on a sector-by- sector basis. The official elucidation accompanying the implementing

regulation accounts for this lack of attention as follow

The authority of districts/municipalities is not covered in the Government Regulation because Law 22/1999 effectively places all governing authority in the districts/municipalities, with the exception of authority that is covered in this Government Regulation.

In this way, Regulation 25/2000 implies that the authority of district governments is to encompass whatever authority is not specifically assigned to the national and provincial governments. Significantly, Article 4 of the implementing regulation also defines the mechanism by which the central government can resume authority or responsibility over areas where autonomous regions (provinces, districts, and municipalities) are incapable of carrying out certain tasks.

In general, the central government is assigned authority and responsibility for setting criteria and standards for various aspects of forest administration, while the provinces are responsible for handling elements of forest administration that extend across the boundaries of districts and municipalities within their jurisdictions. Districts, in turn, are assigned authority and responsibility for carrying out day-to-day functions of forest administration. This presumably includes the authority to issue permits for commercial timber extraction and to formulate district regulations for forest management as long as they do not contradict higher laws.

Regulation 25/2000 gives the central government lead responsibility and authority to:

➢ Determine the areas to be classified as Forest Estate and changes in their status and function;

➢ Formulate national macro-level plans for forestry and estate crops, with general schemes for land rehabilitation and land conservation;

➢ Determine the criteria and standards for licensing utilization of forest areas, environmental services, and nature recreation areas; utilization and extraction of forest products; and management of hunting parks;

➢ Determine the criteria and standards for tariffs on forest utilization license fees, forest royalties, reforestation funds, and investment funds for the costs of forest conservation;

➢ Determine the criteria and standards for the production, processing, quality control, marketing, and distribution of products from Production Forests;

- Determine the criteria and standards for natural resource and ecosystem conservation in the fields of forestry and plantations.

- Manage the allocation of commercial permits for the utilization of forest products and inter-province nature tourism; and

- Manage nature conservation and hunting parks, including rivers flowing through these areas.

Key elements of forest administration assigned to provincial governments include the authority and responsibility to:

- Formulate macro-level plans for forestry and estate crop areas that extend across district and municipality boundaries;

- Formulate guidelines for conducting forest inventory and mapping; forest classification; reconstruction and definition of boundaries for Production Forests and Protection Forests; rehabilitation and reclamation of Production Forests and Protection Forests; and the formation and management of forest conservation parks;

- Manage the establishment and enforcement of boundaries for Production Forests and Protection Forests;

- Manage the formation of estate crop areas that extend across district and municipality boundaries;

- Manage the allocation of permits for the utilization of wood-based forest products; utilization of non-protected flora and fauna; estate crop enterprises; and processing of forest products that extend across district or municipality boundaries;

- Manage forest conservation parks that extend across district or municipality boundaries;

- Determine the guidelines for setting tariffs for the harvesting of non-timber forest products across district or municipality boundaries;

- Participate actively with the [Central] Government in determining the boundaries of the Forest Estate, along with the change of function and status of forests, in the context of the provincial spatial planning process, which is based on agreement between the province and the districts and municipalities; and

- Protect and secure forest areas that extend across district or municipality boundaries.

4.2.2. Stakeholder in Community Forest Management

Indonesia has a lot of non-governmental organizations, researchers, International Agency, University which are active in community forest policy advocacy. Some of those working for community forest management movement realized that if local communities are to gain some protection against the conversion of their lands to large-scale agriculture or plantation forestry, it will have to be the government that recognizes and protects their rights.

In 1994 some NGOs and researcher collaborated in Consortium for Promoting Community based Forest System Management (Konsorsium Pendukung Sistem Hutan Kerakyatan - KPSHK). KPSHK's vision is to promote local people's sovereignty over natural resources, especially the forest, so as to achieve sustainable community-based management. Based on this vision, KPSHK's goals are to: (1) revitalize, research and document sustainable community-based management activities; (2) identify and support natural resource management concepts that are based on local knowledge, are appropriate to the local ecosystems, and guarantee pluralism; (3) develop networks for advocacy and campaign purposes; and, (4) reform natural resources laws and policies, especially forestry related ones, so that they are based on respect of local peoples' sovereignty and recognize and protect human rights.

There are two other important coalitions that have emerged to address CFM :

a. Kudeta

The Coalition for the Democratization of Natural Resources (KUDETA) is a network of 82 Indonesian NGOs and student organizations. KUDETA came together immediately after the Suharto resignation. The coalition demands that the transitional government assure the management of natural resources and benefits derived be returned to local communities. There were three main demands:

o Redefining the boundaries of the state forest, the identification of *adapt* communities and the full recognition of their rights;

o Restructuring of State institutions responsible for environmental and natural resources management;

o Redirecting all development efforts towards community-based resource management.

b. FKKM

The Communication Forum on Community Forestry, (Forum Komunikasi Kehutanan Masyarakat, FKKM) was established in 1997. Founders included several Indonesian NGOs, university professors and students and reform-minded forestry officials. Over the past year the FKKM has become an increasingly effective voice of local communities located within the state forest areas and an important counterbalance to the traditional foresters within the Department of Forestry.

The forum works more on developing detailed critiques of forestry policy and advocating a new paradigm for natural resource management. Strategies focus more on the use of media, meetings with high level forestry officials, including the Minster and lobbying in Parliament. FKKM has taken the position that reform can only happen after the government recognizes the failure of previous forest management practices. They call for a new paradigm which is politically, socially, economically and environmentally sustainable. To accomplish this, FKKM continues to carry out collaborative research, organize workshops and cross-visits among participants.

Beside NGOs, the CMF is supported by the emergence of an indigenous people's movement. At a meeting in Sulawesi in 1993, indigenous leaders and support NGOs established JAPHAMA-Jaringan Pembelaan Hak-hak Masyarakat Adat (Indigenous People Rights Advocates Network). JAPHAMA set out to bring attention to the many human right abuses being suffered by *adat* communities. Network members addressed national policies that worked against the interests of *adat* communities and helped link their efforts to gain recognition of *adat* rights to the national arena. During its first few years, JAPHAMA was successful in consolidating the network and raising public awareness, particularly in the Indonesian media, of the problems *adat* communities face in Indonesia.

In early 1999, JAPHAMA organized a nationwide consultation of *adat* communities. The meeting was a high profile gathering of *adat* leaders, men and women, and a colorful show of political force. More than two hundred representatives from hundred ethnic groups attended. The theme of the meeting was "Improving the bargaining position of *adat* Communities." The meeting was divided by sectoral and legal issues, and government Ministers were invited to hear the concerns of the participants and share what they were doing to address the problems presented.

On the final day of the Congress, participants formed the Alliance of adat Communities of the Archipelago (Aliansi Masyarakat Adat Nusantara -AMAN). AMAN's members are indigenous communities in addition to indigenous organizations at local and regional levels (referring to district or customary bounded territory and provincial space). AMAN has 927 registered communities, and 777 of them are verified members. 18 indigenous organizations at local level and 11 at regional level are allied with AMAN.

The second Congress (AMAN II) was held in September 2003. The main goals were: (a) to draw lessons learned from implementation of the decisions of AMAN I over the last 4 years; (b) to consolidate the organization of indigenous peoples and to develop synergy of all actions of the indigenous communities at regional levels; (c) to mobilize broad-based support for the indigenous peoples' movements through strengthening and broadening of the alliance with other pro-democratic groups; (d) to develop organizational structures that are more responsive to changing situations and more effective in serving the members; and (e) to sharpen the platform of the movement by developing strategic guidelines for organization and programmatic frameworks that accommodate the aspirations and demands of the indigenous peoples in Indonesia. Aware of the challenges and main goals, the second Congress brought out some important results. A new structure of the National Council with defined area of work, and set of Coordinators, improvement of its bylaws, political resolution, and programs were all adopted.

4.2.3. Indonesian Indigenous Community Forest Management

In various places in Indonesia, there are evidences showing the practice of customary law. These indigenous communities have been practicing community-based ecosystem management for centuries. These systems or laws incorporate local knowledge and beliefs that are based on the wisdom and experience of past generations. Under this law, communities are bound to respect the principles of, for example, forest clearance for agricultural use, cattle breeding, game hunting and forest products gathering. Besides, they also contribute to the economic well being of local communities. By growing paddy rice on their farms, sago palm, sweet potatoes, and other crops, indigenous people are contributing to national efforts to achieve food security and self-sufficiency. Without support from any government sponsored

agricultural extension services, they have been cultivating rattan, rubber, raising honeybees, and collecting swallow nests.

Indigenous ecosystem management systems are based on community knowledge about appropriate and productive land and natural resource use. Most indigenous communities have developed specific terms for different uses of land and other natural resources, including terms for different types of vegetation and tenurial arrangements. For example, in central Sulawesi an indigenous community called the Kaili have developed zoning and land use systems within their adapt system. There are designated areas known as tana polidaa for rice fields and tana pobondea for orchards. Tana popamba refers to home gardens and herbs, popa tana to burial places, suakan ntotua to forests, pancoakan rodea to extractive forests, viyata nubulu to sacred areas, suaka viyata to sacred forests, etc (Moniaga, 1998). Other examples of indogenous pratices such as *Mamar* in Nusa Tenggara Timur, *Lembo* as practiced by the Dayak communities in East Kalimantan, *Tembawang* by the Dayak in West Kalimantan, *Repong* by Peminggir communities in Lampung, and *Tombak* by the Bataks in North Tapanuli (Sirait et all, 2000)

These practices show that indigenous communities have had and are capable to manage their own natural resources including the forests for generations. It is known that these patterns include systematic forest management by recognizing land use management under the classification of natural forest, forest plantation, orchards and agricultural use. These practices have resulted diversity of forestland use patterns that are dynamics and integrated bearing numerous economic, socio-cultural, religious, and ecological benefits for the communities and environment (Suhardjito in Sirait et all, 2000).

4.3.Concluding remark

From the previous sections is clear that community forestry in Indonesia has become government concern. It related to civil society struggle on community forestry development. A vigorous civil society movement has emerged to challenge State control of forests including several broad alliances of NGOs and other civil society elements such as the Coalition for the Democratization of Natural Resources (KUDETA), the Communication Forum on Community Forestry (FKKM), and the Alliance of the Indigenous Peoples of the Archipelago (AMAN). While their tactics

and priorities vary, all have called for devolution of control of forests to local communities.

Progress is being made in Indonesia toward developing policies that will secure the community forestry. Government policies on community forestry program and decentralization policies have raised opportunity for community forestry development. Yet enormous challenges lay ahead for customary communities, NGOs and government. Much effort is still needed as Indonesia tries to create a national policy framework that provides guidance and enables local communities and local government to sort out the many overlapping rights on the ground. In the next chapter, it will analyze the some challenges faced by decentralization forest policies on community forestry development.

CHAPTER 5

ANALYSIS OF INDONESIAN REGULATORY FRAMEWORK AND DECENTRALIZATION OF COMMUNITY FOREST MANAGEMENT

Indonesian forest decentralization has been facing challenges in protecting and managing its forest resources. It deals with social tensions over forest rights between the government and indigenous and other local communities. Confusion and disagreement over who should control or own Indonesia's forests and forest zones are widely seen as underlying sources of many of the challenges Indonesia faces in managing its forest estate. This chapter will elaborate this issue more specific on regulatory framework and land tenure of community forestry.

5.1. The Impact of Decentralization to Adat Communities

The decentralization has provided opportunities for adat/customary groups to reinterpret *adat/*customary rights. In the past, *adat* communities were only able to express themselves freely through social practices shaped through custom and expressed mainly through dance and dress. It is caused due to constrain within the overall structure of the central government dominated system, where diversity and culture were defined by the state. With decentralization era, local communities now have the opportunity to reassert practical aspects of *adat*. According to Law 22/1999, communities are legal bodies with the authority to govern and administer the local community based on origins, local customs and traditions acknowledged in the national governance system and located within a district. For instance, in West Sumatra this has led to the re-establishment of the traditional governance structure known locally as *nagari* (Barr *et al*, 2006). The concept of autonomous village governments empowered to make regulations and required to protect local custom and tradition. Particularly in areas where *adat* practice and institutions managed to survive three decades of force-fed New Order regime, the potential for developing or reviving community-based common property resource management regimes is greater now than it has been in a long time.

Decentralization also led to increased awareness of local peoples' rights to forests and other natural resources, as well as the value of these resources. Impatient

with the slow movement of the legal reform process, many adat communities claimed their rights by negating the rights of timber concessionaires and/or simply occupying state forest land. They are now actively declaring ownership, boundaries, and territories over the resources. This new awareness of the meaning of boundaries and extent of territories has arisen due to the monetary value now given to natural resources. The idea of boundaries itself has also changed. In the past, boundaries were generally laid along natural features, mainly rivers or water divides. Since decentralization, however, local boundaries in many areas have been forced in arbitrary lines to allow the inclusion of valuable resources (Anau *et al.* in Barr *et al*, 2006). However, with *adat* right, this does not always mean that such groups are willing and capable to manage forest resources in a sustainable manner. While many customary communities use *adat* claims as a strategy to protect forests, many also feel it is easier to sell exploitation rights for a share in the revenue. Moreover, the generation of revenues in this manner provides no guarantee that the profits will be equitably shared among community members or used to support local development needs (Resosudarmo, 2004).

Decentralization has thus encouraged attention to local people's aspirations. Local social forces gained more formal influence in local governance of forests. Ethnic politics have become as important as party politics in structuring local government relations. With power struggles operating semi-autonomously at the district level, local ethnic groups have come to dominate formal forest policy decisions. They have significantly influenced local government to channel resources to them, both formally and informally. Decentralization thus has broader implications for empowering local groups who would otherwise never have a voice in state forest policy. However, it is often that the individuals with the authority to make decisions on behalf of local communities have different interests from the community's goal. In many regions, local elites have become brokers in negotiating profit-sharing and management partnerships with concessionaries in the name of local communities (Yasmi *et al* at Barr *et al* ,2006). As such, the benefits associated with such agreements are often not distributed equitably among community members. Rather the benefit goes to community elites and local government officers.

So in general, the impacts of decentralization on the livelihoods of communities living in and around forests have been 'mixed' (Resosudarmo 2004). There are some

positive impacts of decentralization on the livelihoods of communities, as well as some negative impacts. An addition to the positive side as has been explained above, at the community level the positive impact is that increased forest exploitation benefited local communities at least in the short term. The local communities get greater opportunities to share in the benefits associated with commercial exploitation of forests which previously went mainly to concessionaries. Yet the decentralization of forest management still faces the problem. The most important problem in decentralization forest management is the regulatory contradiction and the tenurial ambiguity. These problems will be explained in the next discussion.

5.2. Regulatory Contradiction of Forest Decentralization

Indonesia's decentralization process was poorly implemented. The decentralization process was hindered by significant ambiguities and contradictions of existed multitude laws and regulations. Decentralization of forests management, in particular, has been complicated by the fundamental contradictions that exist between Law 22/1999 on Regional Governance and Law 41/1999 on Forestry. The two laws convey profoundly different assumptions about the manner in which legal and regulatory authority should be shared among the central, provincial, and district governments (McCarthy, 2004). The decentralization law (Law 22/1999) worked on the assumption that district and municipal governments would attain extensive discretionary powers, with the central government only retaining powers over setting policy guidelines and standards. In contrast a Basic Forestry Law (law 41/1999) is highly centrist in tone and largely focuses on reaffirming the central government's primary authority in most major aspects of forest administration. The forestry law failed to detail the specific government agencies or levels of government that had responsibility for particular administrative functions, and allowed the Forestry Ministry to retain decision-making powers over large-scale decisions regarding the forestry estate. The 1999 forestry law, moreover, provides the legal basis for the Ministry's subsequent efforts to recentralize key elements of administrative authority and leaves only operational matters in the hands of the districts and municipalities.

When the government enacted the regulation (PP25/2000) for the decentralization act, this only specified areas of responsibility of provincial and central governments. By implication, all remaining responsibilities were left in the hands of district governments. In Other hand, district governments have interpreted Regulation

25/2000 to mean that they have primary authority for administering forest resources that fall within their district boundaries. As a result, every region had already begun to establish regulations that ran counter to decisions prepared by other levels of administration, including those relating to the forestry sector. When district government agencies used their enhanced discretionary powers under decentralization to create district regulatory regimes, they ignored some laws and chose to base district regulations only on those higher laws that suited their agenda. As noted earlier, in drafting their own regulations, districts could selectively invoke areas of legislation to be found in overlapping and contradictory laws and government regulations that supported their particular policy. Officials who moved forward quickly would make the most of the opportunity to shape the future and establish a reputation for successfully managing the district for local interests.

Therefore, many regulations on forest management were overlapping and contradictory, with the result that responsibilities for regulating the forest became unclear and conflicts emerged over the resolution of these ambiguities. This situation was further complicated by the absence of an effective institutional mechanism for resolving contradictions that exist among laws and regulations issued by governments at the central, provincial, and district levels. Furthermore National People's assembly (MPR) decree issued in 2000 supported this position by changing the hierarchy of laws, ensuring that ministerial decrees were now guidelines and had a lower status than district regulations (Resosudarmo, 2004). As a result, through 2000, many district governments argued that there was no legal basis for the central government's claim that decrees issued by the Ministry of Forestry carried greater legal weight than decrees issued by a district leader (*Bupati*).

Beyond the legal ambiguities and contradictions that have existed among laws, Indonesia's decentralization process has also been undermined by a general lack of legal-regulatory coordination among government agencies, both agencies at the same level and between different levels of government. The national government has introduced most of its decentralization legislation with minimal consultation with stakeholders at the provincial and district levels. Conversely, regional governments have acted autonomously in issuing district regulations in a little consultation with national government officials. This lack of coordination has been especially problematic for district governments as most have very limited legal expertise to

ensure that the laws and regulations they issue are fully legitimate, consistent with higher laws, and can be implemented effectively.

5.3. Ambiguity of Land and Forest Tenure

In long-term communities living within the state-defined forest zone are with rights recognized in Indonesian jurisprudence. These communities can argue that their forests and their lands are private and administrative procedures that classified them as state forest violated their rights. The status of adat/customary forest is regulated in the Constitution of 1945 and some laws. The Constitution (Article 18) asserts that the division of the Indonesian territory is based on the traditional rights of special regions. Thus, The Agrarian Law of 1960 recognizes the right of local communities to continue to manage their forested lands under local resource management systems and customary law. According to this law, local communities are entitled to have their rights legally recognized, registered and honored by government. Furthermore The Basic Forestry Law 1999 regulates the status of local rights to manage resources such as forests. According to this law, forests are divided into two ownership categories: state forests for the greater part and private forests for the lesser part. State forests can be managed either on the basis of formal law or controlled by the customary law. Nevertheless, both the Basic Forestry Law and Agrarian Law recognize customary rights systems only as long as they do not contradict with national and State interests. Central elements of the regulations have entailed result in the following situation: the State has the right to control all decisions about land in the national interest, customary rights may be extinguished without compensation when a national interest is invoked, individual land titling is promoted, though only 20% of land parcels have yet been registered, collective tenures are treated as weak rights of usufruct, collective tenures must give way to State-endorsed natural resource development programs, including logging, and no procedures exist for the delineation or registration of collective tenures (Colchester, CIFOR)

While recognized on paper, however, such recognition has yet to be realized in the field. Indeed, state recognition of customary rights is, in many respects, not so easy. There is ambiguity as regards the rights of control and ownership of lands, the confusion whether the people owns the forest they themselves plant or the state have the privilege of control and ownership of both the forestlands and the resources on those lands. Legal confusion and uncertainty have been devastating to the rural

communities that for generations have been dependent on forests for their livelihoods, but have had no legal rights to those forest lands. In New Order Era (1960s-1998), extensive timber concessions were granted in areas occupied by rural communities that had no recourse to the law. Timber concessions managed forests without consideration of community rights. As a result, conflicts between communities, government and timber concessionaires multiplied and became endemic throughout Indonesia. Some indigenous people who feel they have exhausted their efforts at peaceful dialogue with local government have taken direct and aggressive action against companies that have entered their lands. On several occasions they have burned base camps of timber plantations companies that have ignored local land rights (McCarthy, 2004).

In regional autonomy Era, with regard to tenure, decentralization has irrevocably changed local perceptions and value of forests and other natural resources, especially in regions where these resources have high economic value. This change is primarily indicated by the increasing conflict over resource access and ownership, and increasing demands for local rights (Sirait, et al 2000). Increasingly, local stakeholders are asking why district governments did not use decentralization as an opportunity to re-regulate forest and land tenure, and to formalize *adat* (customary) systems for forest access and management. However, in decentralization law, authority for setting forestry boundaries was not devolved to the districts. This meant that district governments did not have significant authority over tenurial issues within the Forestry Estate. For national policymakers, it is perhaps much easier to believe that human resources at the community level are weak and, therefore, state control over resources and statutory law are needed to regulate property rights. Furthermore, there is little incentive for districts to regulate tenure, especially in favor of local people.

Afterwards, given the general lack of coordination across levels, it is unclear as to who is then responsible for guaranteeing the security of land and forest tenure. Most government agencies have shown little desire to regulate or provide security of tenure even it is commonly accepted and believed that the government at each level is ultimately responsible for doing so. The lack of a clear division of authority and inconsistent regulations which are not enforced have resulted in an intense competition over forests and other natural resources, decisions are made based on short-term benefits rather than long-term strategies. At the local level, confusion over rules has frequently enabled village elites to control access to forests and to capture many of the

benefits from forests, causing the marginalization of weaker parties (Simarmata, 2004). In some communities, it is also the case that *adat* leaders have been co-opted by government agencies or private sector actors. *Adat* leaders have learned to expect government honoraria as their rights. It would appear to have strengthened *adat* but it can also have the effect of disempowering *adat*. For example, recognition of *adat* claims often means that a company with logging rights pays compensation to local community groups. However the payment of compensation is often interpreted to mean that customary rules might be broken on a routine basis as long as cash payments are made.

Many NGOs have argued that communities should have responsibilities for regulating their own property rights just as they had in the past. However, in the current situation of uncertainty, devolving tenure regulations to local and *adat* communities is also not a straightforward process. The large number of ethnic groups makes it almost impossible to decide which party has more rights than others. It may be in the interest of district governments to maintain the ambiguity to allocate land in ways that they judge most important and that meet their own interests (Wollenberg *et al.* 2006). In many cases, decentralization has encouraged *adat* communities to be very exclusive in managing access to forests, which in turn has raised concerns among other communities who previously shared access to those forests. Further, in the absence of clear forms of accountability in many communities, *adat* communities are not necessarily more equitable than other types of social groups. However community's tenure remains insecure unless the rights of *adat* peoples are also recognized by other groups.

5.4. Government policies on Community Forest Management

In response to public demands for community based-forest management, the Ministry of Forestry introduced the community forestry policies. At present, many CFM programs have been implemented in Indonesia using community terms such as forest management conducted by the community, participative forest management with the community, Integrated Forest Village Development (PMDHT), Community Forestry Program (HKM), and Production Forest Managed by Traditional Communities (PHPMT). Community forestry is viewed as a new idea and concept. On the other hand, community forestry acknowledges the community customary rights for

the forest areas and the redefining of traditional and local forest management system, which has been practiced for a long time.

The Ministry of Forestry policies about the community forestry are not a part of the decentralization policy, because the several policies were issued before the decentralization policy was developed. In this sense, the community forestry policies are progressive because in these policies, the community is to be a major actor in forest management and the Forestry Department (government) is to just act as a facilitator. The objectives of the policies are the empowerment of the community in forest management for the sustainability of their welfare and of the forest ecosystem. People supported the community forestry program because it had several advantages. It led to improved livelihoods, impacted rural development activities and even added to regional income without damaging forests.

However, the success of the community forestry management policy is mostly determined by how much time the government will give power and trust to local people. Limitation of community resources requires people to think about ways to implement community forestry management flexibly and gradually, because people need to organize the resources to implement their responsibilities. Indonesian policy on developing the community forestry still has limitation because the government policies are more target-oriented. Further, incompatibilities between the government (organization and officers) and communities make it difficult for the government to respond to the social processes in community forest management. Government support for community initiatives in forest management is based on individual commitment rather than institutional responsibility, understanding of policy, and the evidence at community level. Therefore, licenses for community forestry management rights have been given without clear indicators or criteria for assessing the ecological, social and economic factors involved. In many cases, licenses for community forestry management rights were given on the basis of individual relationships (Suryadi, 2002).

Afterwards, community forestry from government initiatives showed hesitation in devolving power to communities in forest management. On one side, the objective of policy is to empower the community, but on the other side, implementation of the policy was very bureaucratic and imposed administrative requirements which were difficult for the community to fulfill. The future challenge is how to develop

collaboration among stakeholders to recognize the real potential of community forest management regime in the formal forestry policy at regional and national level.

5.5. The Role of Stakeholders in Community Forestry

In Indonesia, a number of national NGOs, academics, international donors have promoted community forestry with varying approaches and effectiveness. There are so many groups or coalition between NGOs, academics and international donor such as FKKM, KUDETA, AMAN, etc. Their effort has not yet had the effect of transforming forestry practice in Indonesia on any grand scale but has succeeded in raising awareness about community forestry alternatives. In response to government policy, there are three important different group's perspectives to deal with the policy (Suryadi, 2002). The First, Pragmatic groups argue that the community forestry policy is positive because the community rights and principles of access have basically been accommodated. The limitations of the community forestry program relate to technical aspects and procedures of implementation, such as the fact that the bureaucracy can change or influence community forestry legal rights during the process. Some organizations both from NGOs and universities have supported the program and been involved both in program implementation and policy developments.

The second, moderate groups argue that the community forestry program has given an opportunity for rights and access to forest management to people. But, on other hand, the policy remains inadequate because some of regulations applicable to the program tend to be difficult for people to implement. This provides an opportunity for the government to intervene or cancel community rights or access. Therefore, these moderate groups are not involved directly in the program implementation, but consistently give input for policy reform in the community forestry context.

And finally, advocacy groups argue that there are two forest management regimes in Indonesia: one from government and one based on community initiatives. The government community forestry program is different from the people's forest management system in terms of rights and access regulations and in terms of the management process, including the method of forest use and the type of community organization set up. These groups argue that the government should recognize forest management based on community initiative without using the government community forestry program procedure. Advocates of this position have not been directly involved

in the government community forestry program and are more concerned with the whole process of forestry policy reform.

In practice, the group/forum of community forestry such as FKKM, KUDETA, AMAN, have problem in their network. The main challenge that networkers face in Indonesia is to establish real two-way links with the communities. Networks in Indonesia are basically email-based which limits their connections to the grassroots. It is difficult to expect farmers to tap into these resources. A recent evaluation of the networks carried out for the Ford Foundation came to the following conclusions (Colchester, CIFOR):

- Most of the networks are donor driven and donor initiated
- A network is only as good as its members
- Internal governance of networks is a major issue
- Networks face a dilemma between benign dictatorship and consultativeness
- Many suffer structural problems and have never questioned the links

Some networks were also criticized for being apparently closed and dominated by a few key individuals. The networks contain too many of the same people all meeting together but not really active on the ground. They generate endless minutes and proceedings; there are too many NGOs with laptops and administrative budgets. Some field activists complain that the advice of many intellectuals and NGO members is excessively ideological. There is a gap between the locals and the national NGOs. Yet the challenge is to bring the policy discussions to the field.

Many civil society argued that a general change in NGO tactics is now required in response to decentralization (Colchester, CIFOR). In the past, Indonesian NGOs have specialized and networked along sectoral lands, focusing on issues like human rights, indigenous peoples, participatory mapping, land rights, logging and community forestry. They argue, if the regional autonomy laws take effect, then NGOs and social movements would do better to develop regional not sectoral networks, helping them to focus their energies on promoting cross-sectoral reforms at the provincial and district level, instead of focusing their efforts on national legal reform.

CHAPTER 6
CONCLUSION AND RECOMMENDATION

6.1. Conclusion

Indonesian community forestry in decentralization era is facing many challenges. As early information, Indonesia adopted political decentralization system, decision-making power and control over resources are transferred to authorities representative of and downwardly accountable to local populations. All authority including forest sector was transferred to local government except authority in the fields of international policies, defense and security, the judiciary, monetary and fiscal matters, and religion.

Yet, the decentralization process in Indonesia, particularly in the forestry sector, is facing tremendous obstacles. As Agrawal and Ribot (1999) in chapter 2 suggest that the success of any decentralization program requires the following three interconnected steps: the management of political relationships, the creation of institutional mechanisms, and the management of flows of information and creation of capacities. None of these three steps is fully in place in Indonesia, and the attendant institutional mechanisms within the state and within the villages are dysfunctional. It is therefore debatable whether decentralization has actually occurred or whether the Indonesia's decentralization process has generated tangible benefits for communities living in and around forests. A number of factors have contributed to this. First is the confusion and uncertainty from inconsistencies and regulatory contradictions within the decentralization framework, between decentralization laws and sectoral laws (in this case the forestry law), and regarding the relative authority of certain regulations in the regulation hierarchy. Laws and regulations were formulated with little public involvement. Consequently, the regulatory framework leaves room for multiple interpretations, and local governments have justified their actions based on their own analysis. As Larson (2005) stated that this problem occurred in many developing countries. Inconsistencies between decentralization laws and the forestry law in Indonesia have accumulated historical frustrations and distrust of the center's real intentions in the devolution of authority. This has motivated opportunity-grabbing behavior on the part of local governments and communities, who fear losing these opportunities in the future.

Second is the ambiguity of land tenure. As Padge et al (2006) stated that one element of community forestry successful is tenure security, the Indonesian decentralization effort has created both opportunities and challenges for the legalization of community tenure rights. Greater autonomy to regions of forest resources has, in many cases, resulted in a greater voice for local communities. In sum, the ongoing process of decentralization has a number of implications for community forest tenure. The lack of clear rules of the game and the incapacity of the central government to monitor and enforce the law have translated into local government initiatives that go well beyond the responsibilities assigned by the laws and regulations issued by the central government and result in the loss of national coherence in the forest tenurial administration. The decentralization process has created a wave of expectations and increased the pressure for changes in the districts to the point that the central government has largely lost control of the process. These uncertainties have increased the struggle between different levels of government with a *de facto* informal process of decentralization propelled by the local governments quickly taking over the formal process advocated by the central government. At the district level, the realization of the opportunity to establish claims over resources created numerous strong demands for resolution of conflicts that district governments were ill-prepared to face. The central government often assigned tasks to the district and provincial levels but did not provide them with the necessary resources for discharging these new responsibilities. In these circumstances, the danger of falling into chaotic situations has increased, with competing stakeholders racing to secure their rights, legitimate or not, particularly over the most valuable forest resources.

Finally, the community forestry policies by government aiming the empowerment of the community, the community is to be a major actor in forest management and the government is to just act as a facilitator, but the implementation of the policy was very bureaucratic and imposed administrative requirements which were difficult for the community to fulfill. An addition, the forum of NGOs, academics and international agency in promoting community forestry also has an internal problem. The gap of communication between grassroots, the community, and the NGOs activists become the main problem in the groups or forum of community forestry.

So, in general forestry decentralization in Indonesia has clear limitations, but it has delivered valuable lessons about how the regulatory framework could be improved to deliver sustainable and equitable forest management processes to support the development of livelihoods for the country with million forest-dependent people, how to set land tenure in law and regulation, and for groups/forum/international networks, the lessons are clearer. To be more effective they need to attend more to the local realities, adopt agile working methods that give more control to local partners, and styles of communications tailored to suit local needs.

6.2. Recommendation

Indonesia's experiment with decentralization is still young, at this stage only the short term effects can be evaluated. I argue that the long-term prospects for sustaining the country's forestry sector and improving local people's livelihoods by adapting and implementing decentralized forestry policies are optimistic. However there are several actions that have to be taken.

There is currently an urgent need to strengthen the administrative and regulatory framework for the administration of forests in Indonesia. The experience from the last several years suggests that administrative structure is likely to provide the most optimal outcomes in terms of forest sustainability, economic development, and local livelihood security. Instead, it has become increasingly clear that government agencies at the central, provincial, and district levels will need to find ways to work together effectively in pursuit of shared goals and objectives. It is important for national stakeholders to recognize that the decentralization of some aspects of forest administration does not necessarily mean a weakening of the center. Decentralization requires a strong central government that is capable of setting up and running governance structures for supervising, monitoring and negotiating and, where necessary, ensuring compliance with broad policy guidelines. At the same time, for effective decentralization, provincial and district governments need to have clear rights and responsibilities, strong systems of governance, and to be guided by processes that ensure accountability and representation downwards to local constituencies.

The recognition of customary rights is important that should be embodied in a broader strategy and policy for the reform of the forest estate. The recognition of customary rights requires the refinement of the regulatory framework so that such rights can in fact be awarded without running into legal challenges. General confusion

and lack of clarity affecting forest zone tenure will need to be eliminated. Realistic proposals will also entail participatory processes and an intense work to convince skeptics. This means that the reformulation of the regulatory framework will take time and effort, and this is assuming that there will be a political will to do so. However, actually there is a great deal that can be accomplished within the present regulatory framework. Existing law provides important opportunities for the recognitions of indigenous and other community land rights and to adopt reforms to strengthen forest tenure. For example, the fact that the Constitution and some existing legislation already open opportunities for the recognition of land rights is a positive factor. In short, a first and critical step in the reform process is to the get all stakeholders, most important the ministry of forestry, to reach consensus on the land status of the million hectares of Indonesian forest zone.

Community mapping of forest land is one practical solution for tenurrial problem. The clear identification of community lands is extremely important to establish a clear basis for the enforcement of property rights. Clear formal rights allow communities to draw on the enforcement agencies of the state. However, any agreement with communities, recognition of property rights, requires proper definition of the land area involved that communities consider as their own. Further, communities need to become legal entities to sign formal contracts with other parties, such as the government or concession company. Community-mapping procedures have been developed by NGOs to help rural communities to identify areas they consider as their lands and to solve internal conflicts or threats from powers outside of the community. The process of producing community land maps increases the community security of control over their lands as well as awareness of their rights.

Strengthening community forestry is a clearly needed, even complicated and contentious. Devising and implementing a national forest tenure reform and strengthen regulatory framework of decentralization forest initiative will require bold leadership from national institutions as well as strong support of indigenous and other community groups, environmental NGOs, and the international donor. International agencies could provide conceptual support for policy reforms, lessons from international experience in similar initiatives or research inputs for a more objective national policy debate. While international assistance could be useful, in the end, progress will depend upon Indonesian leadership and political will.

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