

Chapter 5:

Forests for the People, Indigenous Communities (*Masyarakat Adat*) or Cooperatives? Plural Perspectives in the Policy Debate for Community Forestry in Indonesia¹

Jeffrey Y. Campbell²

Abstract

(Jeff Campbell to provide the abstract)

I. Introduction

The current debate over the future of Indonesia's vast forest lands and forest resources, and in particular the new opportunities which present themselves for increased community control and management, is characterized by a complex continuum of contending perspectives. Different actors are seeking to speak for the people (*rakyat*) through a puzzling plurality of discourses (legal, social, political, economic and ecological) and the dialogue is striking in the dichotomy between rhetoric and intent. This paper attempts to illustrate the creative confusion of the debate by painting, in broad strokes, some of the major themes that color this unprecedented opportunity for change. While few of these themes are new, they have taken on an interesting life within the dynamic context of post-Soeharto Indonesia, and in particular, during the transitional government of President B.J. Habibie. This context provides a new arena for public discussion and contestation, opening real possibilities for restructuring fundamental principles of natural resource ownership and distribution, and for the realignment of power and influence. Finally I will focus on one of the discrete new policies, the new community forestry or *hutan kemasyarakatan* program based on ministerial letter (SK) 677, and discuss efforts to build an adaptive learning process into its implementation, which might accommodate the pluralism of local variations.

II. The Context

Through a process of land appropriation and extension of state authority that began in colonial times and accelerated with independence, the national government of Indonesia has exerted its control over 70 % of Indonesia's land, officially classifying this vast resource as *hutan negara* or state forests. Power over this area (making up 80-90 % of many provinces) gradually came to rest in the state, through central, and provincial forest departments. Over a third of this area was classified as production forest. With the backing of district and

¹This paper, under its Indonesian title, *Hutan Untuk Rakyat, Masyarakat Adat, atau Kooperasi?* was originally presented at the Seminar on Legal Complexity, Natural Resource Management and Social (in)Security in Indonesia, Padang 6-9 September 1999.

² The author is Program Officer, Environment and Development, the Ford Foundation, Jakarta, Indonesia, however the views expressed in the paper are the author's and do not represent the Ford Foundation.

provincial government and the military, a closely linked network of industrial houses were given utilization rights to over 90 % of the production forests. At the same time large areas rich in biological diversity were declared as strict nature reserves, national parks and protection forest with accompanying restrictions on access and use of natural resources within them. In a kind of “reverse land reform” project, existing land use patterns of local communities, many of whom had long histories of prior access and rights were completely ignored and forest land was effectively transferred from the “hands of the poor” to the hands of a small, mostly urban elite. Complex land rights and management systems were transformed into single-use, single-user timber concessions, or timber estates and estate crop plantations. Transmigration programs and spontaneous migration shuffled populations of people from region to region and island to island, usually without prior consultation with existing communities, further complicating the character of land rights, natural resource use and the overall human ecology of different areas. The administrative regularization of village or “desa” boundaries cut through historical and customary social and political landscapes ignoring complex relationships between settlements and land. Collective or community managed resources were automatically aggregated into the national collective of the central government.

While timber fueled the remarkably rapid pace of Indonesia’s “dramatic development” in the 1970s and 1980s, communities living in and around the source of this green gold were frequently plunged into conflict and remained amongst the poorest in the country. The thorough plundering, both legal and illegal, of the country’s forests, with annual deforestation rates as high as 1.5 million hectares (Chapter 13) has led to a dramatic reduction in forest cover from 152 million hectares in the 1950s to less than 100 million today. Informal estimates suspect that little more than 50% of the remaining forests could be considered healthy. A recent study by experts from DfID (Great Britain’s Department for International Development) suggests that only 14 million out of the country’s 64 million hectares of production forest are still untouched. Rapid clearing for ongoing conversion and alterations to the forest structure due to excessive logging contributed to the extensive fires that continue to destroy even more forests.

The *reformasi* or reform era that has followed the fall of Soeharto has provided an opportunity for community groups, NGO and university activists and scholars, “reform oriented” national politicians, sympathetic officials in the forest department and resentful regional governments to call for change. Depending on the point of view and the stated or implied objectives and interests of different actors, a wide range of issues have been raised. These can be grouped into three broad categories: rights and access, distribution of resources, and regulation and management.

A. Rights and Access

The issue of rights and access is of course viewed in a number of different ways depending on whether the prior right of communities is considered or not. In other words perspectives differ according to which of the two major overlapping legal schools of thought dominate - the national law often referred to as “positive law”, or *hukum positif*, versus customary law, or *hukum adat*. In many cases arguments are based on a very simplified understanding of these legal settings though the reality in the “local law” is of course far more confusing, overlapping and context specific (Benda-Beckmann and Benda-Beckmann, 1998). From the official perspective that all forests are part of the *hutan negara* or state (national) forests the issue is: how can rural communities living in and around forests gain improved access and utilization

rights to these important resources? From the perspective of local government officials in the field and the industrial timber sector the issue is more a question of: what kinds of compromises may be needed to resolve conflicts among the continuing concessionary rights of timber companies, local community needs and customary or *adat* rights?

For many local community leaders and the activist NGO groups that support them the question is: how can the pre-existing customary or “*adat*” rights of traditional communities over forest lands and traditional forest management systems be recognized and returned? This has led to a renewed call for a re-classification of forest land rights which would recognize and/or carve out customary community forests, *hutan adat*, from the national forest estate.

B. Distribution of Resources

The second set of issues, while related to the first, focuses more on the economic and commercial implications of forest management and address what is viewed as the inefficient, and inequitable distribution of forest assets. How should the monopoly control over timber processing, marketing and exports be dismantled in order to ensure a more equitable distribution of benefits from forest resources? How can the state ensure a larger percentage of the rent from forest concessionaires? How should the distribution of rent be shared between the central and local governments? How can local, forest-dependent communities, small and medium-scale enterprises benefit from forest resources? Here again, there are different perspectives on how, to whom and in what quantities this redistribution should take place.

C. Management and Regulation

Finally there are a number of technical issues which are based on the assumption that better management and more effective regulation can be used to address problems. How can the existing timber concession management systems be monitored more effectively by the Department and by independent parties to reduce forest degradation, environmental damage, corruption and collusion? How should the large-scale conversion of degraded forests to plantation crops be discouraged and reversed? How can the vast but mostly small-scale illegal timber harvesting, processing and marketing business be reduced and/or legalized? How can disincentives to private and small-scale forest product marketing be removed? What role should public sector state forest enterprises play in the future? How can the remaining primary natural forests be protected more effectively to conserve biodiversity and preserve environmental functions? How should revised forestry policy relate to the push for greater regional and local autonomy and the devolution of power?

II. Rights of Customary (*adat*) Communities versus the “People’s Economy”

Two dominant and competing currents in the calls for reform are ironically summed up in the rhetoric of the populist Minister of Forestry and Estate Crops: *Hutan untuk rakyat* or forests for people. The first is an argument based on people’s rights, that draws its legitimacy from traditional *adat*-based claims, calling for *hak masyarakat adat* and the second is an argument based on *perekonomian rakyat* or a people’s economy. The first calls for the recognition and return to *adat* or customary rights over forests, for a redress of the historic misappropriation of these rights³ and a reclassification of the nation’s forests as a necessary pre-condition to

³ Franz von Benda-Beckmann in his article Citizens, Strangers and Indigenous Peoples: Conceptual Politics and Legal Pluralism in Law and Anthropology Vol. 9 (1997) captures this movement on page 30: “What people

reform. The second calls for a redistribution of access to forest resources and income from forests as a means to re-orient the economy away from the monopoly control of a small elite, towards a network of small and medium scale businesses, organized as cooperatives. An emerging network of *adat* leaders supported and, to some extent still represented by NGO and intellectual advocacy groups, is behind the first argument. A major ideological group within the current reformist government of President B.J. Habibie supports the second argument.

A. Recognizing or Reviving Customary (Adat) Communities?

The rallying cry for the assertion of local claims to forest resources, focuses on the recognition of pre-existing community rights and claims to land (*hak ulayat*) and calls for the revival of “*adat*” institutions and customary law, or “*hukum adat*”). This responds to a very clear historical process of marginalization and, frequently, violent intimidation of forest dependent communities. Interestingly both “local law” (see Benda-Beckman, 1998) and national law are used to justify *adat* claims. Many community leaders are arguing that their traditional rights and customary or “*adat*” based land use patterns and management rights were ignored with the application of new national laws, particularly since independence. They have begun to question the validity of national law in public fora such as the 1999 Congress of Indigenous People of the Archipelago (*Kongres Masyarakat Adat Nusantara*), which brought together over 250 representatives of *adat* communities from throughout the archipelago. This remarkable event, which would have been unthinkable only two years earlier, attracted a significant amount of press attention and several of the sessions on land rights were attended by senior government officials. Unfortunately senior officials from the forest Ministry were conspicuously absent. Frustration with national laws is being expressed by such groups in calls for devolution of natural resources through greater regional and local autonomy and, in the most desperate cases, in calls for independence and succession from Indonesia.

Ironically, a number of *adat* rights advocates seek to use national or state law as the means of proving the existence of customary law or *hukum adat*. Most recent forest department definitions of customary law communities (*masyarakat hukum adat*) insist that the final indicator of whether or not a particular community is a *masyarakat hukum adat* community is the recognition of this status by local government. In a further twist the “formalization” of *adat* leaders through the creation of official Councils of *Adat* Leaders can in some cases mean that local governments recognize communities as *masyarakat hukum adat*, when in fact they may already have relegated most decision making matters to the new government regime and national law. *Adat* rights advocates working on drafting new government policies to recognize *adat* forests within the formal legal framework, have convincingly cited a string of national laws and administrative decisions that recognize *adat* rights to forests (Sirait, Fay & Kusworo, 1999). There are a number of interesting cases where *adat* communities, such as Desa Temudak, Nenek Limo Hian Tinggi and Nenek Empat Betung Kuning which border the Kerinci Seblat National Park in Jambi, Sumatra, have in fact effectively established their pre-existing claims over forest areas through a district administrative order (SK Bupati) in spite of lack of higher authorization (Edison, 1998). Contradictions between the agrarian law (UUPA) which recognizes community land rights, or *hak ulayat*, and forest law (UUPK) which claims all forests as state property are finessed in these arguments in favor of the UUPA by making the distinction that agrarian law must adjudicate use and ownership of the land while forestry law should pertain only to the access and use of forest resources/not forest territory. High

claim is not so much the recognition of their law as a solid going concern or a return to “the olden ways”, but the recognition and unmaking of historical injustice and the legitimate power to regulate their own affairs.”

Which Way Forward? - Forests, Policy and People in Indonesia

Carol J. Pierce Colfer and Ida Aju Pradnja Resosudarmo, editors

Draft paper

hopes are therefore attached to a new government regulation, Guidelines to Resolve *Adat* Communal Rights Conflicts (SK 5/99) from the Bureau of Lands (BPN). This order calls for the registration of *hak ulayat* – or community land rights and transfers the responsibility for this process to provincial and district governments (Chapter 13).

With the intensity of the focus on rights, which has been taken up by the NGO advocates, and an emerging Alliance of *Adat* Communities (AMAN), there is a danger that the argument will, perhaps inadvertently, be overly simplified. By placing *adat* at the center of the rights argument, there is a danger of loading too much expectation on *adat* institutions, of romanticizing *adat* processes and encouraging a static interpretation of *adat* as a fixed set of customary prescriptions. This in turn endangers the more nuanced understanding of *adat* as a dynamic and evolving process of community decision making, interacting and interlocking with external legal, political, social and religious influences. Depicting a romanticized version of *adat* as a glorious living tradition of harmony with nature that is fully operative in forest dependent communities, makes it easier for government critics to push their equally simplistic view that most *adat* systems (as static self-perpetuating operating systems) have already broken down. Conversely to admit that *adat* is part of the plural legal reality of decision making and understanding at the village level can make it easier for critics to say that it is impossible to define that which constitutes a “functioning” *adat* community. If nothing else the efforts to revive *adat* as a competing legal system have gained a much greater hearing and stimulated vigorous debate, spawning a range of “experts” from village *adat* leaders to intellectuals and politicians.

One danger with the politicization of the debate is that earlier arguments of community rights advocates which focused on the economic and ecological sustainability of community based forest management systems are in danger of being submerged or ignored. Failure to maintain these additional arguments can lead to a tendency to assume that if *adat* communities are only given back their rights, sustainable forest management will automatically follow in all cases. This is far from guaranteed.

Because of the political power of the *adat* rights argument, there is also a danger that the equity concerns, which in many cases prompted NGO and academic involvement in the movement in the first place, might also be suppressed. There is relatively little discussion of the feudal characteristics of many *adat*-based land use and management arrangements, the role of women versus men, and the transparency of decision making processes in traditional *adat* forums. Younger villagers in some areas (Krui Lampung for instance) are worried that the new “fashion” of *adat* is providing an opportunity for old and “out of touch” *adat* leaders to regain their power. Adding to their argument is the fact that many of these *adat* leaders have already managed to establish themselves within the formal political structure serving as village head (*kepala desa*) or in other government positions. In this way many “traditional” *adat* leaders are in fact as much representatives of the Soeharto era as they are of community consensus.

Another issue is the concern that the resurgence of *adat* claims will re-ignite ethnic tensions, a very real concern given the recent inter-ethnic and inter-religious violence in West Kalimantan and Maluku. In the call for community forestry policy much less attention is being given to the many, complicated, mixed-community villages where people from different *adat* backgrounds, and even people who don't consider *adat* as a defining characteristic of their culture any longer, are thrown together. These groups are also dependent on forest resources and their rights to access and participation in natural resource decision making

cannot be ignored. Some scholars are calling for the much more generalized application of the term *adat* to apply to the dynamic process by which any community develops common rules and understandings in order to avoid a polarization of communities (Iwan Tjitradjaja – various public fora).

Events in the field add a further layer of complexity as, increasingly, communities are taking matters into their own hands, directly confronting logging concession holders and often using violent and intimidating methods (including the burning of logging camps) to demand compensation for forest degradation and damage. In some cases *adat* law is more or less forcefully applied and concession holders are tried in “*adat* courts” and fined punitive damages. At times different groups within the same *adat* community “sue” the companies for damages of different amounts. (Agung Nugroho – personal communication). It can be argued that these direct action campaigns in the field have caused many concession holders to engage more actively in policy debates⁴ and express an interest in identifying and accommodating “*adat* claims” (Chapter 13). The choice for many logging companies is whether to continue to “buy their way out” of conflicts or to “manage their way out”. Those interested in the latter approach are discussing collaborative management or participatory mapping to designate *adat* forest areas.

The use of *adat* for extortion of “rent” and “taxes” weakens the argument that community groups would like to re-claim the forests for their own direct use. If anything it increases the argument that the commercial paradigm of forests, primarily as a source of revenue, has a certain acceptance within communities or at least certain elements of *adat* communities as well. If this is the case, how will “*adat* forests” be managed in the future? Will the forest resources be converted to assets that add value and appreciate over time, so that they can become a sustainable investment which can be transferred to future generations (Coward, Oliver & Conroy, 1999)? What are the economic implications of community forest management? Will many of the forests be converted into agroforestry systems dominated by estate crops - albeit more ecologically diverse and complex forest gardens than the monocultures of large plantations? Evidence shows that many such systems are quite successful in providing a steady stream of benefits and, when linked to international markets can be quite resilient in times of local economic crisis. What incentives will there be to retain natural forests and conserve biological diversity on a large scale? Will the merciless pull of the market and the layers of corruption and collusion and armed power that currently control large scale illegal forest products trade entice, or force, communities to sell off or log-over natural forest remnants? The experience with community owned forests in neighboring Papua Niu Gini shows that traditional/customary chiefs and local leaders can be as easily corrupted as distant government officials.

The possibility of decentralization, increasing regional autonomy and the devolution of authority over natural resources to more local levels further complicates the *adat* rights argument. The new law on decentralization (UU 22/1999) calls for the eventual election of representative village councils which will presumably function at the village level in the same way that newly elected representative assemblies will work at the district level – currently the locus of devolved authority. Should new opportunities for village level democratic governance be guided primarily by traditional *adat* institutions and considerations? Should these be seen as the vanguard of a new phase of local *adat* processes? Or should the focus turn to how communities can most effectively access and use the new local governance

⁴The head of APHI, the association of Indonesian Timber Concession Holders was involved in discussions for the draft government order on recognizing *adat* forests.

structures to effectively manage local resources, gradually replacing *adat* processes? How can democratic governance accompany decentralization to ensure that the concerns and needs of local people are not simply ignored by a new set of village, district or regional elite?

Finally, of course, there is the incredible pluralism and complexity of reality in the field, where the forces of the market, the power of corrupt local officials and the armed might of the military still determine events around and within the forests of many *adat* villagers. In making use of *adat* arguments to create “situations” and make use of “room to maneuver” Tsing (1999) describes how village leaders have had to tread a careful balance between attracting sympathy and understanding as a “traditional” community, and conveying a serious commitment to join the development bandwagon. During the *reformasi* period the portrayal of a strong *adat* culture is finding greater air space in the ongoing dialogue for local land and forest rights. In the process village leaders and NGO advocates face the danger of portraying *adat* rights as not just a necessary condition, but as a sufficient condition for forestry reform. These concerns do not imply that Indonesia’s forests would be better managed by anyone other than local communities, indeed the evidence has already shown us that the timber industry with or without government supervision is not a strong contender. Their track record speaks for itself. It is important, however, that these legitimate concerns not fall out of an over-simplified debate.

III. Forests for People or Forests for Cooperatives?

If the issue of *hak masyarakat adat* is layered by paradoxes and plural agendas, then the rhetoric and reality of the “people’s economy” as a rallying cry for change is equally complex. As has already been mentioned above, most of the changes which have so far been made in forest policy assume that economic solutions will solve the problems. This stems from a continuing commercial/timber oriented understanding of forest resources as engines of national (as opposed to local) development and completely ignores the complex social, cultural and institutional factors which tie local communities to forests. Linked to a major push within the transitional government for *perekonomian rakyat*, championed by the Minister for Cooperatives, the forest department has also fully embraced the logic and rhetoric of cooperatives as the medium for “people” to participate more actively in the national economy via small and medium size business enterprises. Cooperatives are viewed as combining the legal status necessary for small-scale business enterprises with the distributive and democratic elements required by pressures for political reform. It is assumed that people will forget the dramatic failure of so many of the village level cooperatives (KUD) from the Soeharto era, which were often controlled by the local elite and the cooperatives department. Many people both within and outside of the forest department are perplexed by this new institutional orthodoxy that insists on reviving “new” cooperatives as the only legitimate format for community natural resource management, indeed as the only alternative to large scale industrial forest management. While firmly based in the rhetoric of asset distribution, and “people-centered development” as part of the new people’s economy, there is concern that the insistence on cooperatives reflects a continuing pattern of state control and social engineering. The assumption that a cooperative will represent the community is widely questioned though *koperasi* (cooperative) is often substituted for the terms *rakyat* or *masyarakat* in many rhetorical statements of top political leaders.

A more cynical view sees cooperatives as an avenue for the forest industry to get around new limits to the size of forest concessions and regulations stipulating that 20 % of shares in new

timber concessions must be given to cooperatives (stipulated in new administrative order SK 732). Clarifications to the latter rule state that the preference should be for cooperatives genuinely formed by local community members, but that cooperatives formed by more distant members, including those formed by employees of private firms and even the forest department may also be considered. This is borne out by the flood of applications from cooperatives for small forest concessions (areas under 50,000 ha can be approved at the provincial level and forests under 10,000 ha can be approved at the district level under SK 732), and for community forest utilization rights (HKM – under administrative order SK 677). To add to the confusion, special encouragement is being given to Muslim religious schools (*pesantren*) to form cooperatives and apply for forest concessions. Apparently several Javanese *pesantren* have been given forest concessions in Kalimantan, often in partnership with the forest industry, as well as in teak forests on Java, without consultation with local communities (Cohen, M, 2000).

Another development within the forestry ministry, which sends mixed messages is the quiet but persistent push towards the extension of the Perum Perhutani (currently the Java State Forest Corporation) model to the outer islands. A massive concession in East Kalimantan which borders Malaysia has recently been given to the Perum Perhutani, and a recent visit by provincial forestry heads (*kanwils*) to study the functioning of the Perum Perhutani in Java is an indication of the government's commitment to this process. Unlike the parastatal Inhutani that have functioned as forest concession holders off Java which subcontract most of their forestry activities to private timber companies, the Perum Perhutani holds a monopoly over the production forests of Java and combines the role of forest industry with that of the provincial forest department. This means that Perum Perhutani staff directly control and manage forest resources, combining a regulatory role with a profit motive and an obligation to undertake community development and welfare activities. Extending the Perum Perhutani model to the outer islands is in some ways an extension of a centralized control over forest resources and goes against the trend towards increasing privatization of state owned enterprises that is supposedly being encouraged by the current reform government in other sectors. Handing over large forest areas to Perum Perhutani would seem to be a direct contradiction to the call for a redistribution of assets to local communities.

IV. Policy Change Towards Community Forestry

A flurry of policy revisions within the Ministry of Forestry and Estate Crops have begun to respond to these questions. These are ably described in Chapter 13 of this book by Chip Fay and Martua Sirait, policy specialists at the International Center for Research in Agroforestry. Foremost among these is the new Forestry Bill (*Undang Undang Kehutanan*, discussed in Chapter 11, by Wollenberg and Kartodihardjo). However the initial deluge of policy responses to demands for change were in the form of Government Regulations (*Peraturan Pemerintah*, or PP) and Ministerial administrative orders (*Surat Keputusan Menteri* or SK). The first major government initiative was a ministerial order, SK 677, revising a previous “community forestry” program (SK 633) which focused on involving community groups in the rehabilitation of degraded forest land (on production and conservation forests) and planting a mixture of timber and multipurpose tree species. Under SK 633, community groups were given rights to non-timber forest products from the multipurpose tree species, but had little say in the overall management of the forests and no rights to final timber harvests. Under the new order, all forest areas not currently under long-term timber leases are eligible for community forest utilization rights (*hak pengusaha hutan kemasyarakatan-HPHKM*).

For the first time, forest-dependent communities, will be given the right to the utilization of production forests (*hutan produksi*), forests protected for environmental functions (*hutan lindung*), and national parks and conservation forests.

A. Community Forestry

The initial process of formulating government order SK 677 was remarkably open and involved a number of actors from outside the forest department. Enthusiastic officials in the Directorate of Rehabilitation and Social Forestry solicited inputs and set up an advisory team to help them draft a very different approach to community forestry. This was based on a number of important principles, amongst others a recognition of traditional forest management systems and a very clear mandate to let communities take a lead role in determining their own forest management institutions and objectives. However the order went through a number of consecutive drafts and the final product is considerably changed. SK 677 has a number of shortcomings which stem primarily from the department's reluctance to move away from a commercial orientation to forest management. Communities, like industrial forest concession holders will be given a "utilization right" but not a "management" right. This stems from a fundamental perception within the forest bureaucracy that only the forest department, and by extension, scientifically trained foresters working for the department, can "manage" the forest. This interpretation is traced back to Paragraph 33 of the national constitution which specifies that the state "controls" all natural resources for the greatest benefit of the people. There is a widespread perception that to grant management rights is to lose control over the forests and that therefore the state can only grant commercial utilization rights (*hak perusahaan*) or collection and usufruct rights (*hak pemungutan* and *hak pemanfaatan*).

In order to be eligible for a 35 year renewable "forest utilization right" communities must first form a cooperative. This stipulation directly contradicts one of four important principles laid out in the SK, which states that communities are to determine their own institutions. It stems from an assumption that rights to commercial utilization can be given only to "legally recognized bodies". Cooperatives are seen as the ideal form for an egalitarian business venture, in spite of the widespread failure of the village level cooperatives (*koperasi unit desa*, KUD) of the Soeharto New Order regime. There is already considerable evidence to support the widespread concern that cooperatives are proliferating, claiming to represent communities and applying for commercial forest utilization rights. A further difficulty is that communities applying for a HP-HKM may be required to prepare fairly rigorous long term, medium term and annual forest management plans, much along the lines of commercial logging firms. These shortcomings in the new government order are in contradiction with the basic premise of community forestry which is to secure access of communities to the forests upon which they depend and to place the community in control of forest management decision making as the primary actors. The latter premise also is clearly laid out in the basic principles of the SK which stress that communities are the primary implementers and that the community will determine the forest utilization system. A further principle states that government will only facilitate and monitor community forestry.

Many NGO and academic critics of SK 677 feel that the HKM program will be abused by small and medium scale businesses through fake cooperatives, that it is "the wine of privatization in community bottles" (Djuhendi, 1999). This concern draws from disappointment about the process and final form of a higher level government regulation (PP 6) governing the utilization of production forests. PP 6 is notable only for adding

cooperatives to the list of legal institutions allowed to gain utilization rights to production forests in addition to private firms, and government corporations at the national and provincial levels. PP 6 consigns mere collection rights to “*masyarakat hukum adat*” or customary law communities.

B. Draft Government Order on Adat Rights

Perhaps the greatest problem with both SK 677 and PP 6 is that they do not address the issue of conflicting land claims on forests which have already been leased to industrial logging companies. They do not explicitly recognize *adat* rights, existing forest management systems and local decision making institutions. In response to an initiative by *adat* rights advocates, a second government order at the ministerial level (SK) is under consideration that would address those areas under current timber leases which directly overlie forests claimed by traditional forest communities, whose long struggles for recognition of their customary (*adat*) rights has been the source of intense conflict. In this second SK a process of application would be clarified for communities seeking recognition of their *adat*-based rights to forests. Progress on this SK saw the preparation of an initial draft and an informative “academic draft” (Sirait, Fay and Kusworo, 1999). As mentioned earlier a major difficulty lies in the definition of *adat* communities which requires local government recognition to validate their existence. In spite of laudable efforts by the drafting team to move the process forward, there does not, however appear to be a strong commitment from within the ministry. This may be because attention is currently focused on a much higher-level policy change.

The basic forestry law has been hastily revised and, at the time of writing, the proposed new law is currently being debated by Parliament.⁵ A critical debate has taken place about the inadequacy of the consultative process leading to this bill. In fact, critics of the draft bill insist that the final draft sent to parliament is totally different from the draft prepared by a Reform Committee established by the minister for the purpose. While environmental activist groups like WALHI and even ex ministers of the environment and forestry have requested that this draft bill be left to the discretion of the next government in order to establish a much more consultative preparatory process, there are indications that the current parliament will try and push it through, along with a large number of other bills, in its last month of power. The commission discussing this bill has invited inputs from a number of stakeholders but many community rights advocates and NGOs have avoided becoming involved. One group that has sought to actively engage in this process is the Communications Forum for Community Forestry (Forum Komunkasi Kehutanan . Masyarakat – FKKM). A policy group within the FKKM is advocating a re-classification of forests into three categories, private forests (*hutan milik*), community forests (*hutan adat*), and public forests (*hutan publik*). The idea of recognizing a new category of “*hutan adat*” appears to have struck a reformist chord and a number of the official factions have requested clarification on this concept from FKKM members. As of writing it appears unlikely that *hutan adat* will be accorded a status independent of the national forest. Oddly, while community groups, NGO advocates and government officials are trading rhetoric and adopting a variety of stances on this important issue, the current parliament may go ahead and pass a new law with an entirely different interpretation of community forestry and *adat* rights within the month (Chapter 11 by Wollenberg). FKKM members have already begun to strategize on how to target their inputs on the development of the next governments long term development plan if efforts to address

⁵ [Editor’s note: It was passed on 30 September 1999, without implementing regulations, which have still not been made public. See Chapter 11]

adat rights in the new draft bill fail.⁶

A number of other government orders such as SK5/99 from the Bureau of Land which has already been mentioned and two new laws on decentralized governance and on revenue sharing between the central government and the provinces will have a profound effect on the nature of local control over natural resources.⁷

V. Conclusions

As the Indonesian forestry sector faces the process of necessary change and reforms, old paradigms of custodial state control and the comfort of cronies within a small circle of power holders are undergoing a period of trauma and slow transformation. In spite of the growing strength of rhetoric and opinion in favor of community rights on the one hand and the “people’s economy” on the other, new policies are still rooted in conventional, centralized management approaches.

Nevertheless the opportunity provided by the new government community forestry (HKM) program for communities to gain utilization rights to forest areas where timber concessions have expired or been cancelled is an important interim step in the struggle for community forestry. Efforts are being made through a collaboration between the Ford Foundation and the Ministry of Forestry and Estate Crops to ensure that the implementation of this new community forestry program is based on a learning process which takes into consideration variations in local context and places community forest managers at the center of the process of experimentation. Only through the messy process of experimentation in the field can forest dependent communities and the forest department reach some sort of negotiated settlement on how to manage these forests. Multi-stakeholder working groups are being established at the national level and in at least seven provinces to guide an adaptive process of working together on pilot HKM sites. There are many challenges to be faced. Communities must be given information on the various management options available to them as new laws and regulations are issued. Clear but flexible guidelines need to be sent to field level forestry staff and community members. These guidelines must illuminate the spirit and philosophy behind the community forestry initiative and lay out participatory processes to be followed without imposing a rigid and uniform model encumbered with onerous bureaucratic steps. In particular, local forest departments will need help in wading through the sea of applications from cooperatives which have been hastily formed to gain access to forests to determine whether they represent community members or a small elite. Community based institutions must be given the authority, the time and the trust to build on traditional decision making systems and management practices. NGO and other facilitating groups must strengthen these community institutions and assist them to make use of new opportunities, to discuss sustainable and equitable management options and to develop indicators to monitor and correct their progress. Once rights are granted, attention will need to be given to new silvicultural practices that are specific to the multiple needs and objectives of community

⁶ Since this paper was written there have been many new developments that relate to the issues discussed, amongst them a new forestry act (UU41-1999) has been passed. In this act *hutan adat* is recognized as a legal category within the national forest zone, not as a forest owned outright by communities. Regulations clarifying the process for identifying and gazetting *hutan adat* areas have yet to be issued.

⁷ The new laws on decentralization have raised the intensity of the debate as local autonomy is expected to take force in the year 2001. Many *adat* rights groups are calling for a redrawing of village boundaries (returning to *adat* clusters) and a clarification of *hak ulayat* as part of a decentralized re-assessment of land use and natural resource management planning.

Which Way Forward? - Forests, Policy and People in Indonesia

Carol J. Pierce Colfer and Ida Aju Pradnja Resosudarmo, editors

Draft paper

managers. Marketing support and value addition for forest products and forest based enterprises will be needed if community forestry is to contribute to local development. Local government will have to play an increasingly greater role as a facilitator and regulator, which will require transparency and accountability mechanisms to resist the urge to squeeze revenue from forests and to succumb to local cronies and corruption. It is hoped that the experiences gained through a learning process connecting community managed sites by community groups, NGO community organizers, university researchers and local government officers will help guide the process of implementation, illuminate the difficulties with the current community forestry policies, and suggest modifications and changes.

Hopefully the incremental pace of policy change will speed up and provide ever more space for a far more consultative and adaptive process of decision making at the macro level. But the real contests will be in the field where new alliances and institutional formats will create opportunities and challenges for local community members to organize amongst themselves, and to negotiate compromises with local government officials, the forces of the market, old and emerging bases of power, and the national government. The political crisis offers new space for regional, local and community based forest management, the economic crisis can be used as an argument to re-distribute assets to the small and medium scale business sectors while posing new pressures on forests as sources of quick capital and investment. New policies are beginning to respond to this space. Taken together, the way responses to these crises play out will have extremely long-term impacts on the forest resources of Indonesia.

Bibliography

Benda Beckmann, F.von, 1997. Citizens, Strangers and Indigenous Peoples: Conceptual Politics and legal Pluralism. *Law and Anthropology*, Vol. 9.

Benda Beckmann, F. von, K. von Benda-Beckmann, and J. Spiertz. 1998. Equity and Legal Pluralism: Taking Customary Law into Account in Natural Resource Policies in Searching for Equity, Conceptions of Justice and Equity in Peasant Irrigation. eds. Boelens, R. and Davila, G., Van Gorcum.

Cohen, M. 2000. *Far Eastern Economic Review*, (still checking this reference).

Coward, E.W., M. Oliver, and M. Conroy. 1999. Building Natural Assets-Rethinking the Centers' Natural Resources Agenda and Its Links to Poverty Alleviation. Paper Prepared for the Meeting on Assessing the Impact of Agricultural Research on Poverty Alleviation. 14-16 September 1999, San Jose, Costa Rica.

Edison, A.E. 1998. Studi Banding Jambi. Paper presented at the Third Regular Meeting of the Indonesian Communication Forum for Community Forestry (FKKM). 14-17 April 1999, Madiun, Indonesia.

Fay, C., and M. Sirait. 1999. Reforming the Reformists, Challenges to Government Forestry Reform in Post-Suharto Indonesia. Paper presented at the American Association of Rural Sociology. August 6, 1999, Chicago, Illinois.

Munggoro, D. 1999. Management Kemitraan: Meretas Kemelut Pengelolaan Kawasan Konservasi. Paper presented at workshop in Jember, East Kalimantan, August 1999.

Parnell, S., and F. Benda Beckmann. 1998. Introduction in Old World Places, New World Problems eds. Parnell and Benda Beckmann. Canberra, Australia: Australian National University, Centre for Resource and Environmental Studies.

Sirait, M., C. Fay, and A. Kusworo. 1999. Bagaimana Pandangan Pemerintah Atas Hak-Hak Masyarakat *Hukum adat* Di Dalam Kawasan Hutan? Paper presented at the workshop on Decentralization and Natural Resources. August 6-9, 1999, Pontianak, West Kalimantan, Indonesia.

Tadjudin, D. 1999. Hutan Kemasyarakatan: Anggur Privatisasi dalam Botol Kemasyarakatan, Paper presented at the Indonesian Tropical Institute. August 1999, Bogor, Indonesia.

Tsing, A.L. 1999. Becoming a Tribal Elder, and Other Green Development Fantasies. In *Transforming the Indonesian Uplands: Marginality, Power and Production*, edited by Li T.M. Singapore: Harwood Academic Publishers and Institute of Southeast Asian Studies.