



Claiming the forest: Inclusions and exclusions under Indonesia's 'new' forest policies on customary forests



Rodd Myers^a, Dian Intarini^c, Martua Thomas Sirait^d, Ahmad Maryudi^{b,*}

^a Global Environmental Justice Group, School of International Development, University of East Anglia, Norwich NR4 7TJ, United Kingdom

^b Faculty of Forestry, Universitas Gadjah Mada, Bulaksumur, Yogyakarta 55281, Indonesia

^c University of Twente, Enschede, Netherlands

^d The Samdhana Institute, Jakarta, Indonesia

ARTICLE INFO

Keywords:
Indonesia
Customary
Adat
Forest
Exclusion
Law

ABSTRACT

The hopes of customary communities in Indonesia have recently been bolstered by Constitutional Court assurances that they have the right to control customary forest. There are, however, several obstacles to making successful claims, and there are also many situations in which forest users and customary land claimants do not stand to benefit from the recent rulings. This policy review analyses the court decisions, politics around their implementation, and considerations of types of land claimants who are excluded from the current process. We highlight groups of forest and ex forestland users that are excluded from benefiting from the Constitutional Court decisions and are adversely affected by land use change and re-designation of land. These groups include those with claims over land in conservation areas, allocated to concessionaires for resource extraction, on land already issued to them through forest management rights, and those whose land has already been removed from the State forest land.

1. Introduction

Customary forest users in Indonesia have long made claims over forestland defined and controlled by the State. Indigenous rights organisations estimate that approximately 40 million hectares of Indonesian State forestland should be under customary control (AMAN, 2013). In 2011 and 2012, the Constitutional Court ruled with claimants¹ on three landmark rulings (collectively called the 'Constitutional Court decisions' in this paper) that challenged some provisions in the 1999 Forestry Law among others. The first decision was that the rights of all communities must be respected and protected in the implementation of the State's control over State forests (*hutan negara*). This ruling will be referred to in this article as MK 34 (MK34/PUU-IX/2011). The second was MK 35 (MK35/PUU-X/2012) in which *hutan adat* (customary forests) were recognised as a new category of *hutan hak* (titled forests),² the second of two categories of forests listed in Article 6

of the 1999 Forestry Law. *Hutan adat*, under this decision, should be considered outside State forestland.³ Along with State forestland, titled forests should be recognised as one type of forestland tenure. The third, MK 45 (MK45/PUU-IX/2011) changed the meaning of 'state forest zone' (*kawasan hutan*) to include only areas that have been vetted through a gazette process. This meant that the process of determining forest boundaries, which includes the consultation of customary and local forest users, must be undertaken before forestland can be placed under the purview of the Ministry of Environment and Forestry (MoEF).⁴ These three decisions were supported by a broader *adat* movement and Indigenous rights organisations (especially AMAN [Aliansi Masyarakat Adat Nusantara]) (Rachman and Siscawati, 2016). The decisions are significant for the confirmation of existing laws. The laws themselves are not 'new,' but the Constitutional Court decisions inject new political and legal clout to customary claims over forests.

By October 2016, AMAN, the Indonesian Network for Participatory

* Corresponding author.

E-mail addresses: roderick.myers99@alumni.imperial.ac.uk, rodd.myers@uea.ac.uk (R. Myers), d.intarini@gmail.com (D. Intarini), martua@samdhana.org (M.T. Sirait), ahmad_maryudi@ugm.ac.id (A. Maryudi).

¹ Claimants were Aliansi Masyarakat Adat Nusantara (AMAN) and customary leaders on MK 35 and private and formal leaders on MK 34 and 45.

² The term 'titled forests' includes both individual and collective titles and is literally translated as "rights forests," but we use translation that is consistent with the official translation of the law, which is 'title forests,' which is used by several authors (e.g., Sahide and Giessen, 2015). Other authors refer to this as 'privately owned forests' (e.g., Indrarto et al., 2012; Fujiwara et al., 2011), which we also consider appropriate.

³ The question of whether *hutan adat* remain inside or should be considered outside State forests remains a subject of debate, but the current interpretation by the MoEF is that they should remain inside State forests.

⁴ Prior to October 2014, this was the Ministry of Forestry (MoF). We use both ministry names depending on the context.

Mapping (*Jaringan Kerja Pemetaan Partisipatif* [JKPP]), and the Ancestral Domain Registration Agency (*Badan Registrasi Wilayah Adat* [BRWA]) had mapped 932 individual customary forests covering 7.3 million hectares of customary territory, most of which overlaps with State forestland. Only seven of these areas have been verified by BRWA, an association led by customary communities. Two of these areas were issued ‘certificates’ by BRWA, which aims to position these areas for formal claims to the State.⁵ In addition, 34% of all identified areas are in West Kalimantan, 14% of the areas are in North Sumatera, 9% of the areas are in South Sulawesi, and the rest of the areas are distributed among other provinces (BRWA, 2016a,b). The first nine customary forest claims were recognised formally by the State on December 30, 2016, covering 13,122 hectares (Fanani, 2017).

In this review, we discuss the events leading up to and following the Constitutional Court decisions. Our focus is on who, among the claimants of the forests, stands to benefit from these decisions and associated regulations and who, among marginalised forest users, do not. We argue that while the Constitutional Court decisions are an important step forward for customary forest users, many groups of forest users (among them the most disadvantaged) are excluded from accessing these avenues to benefit from forests and forest resources. At the end of this article, we make several recommendations for the claims process for both *hutan adat* and the forgotten communities that are invisible under the Constitutional Court rulings.

Indonesian forest use and designation terminologies are overlapping and often confusing. We clarify them here and bracket the Indonesian term for clarity. The focus of this article is on *hutan adat*, which means ‘customary forests’ but we maintain the Indonesian term because of the embedded meanings of ‘adat,’ which we discuss briefly. We use *hutan adat* to mean the legal definition of customary forests as described in MK 35, as opposed to regionally designated customary forests at the district (*kabupaten*) or provincial levels. We refer to the forest management regimes of village forests (*hutan desa*), community forests (*hutan kemasyarakatan*), and people’s plantations (*hutan tanaman rakyat*) collectively as ‘social forestry’ and individually by their Indonesian names to avoid ambiguity. The entire forest zone (*kawasan hutan*) is under the responsibility of the MoEF, but the State has direct control over State forests (*hutan negara*) and only influences the scope of activities that can be undertaken in titled forests (*hutan hak*). The forest zone is designated for specific uses, broadly including production forests (*hutan produksi*), protection forests (*hutan lindung*), and conservation forests (*hutan konservasi*).⁶

This article is based on the independent research initiatives of the authors. Therefore, we provide examples from several regions of Indonesia that involve diverse data collection and analysis methods to strengthen our review. Our aim is to consolidate some of the key findings of these studies and come to a parsimonious set of insights and recommendations that culminate in a policy review. Consequently, we do not purport to provide new empirical evidence in this paper. We base our analysis on previous data and works both published and unpublished. We specifically focus on customary forests in Indonesia, but we are aware of the greater forces at play that are tied in with global capitalist notions of conservation and natural resource manage-

ment.

Before explaining the processes leading up to the Constitutional Court decisions and the results of these decisions, we explore the forest tenure security in Indonesia. We look at the basis for claim-making among communities and what the Constitutional Court decisions mean for land claims both within and outside of State forestland. We then analyse who stands to benefit from these decisions and who does not. We consider this an important and unaddressed aspect of the Constitutional Court rulings. Our intent is not to diminish the importance of the Constitutional Court decisions, as we believe they are an unprecedented step forward for forest user rights in Indonesia. Our focus is on forest and forest resource users who fall outside the contested definitions of communities that are entitled to benefit from the Constitutional Court decisions and subsequent ‘new’ laws. Finally, we make several recommendations after a brief discussion.

2. Forest tenure security in Indonesia

Indonesia’s Forestry Law (number 41/1999) stipulates that the State designates the forest zone (*kawasan hutan*) to affirm the designation of permanent forests (*hutan tetap*). The process of gazetting the forest zone includes designating specific land as an indicative forest estate, ground-truthing and verifying the land (including considering community land claims), and finally establishing delineation (*penataan batas*) until the enactment (*penetapan*) of such land as a definitive forest estate. MK 45 confirms that the legality of zoning of forestland will be determined by this entire process.

Indonesia’s forest zone (especially State forests) is central to national forestry planning and operates under ‘scientific’ forestry principles (Peluso, 1992). Under this system, the State is the key actor that ensures the efficient control and management of forest resources (Peluso and Vandergeest, 2001). This system was inherited from the Dutch colonial government, which established territoriality in Java through a policy of Domain Declaration. Upon independence, the State implemented the Javanese forest management system in Forest Law 5/67 in the entire archipelago (Barr et al., 2006; Maryudi, 2015b). The policy stated that any unowned land was the State’s domain. Forests were often considered as ‘empty’ or ‘wasteland’ and were the first territories grabbed by the Dutch (and subsequently the State) for forestry and other uses, particularly when debates about customary claims had not been resolved (Peluso et al., 2008).⁷

The Indonesian national government adopts the concept of the State’s right of control over forests (*hak menguasai negara*) in which the State is not the forest owner as assumed in the Domain Declarations, but it is a representative of the Indonesian people charged with controlling the forests by applying its statutory authority to allocate, regulate, and determine legal relations amongst citizens with regard to the forests. In practice, the State performs as the owner by controlling and limiting people’s access to forests and making agreements on forest use (*ijin*) and forestland exchange (*tukar-menukar*), including agreements on forestland that has not yet been gazetted.

Adat claimants, on the other hand, use the basis of custom (often defined differently and overly complex to summarise in this review) to make their claims. We explore the differences of framing land tenure claims here.

2.1. Legal basis for land tenure

Forest Law 41/1999 defines both State and privately titled forests within the State forest zone, although the latter rarely existed prior to *hutan adat*. State forests, as discussed, are located on land without any formal land rights, while titled forests are located on titled land, which

⁵ The State does not officially recognise BRWA certificates and has its own process called the IP4T (*Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah*/Inventory Control, Ownership, Use, and Utilisation of Land), which is jointly managed by the Ministry of Environment and Forestry (MoEF), the Ministry of Internal Affairs (*Kementerian Dalam Negeri*), and the National Land Agency (*Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional*). Only the result of the IP4T is sufficient for the State to release the land from the Forest Zone. The District Head (*Bupati*) issues a *Peraturan Daerah* (District Law), which would formally authorise *hutan adat* within the District’s powers, but the authority to release the land is within the auspices of IP4T. At the time of writing, data on the progress of IP4T were not available, and there were no known cases of recognition of *hutan adat* by the IP4T.

⁶ There are more nuanced breakdowns and variations of these categories, but this simplified categorisation will suffice for this discussion.

⁷ This logic also extends to transmigration programmes in which the State considered outer islands as empty and requiring to develop (Taylor, 2003).

Download English Version:

<https://daneshyari.com/en/article/6460919>

Download Persian Version:

<https://daneshyari.com/article/6460919>

[Daneshyari.com](https://daneshyari.com)