OCCASIONAL PAPER

Forest and land-use governance in a decentralized Indonesia

A legal and policy review

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Andri Akbar Marthen
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CIFOR
PELANGI

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Occasional Paper 132

ISBN 978-602-387-010-3
DOI: 10.17528/cifor/005695

Ardiansyah F, Marthen AA and Amalia N. 2015. *Forest and land-use governance in a decentralized Indonesia: A legal and policy review*. Occasional Paper 132. Bogor, Indonesia: CIFOR.

Photo by Anna Sanders/CIFOR
Village-level consultations for Ecosystem Restoration License (ERC) for the Katingan Peatland Restoration and Conservation Project (KPRCP), March 2014 in Katingan district, Central Kalimantan.

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We would like to thank all donors who supported this research through their contributions to the CGIAR Fund. For a list of Fund donors please see: https://www.cgiarfund.org/FundDonors

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Acknowledgments

The authors would like to thank CIFOR and Dr. Myrna Safitri who have provided substantial comments and suggestions. CIFOR's Global Comparative Study on REDD+ is supported by the Norwegian Agency for Development Cooperation (Norad), Australian Aid, the Department for International Development (DFID) of the United Kingdom, the European Commission (EC), and the CGIAR Research Program on Forests, Trees and Agroforestry.

Acronyms

AMAN	*Aliansi Masyarakat Adat Nusantara* (Indigenous Peoples' Alliance of the Archipelago)
APBD	*Anggaran Pendapatan dan Belanja Daerah* (Sub-national budget and expenditure plan)
APBN	*Anggaran Pendapatan dan Belanja Negara* (State budget and expenditure plan)
BIG	*Badan Informasi Geospasial* (Geospatial Information Agency)
BAPPEDA	*Badan Perencanaan Pembangunan Daerah* (Provincial or District/Municipal Planning and Development Agency)
BAPPENAS	*Badan Perencanaan Pembangunan Nasional* (National Development Planning Agency)
BKPRN	*Badan Koordinasi Penataan Ruang Nasional* (Coordinating Agency for National Spatial Planning)
BPHN	*Badan Pembinaan Hukum Nasional* (National Law Development Agency)
BPK	*Badan Pemeriksa Keuangan* (State Audit Board)
BPKP	*Badan Pemeriksa Keuangan dan Pembangunan* (Finance and Development Supervisory Agency)
BPN	*Badan Pertanahan Nasional* (National Land Agency)
CIFOR	Center for International Forestry Research
COP-13	The 13th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change
COW	Work contract
CSR	Corporate social responsibility
DAK	*Dana Alokasi Khusus* (Special Allocation Fund)
DAU	*Dana Alokasi Umum* (General Allocation Fund)
DBH	*Dana Bagi Hasil* (Shared revenues)
DG	Directorate General
DNPI	*Dewan Nasional Perubahan Iklim* (National Council on Climate Change)
DPD-RI	*Dewan Perwakilan Daerah* (Council of Regional Representatives)
DPRD-K	*Dewan Perwakilan Rakyat Daerah Kabupaten* or *Kota* (Local Council of People's Representatives)
DPRD-P	*Dewan Perwakilan Rakyat Daerah Provinsi* (Provincial Council of People's Representatives)
DPR-RI	*Dewan Perwakilan Rakyat Republik Indonesia* (Council of People's Representatives)
FAO	Food and Agriculture Organization of the United Nations
FREDDI	Fund for REDD+ in Indonesia

GoI	Government of Indonesia
GR	Government Regulation
HoB	Heart of Borneo
HoBPNR	Minister of Agrarian Affairs/Head of BPN Regulation
HPH	*Hak pengusahaan hutan* (Logging concession permit)
HPT	*Hutan produksi terbatas* (Limited production area)
ICCSR	Indonesia Climate Change Sectoral Roadmap
IHPH	Forest concession fee for a production forest
IHPHTI	Forest license fee for an industrial timber plantation in a TPTI forest
IIUPHHK-HA	Logging concession fee for a natural forest
IIUPHHBK	Non-timber forest product collection permit fee
IIUPHHK-RE	Ecosystem restoration concession fee
IIUPHHK-HTR	Community plantation forest concession fee
IIUPHHK-HKm	Community forest concession fee
IIUPHHK-HD	Village forest concession fee
IPR	Community mining permit
IIUPJL	Environmental service license fee
IUP	*Izin usaha pertambangan* (mining permit)
IUPA	Water utilization fee in conservation forests
IUPK	Special mining activities permit
IUPR	Community mining activities permit
Inpres	*Instruksi Presiden* (Presidential Instruction)
JKPP	Participatory Mapping Network
JPPN	Jawa Pos National Network
Komnas HAM	National Commission on Human Rights
Keppres	*Keputusan Presiden* (Presidential Decree)
KPK	*Komisi Pemberantasan Korupsi* (Corruption Eradication Commission)
KPPOD	*Komite Pemantauan Pelaksanaan Otonomi Daerah* (Regional Autonomy Implementation Monitoring Committee)
LAPAN	*Lembaga Penerbangan dan Antariksa Nasional* (National Aeronautics and Space Institute)
LMCM	Land Management and Conflict Minimization Project
LULUCF	Land use, land-use change and forestry
MA	*Mahkamah Agung* (Supreme Court)
MD	MPR-RI Decree
MEMR	Ministry of Energy and Mineral Resources
MIM	Indicative maps for moratorium
MK	*Mahkamah Konstitusi* (Constitutional Court)

MKD	Constitutional Court Decision
MoA	Ministry of Agriculture
MoAR	Minister of Agriculture Regulation
MoASP	Ministry of Agrarian and Spatial Planning (the newly-established ministry combining the BPN and the Ministry of Public Works' Directorate General of Spatial Planning)
MoE	Ministry of the Environment
MoEF	Ministry of the Environment and Forestry (the newly-established ministry combining the MoE and the Ministry of Forestry)
MoF	Ministry of Forestry
MoFA	Ministry of Foreign Affairs
MoFa	Ministry of Finance
MoFD	Ministry of Forestry Decrees
MoFR	Minister of Forestry Regulation
MoHA	Ministry of Home Affairs
MoPW	Ministry of Public Works
MoU	Memorandum of understanding
MP3EI	Master Plan for the Acceleration and Expansion of Indonesia's Economy 2011-2025
MPR-RI	*Majelis Permusyawaratan Rakyat Republik Indonesia* (People's Consultative Assembly)
MRV	Monitoring, review and verification
NGO	Non-governmental organization
NTFP	Non-timber forest products
OECD	Organization for Economic Co-operation and Development
PAD	*Pendapatan Asli Daerah* (Provincially- and/or locally-generated revenues)
PD	Presidential Decree
PES	Payment for ecosystem services
PG	Provincial government
PI	Presidential instruction
PIFS	Pacific Islands Forum Secretariat
PIT	Personal income tax
PPG	*Program Pengendalian Gratifikasi* (Gratification Control Program)
PR	Presidential Regulation
IUPEA	Micro/mini water-utilization fee in conservation forests
PPATK	Financial Transaction Reports and Analysis Center
PUPA	Water business activities fee in conservation forests
PUPEA	Micro/mini water business activities fee in conservation area
RAN-GRK	National Action Plan for Greenhouse Gas Emissions Reduction
REDD+	Reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks in developing countries

RIM	Regional Incentive Mechanism
RKT	*Rencana Kerja Tahunan* (Annual production plan)
RRI	Rights and Resources Initiative
RTRWK	Local spatial planning
RTRWN	National spatial planning
SOCP	Sumatra Orangutan Conservation Programme
Tahura	*Taman hutan raya* (Grand forest park)
TAP MPR-RI	*Ketetapan MPR-RI* (MPR-RI Decree)
THPB	Clearcutting with artificial regeneration
TPTI	*Tebang Pilih Tanam Indonesia* (Indonesian selection cutting and planting system)
UNFCCC	United Nations Framework Convention on Climate Change
UKP4	*Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan* (Presidential Unit for Development Monitoring and Oversight)
USAID	United States Agency for International Development
USINDO	United States–Indonesia Society
WIUP	Mining activity permit area
WIUPK	Special mining activity permit area
WP	Mining area
WPN	National mining area
WPR	Community mining area
WUP	Mining activities area

Synopsis

This report is a legal and policy review of the powers of key government agencies and lower-level governments and the relations among these different agencies at different levels (e.g. the relationship between the local and central governments) in forest and related sectors. The focus of this review is to identify a particular government agency or level of government that has the legal power to make resource decisions in different spheres related to forests, land use affecting forests and/or benefit sharing, including REDD+. It aims to provide an understanding of the legal basis for the powers of such agencies or a level of government. The review also examines different key actors in each sphere (including whether these agencies can make certain decisions according to the laws and regulations), the differences among agencies, and the scope of authority of lower-level governments.

The review in this report contains an introduction and four main sections. The first (Section 2) describes the division of responsibilities and power across the different levels of government. It provides a general overview of powers (e.g. the extent to which they are permitted to legislate or make decisions) and responsibilities as established by decentralization laws and policy, budget distribution as established by law, and other relevant aspects. This section addresses issues related to the overview of different levels of government in Indonesia, including the evolution and process of decentralization; the definition, scale and scope of regional autonomy/decentralization powers; the powers shared among agencies at different levels; and other relevant aspects.

The second section (Section 3) is on financial resource mechanisms and distribution. It serves as a background for the on-the-ground study of benefit-sharing mechanisms (e.g. actual and potential with regard to REDD+). This section seeks to address issues related to the arrangement of financial resources and the powers and responsibilities over them assigned and distributed among the different levels of government. Such responsibilities include forest fees and other royalties, as well as any existing benefit or incentive schemes (e.g. payment for ecosystem services, or PES) aimed at maintaining forests or promoting sustainable forest management or REDD+.

Section 4 describes the role that different levels of government play by law in the following list of land-use decision or policy arenas affecting forests: (1) spatial and land use planning, (2) defining the vocation of the land and conversion rights, (3) the titling of agricultural land, (4) the titling of indigenous land within forest areas, (5) the governments' ownership and administration of the land, (6) natural protected areas, (7) mining concessions, (8) forest concessions, (9) oil palm, and (10) infrastructure. This section uses summary tables as far as possible, describing the division of responsibilities among the different levels of government, including in the making of formal decisions, which procedures are used, and the division and balance of powers across functions (i.e. in establishing policy and norms, authorizing, administering, controlling and monitoring, and auditing).

The last section (Section 5) further explains the role and opportunities for indigenous (*adat*) law. This includes a review of the definition of *adat* law and the legal basis for communities making land claims based on such law. This section discusses challenges and opportunities for *adat* law to be further recognized in the Indonesian legal system.

1 Introduction

Since the beginning of the "big bang"[1] of decentralization in 2001, Indonesia has undergone a far-reaching process to create a politically, administratively and fiscally decentralized government system. Significant powers now rest with the local-government level[2] (410 districts and 98 cities),[3] and to a lesser extent with the country's 34 provinces,[4] including for natural resource management. Furthermore, the passing of Law No. 6 of 2014 on Villages expands powers to the village level, strengthening the authority of village heads to administer their own villages, including managing their assets (including natural resources), revenue and administration.[5] Another recently-published law (Law No. 23 of 2014 on Regional Governance), however, withdraws some of the authority over natural resource management from district and city governments and shifts this to the provincial and/or national governments.[6] These dynamics and changes are significant because in changing from the new order to the current era of decentralization, Indonesia's economy has been relying heavily on natural resources, including converting forest and land ecosystems to plantations and other land uses.

There remains a question over whether decentralization has delivered a more efficient, effective and responsive mode of government when it comes to managing natural resources, land use and the environment, as expected by some scholars (Resosudarmo IAP 2005, 111; Turner et al. 2003, 1) but suggested otherwise by authors who claim that it has many shortcomings in practice (Dermawan et al. 2006, 2; Ribot 2002, 9; Wollenberg and Kartodihardjo 2002, 92). As in the previous centralized system of government, it appears that development in Indonesia not only boosted economic growth but also resulted in environmental degradation, including deforestation, as well as conflicts between local communities and resource extraction enterprises (Azis and Salim 2005, 126-7). With the introduction of REDD+ (reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks in developing countries) as a scheme to incentivize tropical forest protection and the creation of other positive incentives that will reward good environmental management, it is imperative to understand whether the current system of decentralized government has an adequate institutional arrangement, legal and policy framework, and financing structure to support such schemes.

This additionally leads to a set of crucial questions, the first of which is whether the power structure and relations among different layers of governments (local, provincial and central) are clear enough for one to determine which government institutions have more authority when it comes to the management of land-use, forest and relevant sectors. In the case of these sectors, some studies suggest that various laws and regulations tend to overlap, resulting in further confusion (Dermawan et al. 2006, 5; Seymour and Turner 2002, 38, 43). Another question is whether these policy

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1 Some scholars called the commencement of Indonesia's decentralization the "big bang" because of the notable size, speed and scope of the transformation from a heavily centralized to a wider, decentralized government system (i.e. transferring power from the national government to 2.4 million civil servants at local level, along with more than 40% of government expenditure) (Bennet 2010, 2).

2 This report defines "local governments" and/or "local level" as the second-level regions, consisting of *kabupatens* (districts) and *kotas* (cities). The first level "regions" refer to provinces. When mentioning "sub-national governments," the report is referring to provincial, district and city governments.

3 This number is valid as of May 2013 (KPPOD 2013, 8).

4 *Ibid*.

5 See articles 4 and 26 of Law No. 6 of 2014.

6 See articles 14-15 and the annex of Law No. 23 of 2014.

and political relations are reflected in Indonesia's decentralized financial or fiscal arrangements. This is central to REDD+ since the formulation of financial resource and benefit distribution mechanisms is a step that could "make or break" REDD+ development and implementation. The other question is about the involvement of non-state actors, which particularly includes the private sector[7] and local and indigenous people. Any land-use policy, including as a result of REDD+, will produce "winners" and "losers" among these land-use actors. As mentioned in a number of studies, land-related policies will impact negatively on particular land users or owners (known as "losers") and at the same time benefit others ("winners"). Obidzinski et al. (2012, 25, 37) provide an example by stating that while a land-related policy that encourages oil palm plantation expansion into community land in Indonesia may create winners such as plantation employees and investing households, it will also create losers, including customary land users and former landowners. When discussing the political context of REDD+ in Indonesia, Luttrell et al. (2014, 67) argue that such a policy and associated reforms will have potential significant impacts, creating both winners (those benefiting from REDD+) and losers (those disadvantaged or losing benefits if REDD+ is implemented) in the Indonesian economy. Clarifying the roles, contribution and involvement of these actors in the existing government system in relation to potential REDD+ development is, therefore, necessary.

This report is written to answer the aforementioned questions as far as possible. Commissioned by the Center for International Forestry Research (CIFOR), generally speaking the Pelangi Indonesia Foundation (Pelangi) has used this report as an attempt to review the power relations between lower-level governments and the central government in the land-use, forest and related sectors. It is expected that reading this report will allow a better understanding of the structure of forest and land-use governance in a decentralized Indonesia. Although especially written to support REDD+ development, arrangements and implementation, this report can also feed into a wider discussion about the transformational change needed in the land-use, forest and related sectors in Indonesia.

1.1 Methodology and structure of the report

This report covers the period from the beginning of decentralization in 2001 (and previous years to the extent relevant) until the time of the writing (March 2014 – with as many relevant subsequent regulations and policies as possible also incorporated). It is based on an extensive review of existing literature and of legal and policy documents issued by the central, provincial and local governments regarding spatial and land-use planning; land or forest administration; the vocation[8] of soil; forest/logging permits and forest concessions; non-timber forest products or other key forest-related concessions; small-scale or large-scale conversion rights or permits, for example oil palm; other concessions (mining, petroleum, oil palm); land and forest titling or land allocation; the declaration, establishment and control of protection areas; and infrastructure development (particularly roads). Wherever possible, references to literature and documents are cited or inserted as footnotes.

The aim of this report is not to provide an exhaustive review of all published literature and legal and policy documents, but rather to capture strategic issues regarding the power relations and legal authority among different layers of governments, financial resource mechanisms and the distribution of relevant organizations, as well as the role of other key non-state actors, specifically in the land-use, forest and related sectors.

The report consists of an introduction and four main sections. Section 2 describes the division of responsibilities and power across the different layers of government, giving a general overview of the powers and responsibilities as established by the decentralization law and other relevant

7 See Sub-sections 2.6.1 and 2.6.2. on public participation and non-state actors' involvement in environmental and land-use management. See also Figures 8 and 12 describing the influence of the private sector in specific aspects of land-use management in Indonesia.

8 In this report, the vocation of soil is being defined as the selection of the most appropriate use of land, among the suitable ones, in line with the present development conditions (Comerma 2010, 129). This results not only from the interaction of physical factors, but also from other political, social, economic and infrastructural variables (Comerma 2010, 129-30).

laws; budget distribution as established by law; and non-state actors' participation at different levels, as well as their accountability and their relations to the governments. Section 3 examines financial resources and benefit distribution mechanisms, providing background to the actual and potential benefit-sharing mechanisms in the forest sector as well as those developed in REDD+ or any other incentive scheme. Section 4 describes the role of governments at the different levels when it comes to land-use decisions or policies that affect forests, explaining the relevant governments' responsibilities and procedures and the division and balance of powers in this regard. Section 5 specifically emphasizes the roles and opportunities for indigenous (*adat*) law. This section includes the legal framework of *adat* law and a discussion of the key consequences of having this type of law in Indonesia's current legal and decentralized system. To further help understanding of the different laws, regulations, policies, power structures and relations and of the decision-making processes of governments at the different levels, a number of figures, graphs, matrices and tables are provided, inserted in the main text or as appendices.

2 Overview of the different levels of government

Many feel it was inevitable that decentralization or regional autonomy[9] would eventually take off in Indonesia. A massive archipelagic nation stretching between the Indian and Pacific oceans, Indonesia consists of approximately 17,500 islands, 250 million people, 300 ethnic groups, 700 languages, and many areas rich in natural resources (CIA 2014, 1; Embassy of the Republic of Indonesia, Washington DC 2014, 1). Based on this, a decentralized government system can be considered as having strong roots in Indonesia's geographic, economic and ethnic diversity. It is therefore reasonable to assume that such diversity and vastness would accelerate the country to adopting wider regional autonomy. It took more than 40 years, however, for Indonesia to change this situation and its mode of government.[10] The following sub-sections illustrate the evolutionary process of decentralization in this country as well as its power structure, financial arrangement and other relevant aspects.

2.1 Preliminary issue: the evolution and process of decentralization in Indonesia

For a short period of time after Indonesia's independence, the country experienced decentralization. Sub-national governments and military commands had a relatively high degree of autonomy, since the central government lacked control over the regions and there was pressure to dismantle the monopoly of the post-colonial bureaucracy (Nordholt and Klinken 2007, 10). Law No. 1 of 1957 on Regional Governance asserted this autonomy, for instance, by entitling provincial and district parliaments to appoint their own governor and district head (*bupati*) (Nordholt and Klinken 2007, 10).

For a much longer time after this, however, Indonesia was characterized by a high degree of centralized government, starting from the period of President Sukarno's "Guided Democracy"[11] (1959-1966) and continuing to President Suharto's "New Order" (1966-1998) (Aspinall and Fealy 2003, 2; Nordholt and Klinken 2007, 10-11). The rise of authoritarian rule cancelled Law No. 1 of 1957, as confirmed by Presidential Decree (PD) No. 6 of 1959 on Regional Government (Nordholt and Klinken 2007, 10). Article 4 of this Decree explicitly states that governors are appointed by the president and district heads by the minister of home affairs. Law No. 5 of 1974 on Regional Governance re-affirmed the supremacy of the central government over the regions (Nordholt and Klinken 2007, 11) and imposed a uniform bureaucratic structure throughout Indonesia. As a result, during these two periods, Jakarta – the capital city and location of the central government – controlled the country's purse strings and made the decisions for the first- and second-level regions to implement (Turner et al. 2003, 1).

The long reign of Indonesia's centralized government system can be explained by at least three major factors: the legacy of Dutch colonialism, a nationalistic view of Indonesia and a perception that a centralized government would result in political stability. The Dutch established a central government which presided over regions to enforce colonial rule and used sub-national

9 As mentioned by Hofman and Kaiser (2002, 3), Indonesians often use the term regional autonomy and decentralization interchangeably.

10 Such a dynamic change is still taking place, as shown by the passing of Law No. 23 of 2014, in which recentralization has become more prominent.

11 In theory "Guided Democracy" meant that government decisions would be made by consensus, not by voting, and Sukarno used this system to further guarantee his total control over the government (Lamoureux 2003, 98-101; Mintz 1961, 141-44: and Seekins 1993, 49-51).

governments as mere instruments to back up the Dutch East Indies' administration (Turner et al. 2003, 9). The authoritarian regimes under Presidents Sukarno and Suharto could be seen as a reflection of the 19th-century Dutch colonial state since the central government tried to strongly enforce economic and political integration (Seekins 1993, 21). The second factor, related to Indonesian nationalism, can be traced back to a perception that in order to gain independence people living in the Indo-Malay archipelago had to feel they were united in an imagined nation, although still possessed of enormous cultural diversity. Based on this view, a strong centralist policy was deemed necessary to hold the imagined nation together (Turner et al. 2003, 9). In the beginning of the introduction of decentralization, opponents of this new system often used such a nationalistic view, arguing that decentralization would encourage dangerous new forms of local identity politics and thereby weaken the bonds of Indonesian national unity (Aspinall and Fealy 2003, 6). Finally, the perception that a heavily centralized government system would result in total control of the country's economy, society and politics and hence lead to stability started under President Sukarno when he declared a "Guided Democracy,"a system in which considerable power was concentrated in the chief executive (Lamoureux 2003, 98). When General Suharto took over the leadership of the country in the 1960s, he basically kept the heavily centralized system, which he adjusted and labeled the "New Order."

After a considerably successful long period of creating stable government, especially until the 1980s, by suppressing opposition and not giving a substantive share of authority to the locals, Suharto's authoritarian regime gradually introduced "some sense of regional autonomy and decentralization." Even Law No. 5 of 1974,[12] an important link between the central government and the local ones in the framework of a unitary state, mentions this, by emphasizing "autonomy at the second level" of districts and cities (Turner et al. 2003, 9-10). This law, however, prefers a top-down regional administration model to a bottom-up, autonomous regional government model (Malley 2003, 107). In practical terms, this law concentrated fiscal resources and executive authority in the institutions of the central government (Malley 2003, 107). The central agencies had no interest in giving up lucrative development projects to the regions and any regional development projects had to be approved in principal at the central level by technical ministries or departments, the Ministry of Home Affairs, the National Development Planning Agency (BAPPENAS) and the Ministry of Finance (Turner et al. 2003, 10).

This powerful centralized government system eventually provoked local opposition across the country. By the 1990s, a wave of protests and conflicts[13] was the inevitable result of a series of controversies surrounding the process of choosing local provincial and district leaders, turning these normally uneventful processes into forums for defining and advancing local interests (Malley 2003, 108). In 1996,[14] to address the increasing demands from the local level, an experimental "decentralization" process was launched in 26 local governments, although this experiment was fraught with difficulties and failed to continue as resources and facilities were not handed over along with the tasks (Hofman and Kaiser 2004, 17). The 1997 economic crisis that led to the collapse of the authoritarian rule of President Suharto, coupled with widespread demands for political, administrative and economic reforms, including the introduction of a decentralized model of government, helped establish fertile ground for a "big bang" approach to decentralization (Hofman and Kaiser 2004, 17). As reported by many studies, this was a period during which there were fears that resource-rich regions at the periphery might secede following the fall of Suharto and the Indonesian parliament passed decentralization laws in April

12 See paragraphs 1(b)-(c) of Law No. 5 of 1974.

13 Conflicts at the local level were also quite common during President Sukarno's era, including open rebellion led by the *Pemerintahan Revolusioner Republik Indonesia* (Revolutionary Government of the Republic of Indonesia or PRRI) in West Sumatra and *Piagam Perjuangan Semesta Alam* (Universal Struggle Charter or Permesta) in North Sulawesi, as a result of the combination of geopolitical situations in Southeast Asia and local demands (Aspinall and Berger 2001, 1006).

14 Acording to Bennet (2010, 2), decentralization had crept into the policy agenda in the late 1980s, but its advocates (including the then minister of home affairs, General Rudini) never made much progress. At that time, the central government launched a limited pilot decentralization program but there were no significant changes in the structure of the government or implementation of its development programs, most likely because Suharto was afraid that this pilot would only empower regional strongmen (Bennet 2010, 2).

1999 (Malley 2003, 107-9; Resosudarmo IAP 2005, 110-11).

Two laws marked wider regional autonomy or decentralization: Law No. 22 of 1999 on Regional Governance and Law No. 25 of 1999 on Central and Local Fiscal Balance. Based on Law No. 22 of 1999, Indonesia is a decentralized, unitary State[15] with the following division of levels of government:[16] (a) *Pemerintah Pusat* (central or national government); and *Pemerintah Daerah Otonom* (autonomous sub-national governments), which include (b) *Pemerintah Provinsi* (provincial governments) and (c) *Pemerintah Kabupaten dan Kota* (district and city governments[17]). The 1999 Law was followed by amendments to the 1945 Constitution of the Republic of Indonesia that were passed in 2000, confirming[18] the division of Indonesia into provinces that are divided into districts and cities (Butt 2010, 180). According to Butt (2010, 180), each of these three levels of government is to:

- have its own regional government (executive)[19] and parliament with elected members;[20]
- manage and regulate the activities of government, as an expression of autonomy or in assisting the central government[21]; and
- have democratically-elected governors (for provinces), district heads (for districts) and mayors (for cities).[22]

The regional autonomy or decentralization in this law gives districts and cities, and to a lesser extent provinces,[23] broad autonomy in governing and managing the public services[24] in their respective districts and cities, as well as wide-ranging lawmaking authority initially in the "11 fields of governance,"[25] which are:

- public works
- health
- education and culture
- agriculture
- transportation
- trade and industry
- investment
- the environment
- land administration
- cooperatives
- labor

(Colongon Jr 2003, 91-2; Rasyid 2004, 67)

Local governments, however, have no authority over security and defense; foreign, fiscal and monetary affairs; justice; and religious affairs (Butt 2010, 180; Rasyid 2004, 67). This law in particular gives local governments sovereignty over their political affairs and huge remaining natural resources at the local level (Hofman and Kaiser 2004, 15; Rasyid 2003, 65; Resosudarmo IAP 2005, 114). The authority given to provinces in this law covers only cross-district issues and any authority not given to local governments.[26]

Law No. 22 of 1999 was later replaced by Law No. 32 of 2004 on Regional Governance,[27] which scales back the power given to local governments

15 See paragraph 2(1) of Law No. 22 of 1999, as confirmed by paragraphs 1(2) and 2(1) of Law No. 32 of 2004.

16 See paragraphs 1(a)-(b) and 2(1) of Law No. 22 of 1999, as confirmed by paragraph 2(1) of Law No. 32 of 2004.

17 If combined, these are known as "local governments".

18 See paragraph 18(1) of the amended Constitution.

19 *Ibid*.

20 See paragraph 18(3) of the amended Constitution.

21 See paragraph 18(2) of the amended Constitution.

22 See paragraph 18(4) of the amended Constitution. Law No. 22 of 2014 on the Election of Governors, *Bupatis* and Mayors changed this direct election system to an indirect one in which governors, *bupatis* and mayors are elected by parliamentary members at their respective levels (see paragraph 1(5) of the law). This law was then annulled and replaced by Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, *Bupatis* and Mayors that re-instates the direct election of provincial and district heads (see paragraph 1(1) of the Government Regulation).

23 The authority given to local governments is in the framework of decentralization, while the authority given to provincial governments is under the framework of deconcentration (see paragraphs 8(1)-(2) of Law No. 22 of 1999). In general, decentralization can be defined as the transfer of powers and deconcentration as the transfer of administrative responsibility (Yuliani 2004, 1-3). The authority given to provincial governments is revised and adjusted in Law No. 32 of 2004 and Law No. 23 of 2014 (see Sub-section 2.2 for details).

24 See paragraph 1(h) of Law No. 22 of 1999, as confirmed by paragraph 1(5) of Law No. 32 of 2004.

25 See paragraph 11(2) of Law No. 22 of 1999 (these 11 fields are revised by paragraph 14(1) of Law No. 32 of 2004 – see Sub-section 2.2 for details).

26 See paragraphs 9(1)-(2) of Law No. 22 of 1999. This authority is revised and adjusted in Law No. 32 of 2004 (see Sub-section 2.2 for details).

27 Law No. 32 of 2004 revises Law No. 22 of 1999, scaling back the power given to the local council and restoring some authority to the provincial governor.

and restores some authority to provincial governments (USAID 2009, 9). Since the 1999 Law had given only limited lawmaking and other powers to provincial governments, there were many complaints from provincial governors who felt marginalized as *bupatis* (district heads) often ignored their instructions (Aspinall and Fealy 2003, 7; Butt 2010, 180). In this latest law, greater lawmaking powers are given to provinces and it makes provincial governors official central government representatives answerable to the president[28] (Butt 2010, 180). Butt (2010, 180), however, believes that the primary reason for the law's replacement was probably that the central government wished to regain power it had previously relinquished to cities and districts.

In relation to the financial and/or fiscal arrangements among the different layers of government, Law No. 25 set out a new system under which local governments gain a far larger share[29] of the revenue generated within their borders (Aspinall and Fealy 2003, 3). Sub-section 2.4 further elaborates this arrangement. As with the other decentralization law, Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Governments eventually replaced Law No 25 of 1999. The latest law provides additional shares for both local and provincial governments (Murniasih 2010, 5-6; Seymour and Turner 2002, 39; Sidik and Kadjatmiko 2004, 149).

Decentralization was not without controversies and opposition, however. There are cases in which some senior central government agency bureaucrats and policy makers tried to avoid supporting the implementation of regional autonomy (Aspinall and Fealy 2003, 3; Turner et al. 2003, 16). The passing of Law No. 23 of 2014 can be seen as an attempt by the national government to further reduce the power given to local governments and increase the authority of the provincial and national governments, particularly with regard to natural resource management.[30] Nevertheless, with the passing of the aforementioned laws, in principle it appears that decentralization is here to stay in Indonesia, especially since 2005 when heads of local and provincial governments (*bupatis*, mayors and governors) began to be elected directly by the people. One thing that is certain in Indonesia is that the debates over decentralization will continue, coloring and shaping the current and future system of Indonesian government.

2.2 Local and provincial government autonomy

As briefly discussed in the previous sub-section, the notion of regional autonomy in Indonesia refers to the provision established in decentralization laws giving wider authority to local – and to some extent provincial – governments in governing and managing public services, as well as making regulations and policies, with the exception[31] of several matters reserved exclusively for the central government (Butt 2010, 179-80). These decentralization laws (i.e. Law No. 22 of 1999, its replacement Law No. 32 of 2004, and the recent refinement contained in Law No. 23 of 2014) further specify the dimension of regional autonomy as follows:

- For *local governments*:
  a. "*Political autonomy*," by having democratically-elected government heads[32] (district heads for districts and mayors for cities), their own governments (executive) and parliaments with elected members,[33] and lawmaking authority[34] in a number of fields[35] of governance. These fields are development planning and control; spatial planning, use and monitoring; peace and order; public facilities and infrastructures; health; education; social issues; labor; cooperatives and small and medium enterprises; the environment; land administration; civil registry; public administration; investment; other basic services; and other compulsory affairs mandated by regulations.

28 See articles 37-38 of Law No. 32 of 2004.

29 See articles 3-16 of Law No. 25 of 1999.

30 In the case of forestry, for instance, Law No. 23 of 2014 only provides local governments the authority to manage "grand forest parks" (see paragraph 14(2)).

31 See paragraphs 7(1)-(2) of Law No. 22 of 1999.

32 See paragraph 18(4) of the amended Constitution.

33 See paragraphs 18(1)-(3) of the amended Constitution.

34 See paragraph 11(2) of Law No. 22 of 1999.

35 Initially there were 11 fields of governance as stipulated in paragraph 11(2) of Law No. 22 of 1999, but this was later revised by paragraph 14(1) of Law No. 32 of 2004, and then further revised by articles 10-24 and the annex of Law No. 23 of 2014.

b. "*Economic autonomy*," by designing their own budgets (ruled by *peraturan daerah kabupaten/kota* or local regulations)[36] and having a far larger share[37] of the revenue generated within their borders, including from their own source revenues (e.g. direct collection of local taxes and levies) and intergovernmental fiscal transfers.
c. "*Administrative autonomy*," by governing government activities and managing the public services[38] in a number of fields of governance, as listed in point (a).

- For *provincial governments*:
  a. "*Political autonomy*," by having democratically-elected government heads[39] (governors), their own governments (executive) and parliaments with elected members,[40] and lawmaking authority[41] in a number of fields[42] of governance. These fields are development planning and control; spatial planning, use and monitoring; peace and order; public facilities and infrastructures; health; education and human resources; cross-district social issues; cross-district labor issues; cooperatives and small and medium enterprises, including those with cross-district issues; the environment; land administration, including cases with cross-district issues; civil registry; public administration; investments, including those with cross-district issues; other basic services; and other compulsory affairs mandated by regulations.
  b. *"Economic autonomy*," by designing their own budgets (ruled by *peraturan daerah provinsi* or provincial regulations)[43] and having a far larger share of revenue,[44] including from funds to support their deconcentration roles[45] and other revenues generated within their borders (e.g. their own source revenues from direct collection of local taxes and levies and other intergovernmental fiscal transfers).
  c. *"Administrative autonomy*," by governing government activities and managing the public services[46] in a number of fields of governance, as listed in point (a).

When comparing the 1999 and 2004 laws (and the recent 2014 law), there are at least three main differences between the autonomy of the local and provincial governments. The first is the change in the authority of the local and provincial governments. Although the authority of local governments lies in making local regulations and governing their respective districts, the 2004 law provides greater power for provincial governments (which became even greater as a result of the 2014 law), including to "guide and supervise governance in districts and cities" and to "coordinate the implementation of central government affairs in provinces, districts and cities"[47] (Butt 2010, 180). In addition, the 2004 law allows the invalidation[48] of local regulations, as instructed by the central government (Butt 2010, 182). The second key difference is the revision of local "fields of governance". Although it gives additional fields to govern, there are also fields not explicitly mentioned in the 2004 law: agriculture, transportation, and

36 See article 19 of Law No. 25 of 1999, as confirmed by article 66 of Law No. 33 of 2004 and article 230 of Law No. 23 of 2014.

37 See articles 3-16 of Law No. 25 of 1999, as confirmed and added to by articles 5-65 of Law No. 33 of 2004 and paragraphs 1(47)-(49) and articles 285-297 of Law No. 23 of 2014 (see Sub-section 2.4 for details).

38 See paragraph 1(h) of Law No. 22 of 1999, as confirmed by paragraph 1(5) of Law No. 32 of 2004 and article 12 of Law No. 23 of 2014.

39 See paragraph 18(4) of the amended Constitution and Government Regulation in Lieu of Law No. 1 of 2014.

40 See paragraphs 18(1)-(3) of the amended Constitution.

41 Initially, as stipulated in paragraph 11(2) of Law No. 22 of 1999, the lawmaking authority in 11 fields of governance was given to local governments, while provincial governments were only given authority over cross-district issues and those not given to local governments (see paragraphs 9(1)-(2) of Law No. 22 of 1999).

42 See paragraph 13(1) of Law No. 32 of 2004. The details of the authority of national, provincial and local governments can be seen in the annex to Law No. 23 of 2014.

43 See article 185 of Law No. 33 of 2004.

44 See articles 5-65 of Law No. 33 of 2004 (see Sub-section 2.4 for details).

45 See paragraph 12(2) of Law No. 32 of 2004.

46 See paragraph 1(h) of Law No. 22 of 1999, as confirmed by paragraph 1(5) of Law No. 32 of 2004.

47 See articles 37-38 of Law No. 32 of 2004.

48 See paragraph 145(3) of Law No. 32 of 2004.

trade and industry.[49] Transportation may be covered as part of public facilities and infrastructure, and agriculture, trade and industry as part of development and spatial planning, as well as land administration. The third difference is an increase in the proportion of financial shares given to local governments. These include the introduction of shares from reforestation and geothermal energy in the 2004 law (Murniasih 2010, 5-6; Seymour and Turner 2002, 39; Sidik and Kadjatmiko 2004, 149).

The decentralization laws define the division of powers into:

- "*Exclusive powers,*" in which local governments have full authority in governing their respective districts as stipulated by laws,[50] as an expression of regional autonomy or in assisting the central government[51]; and the central government has exclusive authority[52] in foreign affairs, defense, security, justice, national monetary and fiscal affairs, and religion.
- "*Delegated powers,*" in which the central government delegates its duties, functions or authority to provincial and/or local governments[53]; and delegates part of its administrative affairs or duties to provincial governments, local governments and/or village governments based on the principle of support assignments (*tugas pembantuan*).[54]
- "*Cooperation and shared revenues,*"[55] not "*shared powers*," among the different layers of government, particularly in natural resource management.

2.3 National, provincial and local government powers

Based on the amended Constitution and relevant laws, Figure 1 shows the Indonesian political system or government structure and the interaction among the different layers of government. At the *national level*, the government structure comprises legislative, executive and judicial branches.

2.3.1 *Majelis Permusyawaratan Rakyat* (MPR-RI) (People's Consultative Assembly)

Previously acknowledged as the highest state institution, the MPR-RI no longer holds that position according to the amended Constitution.[56] Its members are members of the House of Representatives (i.e. the Council of People's Representatives and the Council of Regional Representatives) (Ministry of State Secretary 2010b, 1). This institution's principal functions[57] are: (a) the authority to amend and enact the

49 This situation may lead to confusion and conflicts. For instance, agriculture can be part of the provincial and/or local governments' optional fields of governance, but the distinction of authority between the two governments remains unclear (see the Elucidation part of paragraphs 13(2) and 14(2)). According to these paragraphs, the difference lies in the condition, peculiarity, and comparative advantage of the regions concerned (and this can lead to multiple interpretations). Law No. 23 of 2014 provides a detailed explanation of the fields of governance among the different levels of government (see articles 10-23). Paragraph 10(1) of Law No. 23 of 2014 clearly stipulates the following aspects as the fields of governance exclusively administered by the national government: (a) foreign affairs; (b) defense; (c) security; (d) justice; (e) monetary and national fiscal affairs; and (f) religious affairs. Using a deconcentration arrangement, the national government can delegate such authority to provincial and local governments (see paragraph 10(2)). The fields of governance that can be shared-managed by the national, provincial and local governments are: (1) mandatory fields that link to basic services, consisting of (a) education, (b) health, (c) public works and spatial planning, (d) public housing and human settlement areas, (e) law and order and public protection, and (f) social welfare; (2) mandatory fields that do not link to basic services, consisting of (a) labor, (b) women's empowerment and child protection, (c) food, (d) land, (e) the environment, (f) population administration and civil registry, (g) community and village empowerment, (h) population control and family planning, (i) transportation, (j) communication and information, (k) cooperatives and small and medium enterprise, (l) capital investment, (m) youth and sport, (n) statistics, (o) intelligence, (p) culture, (q) libraries, and (r) archives; (3) optional fields of governance, consisting of (a) marine affairs and fishery, (b) tourism, (c) agriculture, (d) forestry, (e) energy and mineral resources, (f) trade, (g) industry, and (h) transmigration. The authority of local governments for such fields of governance is limited to aspects within the scope of their respected administrative boundaries (see article 13 and the annex to Law No. 23 of 2014).

50 See paragraph 10(1) of Law No. 32 of 2004 and article 13 of Law No. 23 of 2014.

51 See paragraph 10(2) of Law No. 32 of 2004 and article 13 of Law No. 23 of 2014.

52 See paragraph 10(3) of Law No. 32 of 2004 and paragraph 10(1) of Law No. 23 of 2014.

53 See paragraph 10(4) of Law No. 32 of 2004 and paragraph 10(2) of Law No. 23 of 2014.

54 See paragraphs 10(4)-(5) of Law No. 32 of 2004 and paragraph 10(2) of Law No. 23 of 2014.

55 See article 17 of Law No. 32 of 2004 and paragraph 1(30) of Law No. 23 of 2014.

56 See paragraph 2(1) of the amended Constitution.

57 See article 3 of the amended Constitution.

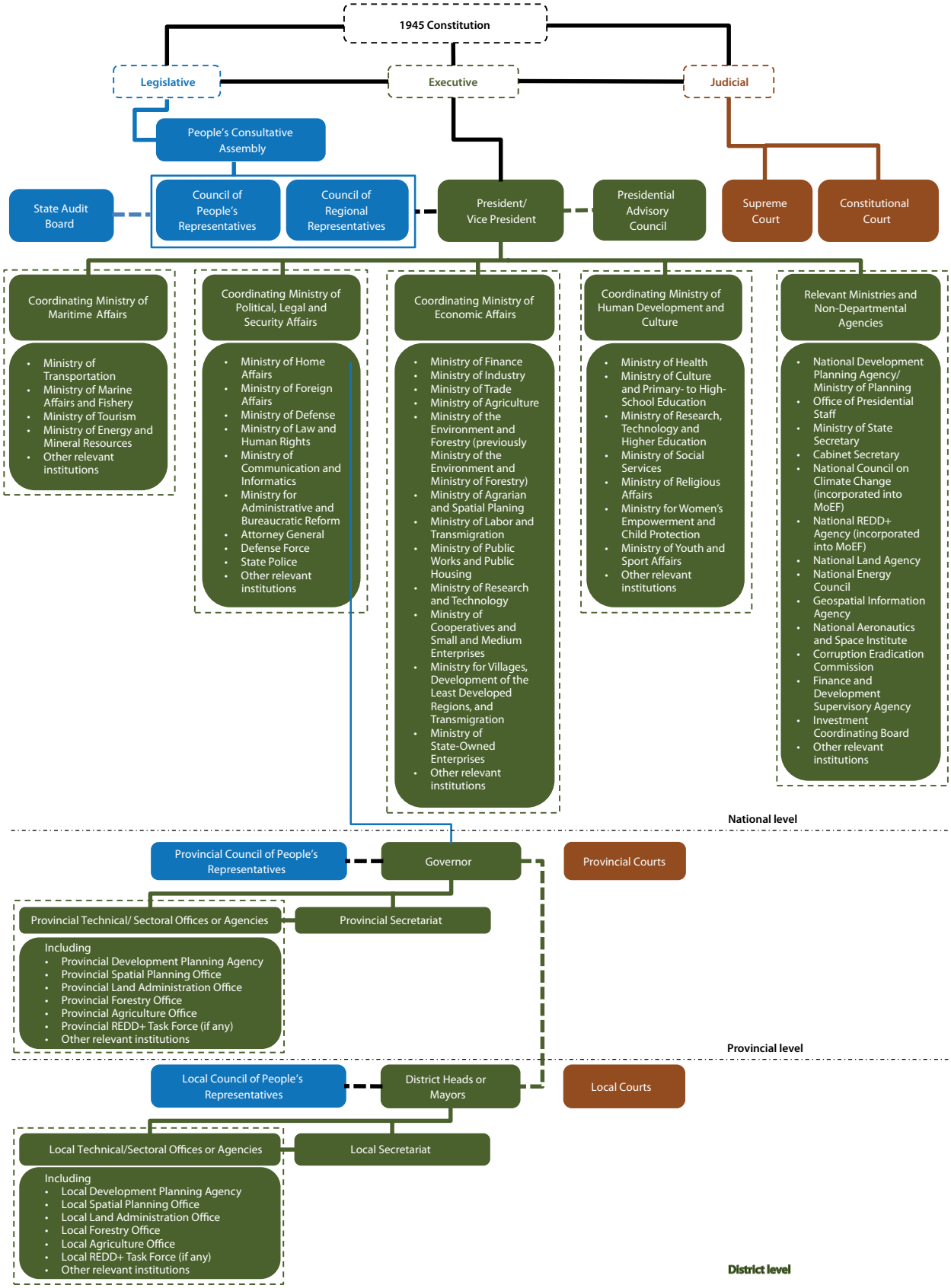

Figure 1. The Indonesian political system and government structure.

Sources: First author's description based on the amended 1945 Constitution; Coordinating Ministry of Economic Affairs (2013, 1); Coordinating Ministry of Social Welfare (2013, 1); Law No. 30 of 2002 on the Corruption Eradication Commission; Presidential Regulation (PR) No. 24 of 2010 on the Hierarchy, Duties and Functions of State Ministries; PR No. 92 of 2011 on the Second Revision of Presidential Regulation No. 24 of 2010 (as revised by PR No. 135 of 2014 on the Seventh Revision of PR No. 24 of 2010 on the Hierarchy, Duties and Functions of State Ministries, and the Hierarchy, Duties and Functions of 1st-Echelon State Ministries and PR No. 165 of 2014 on the Arrangement of Duties and Functions of the Presidential Cabinet); and Radio Australia (2004, 1-3).

Constitution, (b) inaugurating the president and/or vice president, and (c) dismissing the president and/or vice president, only in accordance with the Constitution. Key MPR-RI decrees[58] relevant to the land-use, forest and land-related sectors in a decentralized Indonesia can be seen in Table 1.

Non-governmental organizations (NGOs) particularly view MD No. IX of 2001 as important because it is considered to have provided a legal framework for addressing land-related and natural resource management issues in Indonesia (HuMa 2011, 11-12). Some NGOs, however, have been particularly critical of the fact that the central government has not seriously implemented this decree (HuMa 2011, 11-12). There are at least two reasons behind the government's inaction regarding the implementation of this decree, as argued by Yulandri (2011, 19-21) and HuMa (2011, 12):

- The deletion of MPR-RI Decrees in the Indonesian hierarchy of laws as regulated by Law No. 10 of 2004 on the Formulation of Laws and Regulations.[59] In 2011, MPR-RI Decrees were re-instated in the Indonesian hierarchy of laws by Law No. 12 of 2011 on the Formulation of Laws and Regulations,[60] as a result of which NGOs expect the government to seriously implement this decree.
- The government's overall economic development programs, which some NGOs view as "too capitalistic" and "pro big investors." Such an ideology, according to these NGOs, has driven the government to ignore the mandate of MD No. IX of 2001.

Table 1. MPR-RI decrees.

Type	Number and year	Content
MPR-RI Decree (MD)	No. XV of 1998	Regional Autonomy, Just and Equitable Use of the Nation's Resources, and Fiscal Balance between the Central Government and Regional Governments
MD	No. III of 2000	Sources of Law and the Hierarchy of Laws and Regulations
MD	No. IV of 2000	Policy Recommendations for Implementing Regional Autonomy
MD	No. IX of 2001	Agrarian Reforms and Natural Resource Management

Source: First author's compilation based on information from the BPHN (2014) and other government sources.

2.3.2 *Dewan Perwakilan Rakyat* (DPR-RI) (Council of People's Representatives)

DPR-RI members are elected[61] by general election every five years. The DPR-RI has the right to propose bills and the authority to establish laws, jointly discussed with and approved by the president.[62] In addition to its legislative authority, the DPR-RI has budgeting and oversight functions as well as the right to question[63] the president and other institutions of the executive branch of government. These key DPR-RI functions have made it one of the most important state institutions at the national level.

Laws produced by the DPR-RI have played a fundamental role in guiding and directing the land-use, forest and other relevant sectors, as well as directly influencing them. Table 2 shows some of the key laws related to these sectors.

2.3.3 *Dewan Perwakilan Daerah* (DPD-RI) (Council of Regional Representatives)

DPD-RI members are elected[64] from every province through a general election every five years. The DPD-RI can propose to the DPR-RI bills related to regional autonomy, the relationship between central and regional governments, the expansion or splitting of regions, the management of natural resources and other economic resources, and the fiscal balance between the

58 MPR-RI decrees are recognized as having the highest degree of authority in the Indonesian hierarchy of laws after the Constitution (see paragraph 7(1) of Law No. 12 of 2011).

59 See paragraph 7(1) of Law No. 10 of 2004.

60 See paragraph 7(1) of Law No. 12 of 2011.

61 See paragraph 19(1) of the amended Constitution.

62 See articles 20-21 of the amended Constitution.

63 See paragraphs 20A(2)-(3) of the amended Constitution.

64 See paragraph 22C(1) of the amended Constitution.

Table 2. Laws passed by the DPR-RI.

Type	Number and year	Content
Law	No. 5 of 1960	Basic Agrarian Principles
Law	No. 5 of 1990	Conservation of Biodiversity and Ecosystems
Law	No. 6 of 1994	Ratification of the United Nations Framework Convention on Climate Change (UNFCCC)
Law	No. 41 of 1999	Forestry
Law	No. 22 of 2001	Petroleum (Oil) and Natural Gas
Law	No. 27 of 2003	Geothermal Energy
Law	No. 7 of 2004	Water Resources
Law	No. 17 of 2004	Ratification of the Kyoto Protocol to the UNFCCC
Law	No. 18 of 2004	Plantations (Estate Crops)
Law	No. 19 of 2004	Revision of Law No. 41 of 1999 on Forestry
Law	No. 25 of 2004	National Development Planning System
Law	No. 17 of 2007	National Long-Term Development Planning 2005-2025
Law	No. 26 of 2007	Spatial Planning
Law	No. 27 of 2007	Coastal and Small Island Management
Law	No. 30 of 2007	Energy
Law	No. 4 of 2009	Mining of Mineral Resources and Coal
Law	No. 32 of 2009	Environmental Protection and Management
Law	No. 41 of 2009	Protection of Land for Sustainable Food Crops
Law	No. 4 of 2011	Geospatial Information
Law	No. 2 of 2012	Land Procurement for the Public Interest (Land Acquisition Law)
Law	No. 7 of 2012	Resolution of Social Conflicts
Law	No. 18 of 2012	Food
Law	No. 11 of 2013	Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
Law	No. 18 of 2013	Prevention and Eradication of Forest Degradation
Law	No. 19 of 2013	Protection and Empowerment of Farmers
Law	No. 1 of 2014	Revision of Law No. 27 of 2007 on Coastal and Small Island Management
Law	No. 6 of 2014	Villages
Law	No. 23 of 2014	Regional Governance
		Other relevant laws, including those concerning the establishment of new provinces, districts and cities

Source: First author's compilation based on information from the BPHN (2014) and other government sources.

central government and the regions.[65] Although they have been acknowledged as co-legislators with the DPR-RI, some scholars and political analysts consider the DPD-RI to be a weaker institution (Marzuki 2008, 83-84). Nevertheless, this institution has a strong position in terms of influencing any decision on regional autonomy, including the establishment of new districts and fiscal arrangements.

Beside the legislative branch, Indonesia has its *executive branch* of government at the national level with the following institutions.

65 See paragraph 22D(1) of the amended Constitution.

2.3.4 President and vice president of the Republic of Indonesia

The president and vice president run on the same ticket and are directly elected by the people[66] every five years. The president's principal functions are: (a) being entitled to submit bills to the DPR-RI and issue government regulations as required to implement laws,[67] (b) being able to declare war, make peace and conclude treaties with other countries, with the DPR-RI's approval,[68] (c) being able to make international agreements, with the DPR-RI's approval,[69] (d) being able to declare a state of emergency, as regulated by law,[70] (e) appointing ambassadors and consuls,[71] (f) being able to grant[72] clemency, the restoration of rights and amnesties taking into account the considerations of the Supreme Court, (g) being able to grant titles and other honors, and (h) establishing an advisory council to advise the president and provide opinions him/her with opinions.[73] The president also holds the power to appoint and dismiss ministers,[74] who act as his/her assistants in the cabinet. The functions and authority of the ministries are explained in the following sub-section.

Throughout Indonesian history, the president has been influential in shaping natural resource and land-use management in the country. Key regulations and policies issued by the executive branch of government and/or the president in these sectors can be seen in Table 3.

Based on Table 3, it is clear that the president and the executive branch of the central government are the center of policy formulation for land-use, forestry and natural resource management, even after decentralization took place in Indonesia. Following the 13th session of the Conference of the Parties (COP-13) to the United Nations Framework Convention on Climate Change (UNFCCC) in Bali in 2007, it also became clear that then President Susilo Bambang Yudhoyono wanted to put actions for reducing Indonesia's greenhouse gas emissions (including from REDD+) at the top of the country's agenda, as indicated by an increase in the number of regulations issued on this matter.

The fact that the president or the executive branch of the central government may have been supportive to REDD+ or climate change mitigation at that time is no guarantee that such policies are going to be implemented smoothly at the national, regional and local levels. In a democratized Indonesia, the power relations between the executive and legislative branches of government have changed dramatically. The presidential veto, provided for in the original 1945 Constitution, and the right to establish law are no longer stipulated in the amended Constitution (Kawamura 2010, 12). The president can only propose a bill to the DPR-RI or issue a government regulation[75] or presidential regulation or decree. As a consequence, any policy from the president's office, in the form of presidential regulations, for instance, may be scrutinized or weakened by the DPR-RI. Such presidential regulations or decrees are also susceptible to being changed, especially if a particular president who initiated the regulations has stepped down from office. The current president, Joko Widodo (Jokowi), for instance, issued PR No. 16 of 2015 on the Ministry of the Environment and Forestry (MoEF) that discontinues the REDD+ Agency and the National Council on Climate Change and incorporates the mandates, duties and functions of these two organizations into the newly-established MoEF.[76] To have a stronger and sustained policy, therefore, the president needs to work with the DPR-RI in order to transform presidential regulations and/or decrees to confirm them as laws, or at least government regulations.

Furthermore, in a decentralized Indonesia, policies formulated as presidential regulations and/or decrees have less weight than laws or government regulations. As part of exercising their decentralized authority regulated by law, provincial and local governments may issue different policies that can contradict those issued by the president. To address this, an explicit "whole-of-government policy"

66 See paragraph 6A(1) of the amended Constitution.

67 See article 5 of the amended Constitution.

68 See paragraph 11(1) of the amended Constitution.

69 See paragraph 11(2) of the amended Constitution.

70 See article 12 of the amended Constitution.

71 See article 13 of the amended Constitution.

72 See article 14 of the amended Constitution.

73 See article 16 of the amended Constitution.

74 See paragraphs 17(1)-(2) of the amended Constitution.

75 See article 5 of the amended Constitution.

76 See articles 59 and 63 of PR No. 16 of 2015.

Table 3. Regulations and policies issued by the government and/or president.

Type[a]	Number and year	Content
GR	No. 64 of 1957	Granting Some of the Central Government's Authority over Matters Concerning Fisheries, Forestry and Community Rubber Sectors to First-level Regional Governments
GR	No. 22 of 1967	Forest Concession License Fees and Royalties
GR	No. 6 of 1968	Withdrawing Control over Matters Related to Forestry from District Forestry to Provincial Forestry in Eastern Indonesia
GR	No. 21 of 1970	Forest Concession Rights and Forest Product Harvesting Rights
GR	No. 33 of 1970	Forest Planning
GR	No. 18 of 1975	Revision of Article 9 of GR No. 21 of 1970 on Forest Exploitation Rights and Forest Product Harvesting Rights
GR	No. 28 of 1985	Forest Protection
PD	No. 26 of 1988	National Land Agency
GR	No. 7 of 1990	Industrial Timber Plantations
PD	No. 30 of 1990	Imposition, Collection and Distribution of Forest Royalties
PD	No. 32 of 1990	Protected Area Management
PD	No. 29 of 1991	Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties
GR	No. 79 of 1992	Revision of GR No. 32 of 1969 on the Implementation of Law No. 11 of 1967 on Mining Principles
PD	No. 41 of 1993	Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties as Previously Revised by PD No. 29 of 1991
PD	No. 55 of 1993	Land Procurement for the Implementation of Development for the Public Interest
PD	No. 75 of 1993	Coordination for National Spatial Planning
PD	No. 25 of 1994	Coordination in the Implementation of Resettlement and the Settlement of Forest Squatters
PD	No. 22 of 1995	Establishment of an Integrated Forest Safeguarding Team
PD	No. 82 of 1995	Development of Peatland Areas for Food Crops in Central Kalimantan
PD	No. 83 of 1995	Establishment of a Presidential Fund to Support the Development of Peatland Areas in Central Kalimantan
GR	No. 40 of 1996	Right of Exploitation, Right of Building and Right of Land
GR	No. 69 of 1996	Implementation of Rights and Duties and the Procedure for Public Participation in Spatial Planning
PD	No. 75 of 1996	Basic Regulations on Work Contracts in Coal Mining Activities
GR	No. 24 of 1997	Land Registration
GR	No. 47 of 1997	National Spatial Planning
GR	No. 36 of 1998	Control and Use of Abandoned Land
GR	No. 51 of 1998	Forest Resource Rent Provision
GR	No. 58 of 1998	Service Tariff for Non-Tax State Revenue Valid at the Ministry of Mining and Energy in the General Mining Sector
GR	No. 59 of 1998	Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
GR	No. 62 of 1998	Granting to Local Governments of Some of the Central Government's Authority over Matters Concerning Forestry
PD	No. 33 of 1998	Management of the Leuser Ecosystem Area

continued on next page

Table 3. Continued

Type[a]	Number and year	Content
PD	No. 67 of 1998	Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties, as Previously Revised by PD No. 41 of 1993
PD	No. 74 of 1998	Revision of PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan
PD	No. 133 of 1998	Revision of PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan, as Previously Revised by PD No. 74 of 1998
PI	No. 6 of 1998	Foreign Direct Investment in Oil Palm Plantations
GR	No. 6 of 1999	Forest Utilization and Forest Product Collection/ Harvesting in Production Forests
GR	No. 27 of 1999	Environmental Impact Assessment
GR	No. 74 of 1999	Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
GR	No. 92 of 1999	Second Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
PD	No. 80 of 1999	General Guidance for Planning and Managing Ex-Mega Rice Peatland Project Areas in Central Kalimantan
PD	No. 154 of 1999	Revision of PD No. 26 of 1988 on the National Land Agency
GR	No. 150 of 2000	Mitigation of Soil Degradation from Biomass Production
PD	No. 80 of 2000	Inter-Departmental Forestry Committees
PD	No. 95 of 2000	National Land Agency
GR	No. 4 of 2001	Management of Environmental Degradation and/or Pollution Linked to Forest or Land Fires
GR	No. 75 of 2001	Second Revision of GR No. 32 of 1969 on the Implementation of Law No. 11 of 1967 on Mining Principles
PD	No. 10 of 2001	Implementation of Regional Autonomy in the Land Sector
PD	No. 25 of 2001	Coordination Team for the Eradication of Illegal Mining, Fuel Smuggling and Electricity Theft
PD	No. 81 of 2001	Committee on Policy for the Acceleration of Infrastructure Development
PI	No. 5 of 2001	Eliminating Illegal Logging and the Illegal Timber Trade in the Leuser Ecosystem and Tanjung Puting National Park
GR	No. 34 of 2002	Forest Planning and the Formulation of Forest Management and Utilization Plans
GR	No. 35 of 2002	Reforestation Fund
GR	No. 63 of 2002	Urban Forests
GR	No. 68 of 2002	Food Security
PD	No. 34 of 2003	National Policy in the Land Sector
GR	No. 16 of 2004	Land Management
GR	No. 44 of 2004	Forest Planning
GR	No. 45 of 2004	Forest Protection
PD	No. 4 of 2004	Permits or Contracts Relating to Mining in Forest Areas
PI	No. 4 of 2005	Eradication of Illegal Logging in Forest Areas and Distribution throughout the Territory of the Republic of Indonesia
PR	No. 36 of 2005	Land Procurement for the Implementation of Development for the Public Interest
PR	No. 42 of 2005	Committee on Policy for the Acceleration of Infrastructure Provision

continued on next page

Table 3. Continued

Type[a]	Number and year	Content
PR	No. 5 of 2006	National Energy Policy
PR	No. 10 of 2006	National Land Agency
PR	No. 65 of 2006	Revision of PR No. 36 of 2005 on Land Procurement for the Implementation of Development for the Public Interest
PI	No. 1 of 2006	Supply and Use of Biofuel as an Alternative Fuel
PI	No. 2 of 2006	Supply and Use of Liquid Coal as an Alternative Fuel
GR	No. 6 of 2007	Forest Planning and the Formulation of Forest Management and Utilization Plans
GR	No. 59 of 2007	Geothermal Business Activities
PR	No. 89 of 2007	National Movement for Forest and Land Rehabilitation
PI	No. 2 of 2007	Acceleration of the Rehabilitation and Revitalization of Ex-Mega Rice Peatland Project Areas in Central Kalimantan
GR	No. 2 of 2008	Type of and Tariffs on Non-Tax State Revenue from the Use of Forest Areas for Non-Forest Development Activities Valid at the Ministry of Forestry
GR	No. 3 of 2008	Revision of GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans
GR	No. 26 of 2008	National Spatial Planning
GR	No. 76 of 2008	Forest Rehabilitation and Reclamation
PR	No. 26 of 2008	Establishment of the National Energy Council and the Selection of its Members
PR	No. 46 of 2008	National Council on Climate Change
GR	No. 31 of 2009	Protection of Areas Producing Specific Estate Crop Produce
GR	No. 60 of 2009	Revision of GR No. 45 of 2004 on Forest Protection
GR	No. 10 of 2010	Procedure for Changing the Status and Functions of Forest Areas
GR	No. 11 of 2010	Control and Use of Abandoned Land
GR	No. 22 of 2010	Mining Areas
GR	No. 23 of 2010	Implementation of Mineral and Coal Mining Business Activities
GR	No. 24 of 2010	Utilization of Forest Areas
GR	No. 55 of 2010	Supervision and Control of Mineral and Coal Mining Business Activities
GR	No. 68 of 2010	Procedure for Public Participation in Spatial Planning
GR	No. 70 of 2010	Revision of GR No. 59 of 2007 on Geothermal Business Activities
GR	No. 72 of 2010	State Owned Forestry Companies
GR	No. 78 of 2010	Reclamation and Post-Mining Activities
PR	No. 5 of 2010	Medium-Term National Development Plan 2010-2014
PR	No. 78 of 2010	Guaranteeing Infrastructure in Government Cooperation Projects with Business Entities Done through the Infrastructure Guarantee Agency
PI	No. 1 of 2010	Acceleration of the Implementation of National Development Priorities in 2010
PD	No. 19 of 2010	Task Force for the Preparation of the REDD+ Agency
GR	No. 1 of 2011	Gazettement and Conversion of Functions of Land for Sustainable Food Crops
GR	No. 28 of 2011	Management of Game and Nature Reserves
PR	No. 10 of 2011	National Coordination Board for Agriculture, Fishery and Forestry Extension Services
PR	No. 12 of 2011	Revision of PR No. 42 of 2005 on the Committee on Policy for the Acceleration of Infrastructure Provision

continued on next page

Table 3. Continued

Type[a]	Number and year	Content
PR	No. 28 of 2011	Use of Protection Forests for Underground Mining Activities
PR	No. 32 of 2011	Master Plan for the Acceleration and Expansion of Indonesia's Economy 2011-2025
PR	No. 61 of 2011	National Action Plan for the Reduction of Greenhouse Gas Emissions
PR	No. 71 of 2011	Implementation of the National Greenhouse Gas Inventory
PR	No. 80 of 2011	Trust Funds
PI	No. 5 of 2011	Safeguarding National Rice Security in Extreme Climate Conditions
PI	No. 10 of 2011	Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands
PD	No. 25 of 2011	Task Force for Preparation of the REDD+ Agency
GR	No. 24 of 2012	Revision of GR No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities
GR	No. 25 of 2012	Information System on Land for Sustainable Food Crops
GR	No. 27 of 2012	Environmental Licenses
GR	No. 30 of 2012	Financing the Protection of Land for Sustainable Food Crops
GR	No. 37 of 2012	River Basin (Watershed Area) Management
GR	No. 60 of 2012	Revision of GR No. 10 of 2010 on the Procedure for Changing the Status and Functions of Forest Areas
GR	No. 61 of 2012	Revision of GR No. 24 of 2010 on the Utilization of Forest Areas
PR	No. 3 of 2012	Kalimantan Spatial Planning
PR	No. 13 of 2012	Sumatra Spatial Planning
PR	No. 71 of 2012	Land Procurement for the Implementation of Development for the Public Interest
PR	No. 73 of 2012	National Strategy on Mangrove Ecosystem Management
PR	No. 121 of 2012	Rehabilitation of Coastal Zones and Small Islands
PR	No. 122 of 2012	Reclamation of Coastal Zones and Small Islands
GR	No. 73 of 2013	Swamps
GR	No. 79 of 2013	Traffic, Roads and Transportation Networks
PR	No. 62 of 2013	REDD+ Agency
PR	No. 63 of 2013	National Land Agency
PI	No. 6 of 2013	Suspension of New Licenses and Improving the Forest Governance of Primary Forests and Peatlands
GR in Lieu of Law	No. 1 of 2014	Election of Governors, Bupatis and Mayors
GR	No. 1 of 2014	Second Revision of GR No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities
GR	No. 12 of 2014	Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry
GR	No. 165 of 2014	Arrangement of the Duties and Functions of the Presidential Cabinet
PR	No. 16 of 2015	Ministry of the Environment and Forestry
		Other relevant regulations and policies

a GR = Government Regulation, PD = Presidential Decree, PI = Presidential Instruction and PR = Presidential Regulation.

Source: First author's compilation based on information from the BPHN (2014) and other government sources.

strategy can be used that builds on Law No. 12 of 2011 (OECD 2012, 23). This law provides the executive with a great deal of flexibility to enhance regulatory management systems at both the national and sub-national levels through the use of presidential and government regulations (OECD 2012, 23). Using this strategy, for example, a presidential regulation can express a statement of political commitment and direct public sector entities – including at sub-national levels – to coordinate actions and define a range of measures that should be taken (OECD 2012, 23). The passing of Law No. 23 of 2014[77] that shifts some authority from local governments to provincial and central governments is likely to be used by the current president and vice president to ensure the smooth implementation of national policies. Such a top-down approach, however, may face resistance at the local level.[78]

Also, to strengthen and implement his/her policies, the president is assisted by ministers of state[79] and relevant national agencies and institutions. These ministers (and their corresponding ministries) and national agencies are discussed in Sub-section 2.3.5. To obtain strategic advice on various development sectors, the president has a *Dewan Pertimbangan Presiden* (Presidential Advisory Council)[80] that consists of advisors who tend to be former ministers, have expertise on different issues and have varying levels of influence on the president and other government institutions (Datta et al. 2011, 20).

2.3.5 The cabinet (ministers of state) and relevant agencies under the president

The main duty of the cabinet, which consists of ministers of state, is to assist the president.[81] Each minister is responsible for a particular area of government activity[82] and is often in charge of a ministerial institution to help in his or her duty. These ministries are coordinated by four[83] different coordinating ministries: the Coordinating Ministry of Maritime Affairs, the Coordinating Ministry of Political, Legal and Security Affairs, the Coordinating Ministry of Economic Affairs, and the Coordinating Ministry of Human Development and Culture.[84] The full list of ministries can be seen in Figure 1.

When it comes to cross-sectoral issues such as land-use and forestry management, several different ministries are relevant. Each ministry has different functions and duties, as regulated by laws and respective regulations. The first group of ministries includes those under the Coordinating Ministry for Political, Legal and Security Affairs, which consists of:

The Ministry of Home Affairs (MoHA)[85]

The MoHA has functions that include: (a) implementation of governmental matters in the field of domestic affairs[86] and regional autonomy,[87] (b) supervision and coordination of the implementation of tasks and the administrative services department, (c) implementation of applied research and development as well as education and specific training to support policy in the field of domestic affairs and regional autonomy, and (d) implementation of functional supervision (Ministry of State Secretary 2010a, 1). In relation to regional autonomy, the MoHA has the authority to evaluate drafts of budgetary-related provincial regulations and eventually revoke them if they do not meet the requirements.[88] The MoHA also has the authority to review provincial and local regulations and policies and to revoke such policies

77 See articles 14-15 and the annex to Law No. 23 of 2014.

78 One reaction, reported as coming from the acting *Bupati* of Kutai Timur district in East Kalimantan, stated that Law No. 23 of 2014 can be seen as the death sign for decentralization (http://www.suarakutim.com/uu-no-23-tahun-2014-lonceng-kematian-semangat-otda/).

79 See article 17 of the amended Constitution.

80 See article 16 of the amended Constitution.

81 See paragraph 17(1) of the amended Constitution.

82 See paragraph 17(3) of the amended Constitution.

83 The previous administration had three coordinating ministries: the Coordinating Ministry of Political, Legal and Security Affairs, the Coordinating Ministry of Economic Affairs, and the Coordinating Ministry of Social Welfare (see PR No. 24 of 2010 and PR No. 92 of 2011).

84 See PR No. 165 of 2014.

85 *Kementerian Dalam Negeri* (in Bahasa Indonesia) or Kemendagri.

86 See paragraph 67(a) of PR No. 24 of 2010 and article 8 of PR No. 165 of 2014. The tasks and functions relating to the village, however, have been shifted from the MoHA to the Ministry of the Village, Disadvantaged Regions and Transmigration (see article 6 of PR No. 165 of 2014).

87 See paragraph 122(1) of Law No. 32 of 2004.

88 See paragraph 185 of Law No. 32 of 2004.

if deemed contradictory to national regulations and/or policies.[89]

The MoHA has gradually become active in helping promote conservation and sustainable platforms at the sub-national level. In 2010, for example, in collaboration with the Ministry of the Environment, the Ministry of Public Works and the Ministry of Forestry, the MoHA got ten Sumatran governors to agree on a policy document known as the "the Road Map for Saving Sumatra's Ecosystem: Sumatra's Vision 2020" (Satriastanti 2010, 1). With the help of Professor Emil Salim (a member of the Presidential Advisory Council), these four ministries and ten governors launched an official commitment to develop spatial plans on the island based on ecosystem values, functions and services, restoring critical areas and protecting the remaining high-value conservation areas (Ardiansyah and Barano 2012, 1; Satriastanti 2010, 1). This platform, which was followed by PR No. 13 of 2012 on Sumatra Island Spatial Planning, shows that the central government can work with provincial governments, at least in formulating sustainable development and environmental protection policy.

The Ministry of Foreign Affairs (MoFA)[90]

The MoFA has functions and roles[91] which include: (a) formulating and implementing national policies and technical policies in the field of foreign policy and foreign relations, (b) managing governmental affairs within its scope of work, (c) managing the state property/ assets under its responsibility, (d) supervising the performance of its duties, and (e) delivering a report evaluating results and with recommendations and considerations on its duties and functions to the president. The MoFA plays a crucial role in relation to the land-use and forest sectors, particularly in terms of being actively involved in negotiating Indonesia's position on these issues at the international level, including aspects related to financial mechanisms. The famous Letter of Intent between the Government of the Kingdom of Norway and the Government of the Republic of Indonesia on Cooperation on Reducing Greenhouse Gas Emissions from Deforestation and Forest Degradation was also jointly signed by the Indonesian Minister for Foreign Affairs, R.M. Marty M. Natalegawa, and the Norwegian Minister of the Environment and International Development, Erik Solheim, in Oslo on 26 May 2010.

Other key ministries are those led by the Coordinating Ministry of Economic Affairs:

The Ministry of Finance (MoFa)[92]

The MoFa has a crucial task in managing affairs related to financial and state assets and assisting the President in organizing the state.[93] It has several key functions[94] including: (a) formulation, stipulation, and implementation of financial and state asset policies, (b) management of state properties/ assets that belong to the MoFa, (c) supervision of the implementation of tasks within the MoFa, (d) implementation of technical guidance and supervision for the MoFa's affairs in the regions, (e) implementation of national technical activities, and (f) implementation of vertical technical activities to the regions (Ministry of Finance 2013b, 1). Based on its task and functions, the MoFa is the leading institution at the national level in arranging, regulating and supervising intergovernmental fiscal transfers to the regions. This is carried out by: (a) formulating fiscal balance policy, (b) implementing fiscal balance policy, (c) drawing up fiscal balance norms, standards, procedures and criteria, and (d) providing technical guidance and evaluation on fiscal balance (Ministry of Finance 2013b, 1). The details of intergovernmental fiscal transfers are provided in Sub-section 2.3.6.

With regard to the land-use and forest sectors, the MoFa has a substantive role in incentivizing[95] climate change mitigation, better land-use management and environmental protection at the provincial and local levels. Such incentives

89 See Elucidation part of Law No. 32 of 2004 (p. 16).

90 *Kementerian Luar Negeri* or Kemenlu.

91 See articles 93-94 of PR No. 24 of 2010, and article 7 of Law No. 39 of 2008 on State Ministries.

92 *Kementerian Keuangan* or Kemenkeu.

93 See article 170 of PR No. 24 of 2010.

94 See article 171 of PR No. 24 of 2010.

95 The MoFa's authority and functions to regulate and provide incentives include, but are not limited to, formulating and implementing taxation policy, budgeting policy (e.g. determining subsidies) and fiscal balance (e.g. determining the provision of fund allocation and incentives to provincial and local governments) (Ministry of Finance 2013b, 1).

(Ministry of Finance 2009, 4, 6, 8-9, 14) may include:

- The provision of government funds to support capacity building, institutional reform and the up-front financing of mitigation initiatives, and to facilitate transformational change.
- The formulation and application of the carbon tax/levy and/or pricing policy.
- Relevant price arrangements and the provision of government guarantees to support climate-change mitigation activities.
- The provision of assistance to maximize access to international climate financing.
- Budget allocation and arrangement to support provincial and local governments in implementing climate-change mitigation and environmental protection.

Tänzler and Maulidia (2013, 20) similarly explain that the MoFa is responsible for ensuring climate change requirements are reflected in budget priorities, pricing policies, and financial market rules.

The MoFa has been proactive in approaching this issue since COP-13 in Bali in 2007. Led by its minister, the MoFa facilitated parallel meetings among finance and trade ministers aimed, among other things, at reviewing the cost of damage due to climate change, examining policy instruments available to address the issues, setting objectives and common goals, and outlining the next steps. These meetings drew dozens of trade and finance ministers, who had remained largely aloof from the climate debate prior to COP-13 (Pew Center on Global Climate Challenge 2007, 1).

At the national level, the MoFa further strengthened its involvement by releasing a green paper on *Economic and Fiscal Policy Strategies for Climate Change Mitigation in Indonesia* in 2009. In this document, the Ministry proposed a REDD+ payment model which formulates the disbursement of REDD+ money to local governments if they translate REDD+ targets into a package of interventions that take into account the economic, social and environmental co-benefits of their actions (Ministry of Finance 2009, 11-13). In other words, the Ministry canvassed an adjusted system of outcome-based payments to local governments under the label of the "Regional Incentive Mechanism" (RIM) (Ministry of Finance 2009, 11-13). It appears that the MoFa is serious about developing appropriate financial support and mechanisms for REDD+. A good indication of the Ministry's seriousness in this respect is its plan to increase the percentage of environment-related budget in its annual national and sub-national budget and expenditure plans (APBN and APBD) from 1.1% in 2012 to 1.5% in 2014 and 3% in 2015 (Ampri 2013, 11). The MoFa was also proactive in developing the REDD+ financial mechanism as part of the Working Group on Funding Instruments under the REDD+ Task Force that was operating at the time. The discussion on financial resources and fiscal mechanisms can be found in Section 3.

The Ministry of Agriculture (MoA)[96]

The MoA is responsible for assisting the president in administering government duties in the field of agriculture.[97] It has several key functions[98] including: (a) implementation of governance affairs in the field of agriculture, (b) management of the properties/ assets under MoA responsibility, (c) supervision of implementation of the tasks within the MoA, (d) implementation of technical guidance on and supervision of the MoA's affairs in the regions, and (e) implementation of national technical activities. The MoA has the following four key programs in the period 2010-2014: (a) achieving food self-sufficiency and sustainability, (b) increasing food diversity, (c) increasing the added value, comparative advantage and exportation of agriculture products, and (d) improving farmers' welfare (Ministry of Agriculture 2010, 1).

The MoA can be considered one of the most influential ministries[99] in the context of land-use and forest management. Over the last two decades, agriculture development – especially from palm oil-related products – has emerged as one of the most significant contributors to Indonesia's economy, topped only by oil, gas, and

96 *Kementerian Pertanian* or Kementan.

97 See article 270 of PR No. 24 of 2010.

98 See article 271 of PR No. 24 of 2010.

99 The MoA is expected to have a more prominent role under the current president, President Jokowi, especially since one of his key policy platforms (known as *Nawacita*) is to "attain economic independence through the achievement of food self-sufficiency in key crops by improving irrigation channels and setting up banks for farmers" (http://blogs.wsj.com/indonesiarealtime/2015/02/10/how-well-is-jokowi-keeping-his-campaign-promises/).

mineral products. Palm oil is the highest-yielding vegetable oil crop in the world[100] and has thus become an important agricultural commodity in many tropical countries. The central government has therefore passed and issued a number of laws, regulations and policies to ensure the continued growth of this commodity. These include PI No. 6 of 1998 on Foreign Direct Investment in Oil Palm Plantations, Law No. 18 of 2004 on Plantations (Estate Crops), Minister of Agriculture Regulation (MoAR) No. 26 of 2007 on Guidance on Permit Issuance for Plantation Companies (later revised by MoAR No. 98 of 2013[101]), and MoAR No. 14 of 2009 on Guidance for the Utilization of Peatlands for Oil Palm Cultivation.

MoAR No. 98 of 2013, for instance, offers guidance for investors to help smooth out the process for obtaining licenses for plantation development.[102] This regulation covers aspects of the process for acquiring permits and other important aspects for plantation development such as the type of partnership, size of the land, and type of management and processing capacity.[103] MoAR No. 14 of 2009 facilitates[104] the expansion of oil palm plantation development in peatlands and provides a strong legal framework for such activities (giving support for corporations and investors to obtain licenses and develop plantations in peatlands).[105] It also determines the criteria for peatlands that can be developed for plantation.[106]

Since their intention is to push the growth of palm oil, some parts of these regulations and policies are perceived to be in contradiction with other laws, regulations and policies, particularly those from the forest and other land-related sectors (Suryadi 2011, 17). MoAR No.26 of 2007, for instance, does not establish clear limits for a company's possession or expansion of its plantation area. Suryadi (2011, 17) even suggests that this regulation could allow a company or subsidiary to have a plantation area of 100,000 hectares or more. It is also relatively unclear whether MoAR No. 98 of 2013 restricts the expansion of oil palm. The latest regulation only stipulates that oil-palm plantations of over 1,000 hectares need to be integrated into the plantation product processing industry.[107] According to these regulations, a company with many subsidiaries throughout Indonesia can possess unlimited plantation areas (Suryadi 2011, 17). For Suryadi (2011, 17), this regulation contradicts others such as Minister of Agrarian Affairs/Head of BPN Regulation (HoBPNR) No. 2 of 1999 on Location Permits and Minister of Forestry Regulation (MoFR) 31 of 2005 on the Release of Forest Areas for Plantation Development, which limit one company or holding company to an area of 100,000 hectares of plantation throughout Indonesia.[108] Furthermore, MoAR No. 14 of 2009 potentially conflicts with any regulations and policies aimed at reducing greenhouse gas emissions from peatland conversion, including PR No. 61 of 2011 on the National Action Plan for the Reduction of Greenhouse Gas Emissions.

Other regulations issued by the MoA, such as MoAR No. 19 of 2011 on Guidance for Indonesian Sustainable Palm Oil (ISPO), may provide a good platform for reconciling oil palm development and forest protection and management. This MoAR, recently refined by MoAR No. 11 of 2015 on the ISPO Certification System, covers big plantations as well as smallholders (i.e. plasma or independent) and if implemented effectively could be a major stepping stone for the palm oil sector in Indonesia to increase its productivity while caring for the surrounding environment. Another important aspect of this MoAR is that it is mandatory for plantations to implement ISPO.[109]

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100 Compared to other vegetable-oil commodities (e.g. soybean, rapeseed and sunflower), in 2006 oil palm had the highest average oil yield (3.74 tons/hectare/year, with the others ranging between 0.38 and 0.67) and the lowest coverage in terms of area (9.86 million hectares, with the others ranging between 22.95 and 92.63) (Sumathi et al. 2008, 2407).

101 MoAR No. 98 of 2013 takes into account aspects of plantation development sustainability that MoAR No. 26 of 2007 did not.

102 See paragraph 2(1) of MoAR No. 98 of 2013.

103 See paragraph 2(2) of MoAR No. 98 of 2013.

104 See article 3 of MoAR No. 14 of 2009.

105 See article 4 of MoAR No. 14 of 2009.

106 Peatlands that can be developed can come from former forest areas but should be less than 3 meters deep (see the Elucidation part of MoAR No. 14 of 2009).

107 See paragraph 10(1) of MoAR No. 98 of 2013.

108 See article 4 of MoFR No. 31 of 2005.

109 See article 2 of MoAR No. 19 of 2011.

In addition, based on decentralization laws and regulations (e.g. Law No. 32 of 2004 and GR No. 7 of 2008 on Deconcentration and Assistance), provincial and/or local governments have gained more authority to manage their natural resources,[110] including issuing permits for oil palm plantation development.[111] This complex arrangement of different ministries and layers of government involved in plantation development has created a power struggle among the institutions involved. Sub-section 4.10 details the complexity of such power relations in oil-palm development.

The Ministry of Forestry (MoF)[112] (merged into the Ministry of the Environment and Forestry in the current administration)[113]

The MoF is responsible for assisting the president in administering part of the government's duties in the field of forestry.[114] It has several key functions[115] including: (a) the formulation and implementation of governance affairs in the field of forestry, (b) the management of properties/ assets under MoF responsibility, (c) supervision of the implementation of tasks within the MoF, (d) the implementation of technical guidance on and supervision of the MoF's affairs in the regions, and (e) the implementation of national technical activities. Based on Law No. 41 of 1999 on Forestry, the MoF is responsible for designating, managing and monitoring the national forest areas,[116] reported in 2011 to cover approximately 134 million hectares (70% of the land surface) (Ministry of Forestry 2011b, 4-5). According to the Ministry of Forestry (2011b, 5-6), however, only 98 million hectares of these national forest areas are still forested (52% of the land surface). This figure confirms that Indonesia has been suffering massive deforestation.

Given such a challenge in terms of addressing deforestation, combined with its huge role in promoting forest production, conservation and protection,[117] the MoF can be considered the most important ministry in the forest and land-use sectors. On the production side, the Ministry is under pressure to continuously perform by increasing Indonesia's export products. In the mid-1990s, Indonesia became the world largest exporter of hardwood plywood (Resosudarmo BP 2005, 3). Foreign exchange earnings from forest product exports were estimated at USD 1.2 billion in 1985 and US$3.6 billion in 2011 (Karyaatmadja et al. 2006, 6; Ministry of Forestry 2011b, 217). To maintain this performance, the central government and the MoF have issued regulations and policies such as GR No. 7 of 1990 on Industrial Timber Plantations; PD No. 67 of 1998 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties, as Previously Revised by PD No. 41 of 1993; GR No. 51 of 1998 on Forest Resource Rent Provision; GR No. 6 of 1999 on Forest Utilization and Forest Product Collection/ Harvesting in Production Forests; GR No. 3 of 2008 on the Revision of GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans; GR No. 72 of 2010 on State-Owned Forestry Companies; Minister of Forestry Regulation (MoFR) No. 35 of 2008 on Permits for Primary Forest Industrial Activity; and MoFR No. 50 of 2010 on Granting Licenses for Timber Production in Natural Production Forests.

Generally speaking, these regulations facilitate and support individuals, cooperatives, corporations and other entities in harvesting timber and other forest products in the remaining forest areas. For example, MoFR No. 35 of 2008 clarifies the licenses or permits given to different entities based on their production capacity (i.e. a permit can only be given to individuals and cooperatives if the production capacity is less than 2,000 m^3/ year; if the capacity is higher, a permit can be given to any entity).[118] GR No. 3 of 2008 regulates

110 See article 17, paragraphs 2(5)-(7), 21(f), 22(j), 160(1), 160(3)-(5) and 163(1), and the Elucidation part (p. 1) of Law No. 32 of 2004.

111 See articles 15, 17 and 41, and paragraphs 1(13)-(14), 5(1), 5(3), 7(1), 7(3), 11(4), 13(2), 16(1), 19(1)-(2), 23(2), 24(2), 26(4), 27(2), 28(4), 29(3), 30(1)-(2), 33(1)-(2), and 34(h) of MoAR No. 26 of 2007. See also articles 5 and 7 of MoAR No. 26 of 2007 and article 2 of MoAR No. 14 of 2009.

112 *Kementerian Kehutanan* or Kemenhut.

113 *Kementerian Lingkungan Hidup dan Kehutanan*, or KLHK (see article 5 of PR No. 165 of 2014 and PR No. 16 of 2015).

114 See article 300 of PR No. 24 of 2010, article 5 of PR No. 165 of 2014 and articles 2-3 of PR No. 16 of 2015.

115 See article 301 of PR No. 24 of 2010.

116 Forest area is any particular area determined and or designated by the government to be permanent forest (Ministry of Forestry 2011b, 3). See also paragraph 1(3) of Law No. 41 of 1999.

117 See article 3 of Law No. 41 of 1999.

118 See paragraph 3(1) of MoFR No. 35 of 2008.

different forest management permits (e.g. for industrial timber plantations, ecosystem services, timber collection, etc.) under a forest stewardship unit (*kesatuan pemangkuan hutan* or KPH). Such regulations also specify economic instruments (e.g. taxes, levies, etc.) that can encourage forest production. Discussion of this aspect can be found in Sub-section 3.1 and Table 6.

In contrast, the central government and the MoF have also produced a number of regulations and policies on forest conservation and protection, including Law No. 5 of 1990 on the Conservation of Biodiversity and Ecosystems, PD No. 32 of 1990 on Protected Area Management, PD No. 33 of 1998 on Management of the Leuser Ecosystem Area, GR No. 4 of 2001 on the Management of Environmental Degradation and/ or Pollution Linked to Forest or Land Fires, PI No. 5 of 2001 on Eliminating Illegal Logging and the Illegal Timber Trade in the Leuser Ecosystem and Tanjung Puting National Park, GR No. 45 of 2004 on Forest Protection, PR No. 89 of 2007 on the National Movement for Forest and Land Rehabilitation, GR No. 76 of 2008 on Forest Rehabilitation and Reclamation, GR No. 60 of 2009 on the Revision of GR No. 45 of 2004 on Forest Protection, GR No. 28 of 2011 on the Management of Game and Nature Reserves, MoFR No. 19 of 2004 on Collaborative Management of Nature and Game Reserves, and MoFR No. 31 of 2012 on Conservation Organizations.

With regard to the division of authority, the national government is responsible for managing conservation forests[119] while provincial governments have the authority to manage cross-district grand forest parks (*taman hutan raya*).[120] Local governments particularly have the authority to manage protection forests (although according to Law No. 23 of 2014, they can only manage "grand forest parks").[121] Further discussion about the authority corresponding to different institutions for managing conservation and protection forests can be found in Sub-section 4.6.

Furthermore, the central government and the MoF have issued regulations and policies aimed at supporting REDD+ development and payment for ecosystem services, including PI No. 10 of 2011 on Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands, PD No. 19 of 2010 on the Task Force for Preparation of the REDD+ Agency (as renewed by PD No. 25 of 2011), Law No. 18 of 2013 on the Prevention and Eradication of Forest Degradation, PR No. 62 of 2013 on the REDD+ Agency, PI No. 6 of 2013 on the Suspension of New Licenses and Improving the Forest Governance of Primary Forests and Peatlands, MoFR No. 20 of 2012 on Forest Carbon Implementation and MoFR No. 22 of 2012 on Guidance on Environmental Service Tourism Activities in Protection Forests.

These two contrasting sets of regulations and policies reveal dynamic power relations even within the MoF itself. Also, given the presence of the former REDD+ Agency (previously REDD+ Task Force), the MoF's role in REDD+ development was somewhat reduced, which has created tensions. The MoF nevertheless plays a key role, particularly in producing indicative maps for moratorium (MIMs), continuing the development of a monitoring system and providing guidance for the development of REDD+ demonstration activities (*Pusat Penelitian dan Pengembangan Perubahan Iklim dan Kebijakan* 2010, 2). In fact, according to the Forestry Minister, Zulkifli Hasan, the REDD+ task force or council was crucial for the country to comprehensively reduce emissions from deforestation – across sectors, not only in the forest sector – thus relieving the Forestry Ministry of some of the burden of this gigantic task (Simamora 2010, 1). Under the current administration of President Jokowi, however, the REDD+ Agency has been discontinued and its tasks and functions have been integrated into the newly-established MoEF.[122] The power relations and struggles in the area of forest management and the current shift of REDD+ functions to the Ministry of the Environment and Forestry are further discussed in different sub-sections of Section 4.

119 See paragraphs 7(2) of Law No. 22 of 1999 and 2(3) of GR No. 25 of 2000.

120 See paragraph 3(5) of GR No. 25 of 2000.

121 See article 5 of GR No. 62 of 1998, paragraph 3(5) of GR No. 25 of 2000, and paragraph 14(2) of Law No. 23 of 2014.

122 See articles 59 and 63 of PR No. 16 of 2015.

The Ministry of the Environment (MoE)[123] (merged into the Ministry of the Environment and Forestry in the current administration)[124]

In the previous administration, the MoE was under the Coordinating Ministry of Social Welfare. The Ministry is responsibility for assisting the president in administering part of the government's duties, especially in the field of environmental management and protection.[125] The MoE has several key functions[126] including: (a) the formulation and implementation of governance affairs in the field of environmental management and protection, (b) the coordination and alignment of policy implementation in the field of environmental management and protection, (c) the management of the properties/ assets under MoE responsibility, (d) the supervision of implementation of the tasks within the MoE, and (e) the technical implementation of environmental management and protection as regulated by Law No. 32 of 2009 on Environmental Protection and Management and other relevant regulations. At the national level, the MoE can be considered a key ministry on environmental issues.

The MoE formulates national policies relevant to the environment and environmental impacts, coordinates and supports provincial and local authorities in the implementation of these policies, regulates environmental impact assessment processes, and collects relevant environmental data (Ministry of State Secretary 2009, 1). Prior to Law No. 32 of 2009, the MoE was only responsible for environmental monitoring, but did not necessarily implement environmental regulations itself and had no direct control[127] over provincial or district agencies. Consequently, these local institutions were not compelled to implement the ministry's standards and policies (Leitmann et al. 2009, 22). Law No. 32 of 2009 gives the MoE greater power, for instance, to control[128] local governments' policies and permits, especially if they involve potential environmental risks. Yet, there is a gulf between the MoE's authority as stipulated in this law and its desired local-level implementation.

Another key challenge the MoE faced in the previous administration was that it was not at the core of the Cabinet (i.e. not included in the Coordinating Ministry of Economic Affairs). As a result, it was often marginalized, focusing on issues widely regarded as low priority (Resosudarmo et al. 2013, 79). When compared to other sectoral ministries, the MoE had a relatively small budget and lacked human resources (Resosudarmo et al. 2013, 79). This situation may change since Law No. 32 of 2009 has mandated national and sub-national governments to allocate sufficient budgets[129] to address environmental issues, while the issuance of PR No. 16 of 2015, which merges the MoE and the MoF, may lead to an increase in the budget for environmental management and protection.

The Ministry of Public Works (MoPW)[130]

Like many other ministries, the MoPW is responsible for assisting the president in administering part of the government's duties, especially in the field of public works.[131] In the previous administration, the public works field[132] included, but was not limited to, spatial planning[133] and the development of infrastructure and public facilities (e.g. roads, irrigation, water treatment, wastewater treatment). The MoPW has several key functions[134] including: (a) the formulation and implementation of governance affairs in the field of public works, (b) the management of properties/ assets under MoPW responsibility, (c) the supervision of implementation of the tasks within the MoPW, (d) the implementation of technical guidance on and supervision of the MoPW's affairs in the regions, and (e) implementation of national technical activities. These functions and the field

123 *Kementerian Lingkungan Hidup* or KemenLH.

124 See article 5 of PR No. 165 of 2014 and PR No. 16 of 2015.

125 See article 574 of PR No. 24 of 2010, article 5 of PR No. 165 of 2014 and articles 2-3 of PR No. 16 of 2015.

126 See article 575 of PR No. 24 of 2010, article 5 of PR No. 165 of 2014 and articles 2-3 of PR No. 16 of 2015.

127 Prior to the passing of Law No. 32 of 2009, there was no regulation giving the MoE the authority needed to monitor and control environmental management at the local level (Ministry of the Environment 2011, 1).

128 See article 73 of Law No. 32 of 2009.

129 See articles 45-46 of Law No. 32 of 2009.

130 *Kementerian Pekerjaan Umum* or KemenPU.

131 See article 391 of PR No. 24 of 2010.

132 See article 393 of PR No. 24 of 2010.

133 See article 9 of Law No. 26 of 2007.

134 See article 392 of PR No. 24 of 2010.

of public works make the MoPW a key ministry in the land-use and forest sectors. The establishment of the Ministry of Agrarian and Spatial Planning (MoASP) has seen the Directorate General of Spatial Planning that was previously under the MoPW transferred to the new ministry.[135] This shift of authority may reduce the MoPW's role in the land-use sector.

To date, the MoPW has been actively involved in leading infrastructure development, which in many cases has led to negative environment impacts. Along with the MoA, for instance, the MoPW was involved in the Mega Rice Project that led to peat swamp forest conversion in Central Kalimantan in the 1990s (Down to Earth 1999, 1; *Forest.org* 1997, 1; Muhamad 2001, 1), as instructed by PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan. In the previous administration, under the leadership of the Coordinating Ministry of Economic Affairs, the MoPW was also one of the key ministries ensuring the implementation of PR No. 42 of 2005 on the Committee on Policy for the Acceleration of Infrastructure Provision and PR No. 32 of 2011 on the Master Plan for the Acceleration and Expansion of Indonesia's Economy 2011-2025 (MP3EI) (Wardani 2013, 3).

The MoPW has also made positive contributions to environmental protection. It plays a crucial role in advocating the conservation of the remaining peatlands in Central Kalimantan, as further stipulated in PR No. 3 of 2012 on Kalimantan Island Spatial Planning (DG of Spatial Planning 2012, 6-25). The MoPW has also supported the creation of the Heart of Borneo (HoB) – and becoming a member of the HoB National Working Group – and "the Road Map for Saving Sumatra's Ecosystem: Sumatra's Vision 2020" (Heart of Borneo Initiative 2014, 1; Satriastanti 2010, 1). More importantly, since it is the national institution responsible for overseeing the implementation of spatial planning at the national level, the MoPW can provide technical advice and supervision to provincial and local governments, which have the final authority over provincial and district spatial planning.

135 See article 7 of PR No. 165 of 2014.

The National Land Agency (BPN) (incorporated into the MoASP along with the MoPW's Directorate General of Spatial Planning)[136]

The role of the MoASP combines the roles of the BPN and the Directorate General of Spatial Planning, which was previously under the MoPW (as explained in the previous sub-section).[137] The BPN itself was a non-departmental government institution which answered to the president. The BPN was regulated by PR No. 63 of 2013 on the National Land Agency (refined by PR No. 165 of 2014, PR No. 17 of 2015 on the Ministry of Agrarian and Spatial Planning and PR No. 20 of 2015 on the National Land Agency). The BPN has the task of assisting the president in administering part of the government's duties, especially in the field of land administration at the national, regional and sectoral level.[138] The BPN's functions[139] include, among others, (a) formulating and issuing national policies in the land sector, (b) coordinating policy, planning and programs in the land sector, (c) guiding and providing assistance to the BPN's units across Indonesia, (d) formulating and issuing policies related to land rights, land registration and community empowerment, (e) formulating and issuing policies that address land conflicts, and (f) conducting research and development in the land sector. The BPN, now incorporated into the MoASP, is therefore the leading agency when it comes to land-related legal issues.

The BPN plays a crucial role in addressing land conflicts as it has a special deputy dedicated to this issue.[140] There was a case in which the DPR-RI assigned the BPN to solve a land conflict between a provincial government and villagers (*The Jakarta Post* 2014, 1). In another case, the National Commission on Human Rights (Komnas HAM)[141] suggested the BPN conduct a re-measurement of land that generated a conflict between a state-

136 *Badan Pertanahan National* or BPN (see article 7 of PR No. 165 of 2014).

137 See articles 2-3 of PR No. 17 of 2015.

138 See article 2 of PR No. 63 of 2009, articles 2-3 of PR No. 17 of 2015 and articles 2-4 of PR No. 20 of 2015.

139 See article 3 of PR No. 63 of 2009 and articles 2-4 of PR No. 20 of 2015.

140 See paragraph 5(g) of PR No. 63 of 2009.

141 *Komisi Nasional Hak-Hak Asasi Manusia* or Komnas HAM.

owned palm oil company and villagers in South Sumatra (Ansyor 2012, 1). Since it is the agency to go to with regard to land conflicts, the BPN has kept a relatively good record on this issue. In 1998, for instance, it recorded 1,395 land dispute-related complaints submitted in the six-month period before the end of that year (Lucas and Warren 2013, 9-10). In 2011, the then head of the BPN reported that 7,491 land cases had been recorded by the agency, of which 2,052 remained subject to litigation in the courts and only 1,180 had been settled through legal processes (Lucas and Warren 2013, 17).

The BPN is not faultless, however, in relation to land conflicts. This is the agency responsible for issuing guidance on location permits given to investors or companies seeking land for development (Lucas and Warren 2013, 30). This authority is regulated by Minister of Agrarian Affairs/Head of BPN Regulation (HoBPNR) No. 2 of 1993 on the Procedure for Obtaining Location Permits for Investors, which was further modified and strengthened by HoBPNR No. 2 of 1999 on Location Permits. Although they are ultimately signed by *bupatis* (district heads) and/or mayors, the BPN's local offices are responsible for preparing these location permits.[142] Furthermore, Lucas and Warren (2013, 30) argue that HoBPNR No. 2 of 1993 has "simplified" the process of acquiring land for companies as it allows them to negotiate directly with land holders once the location permits are issued. As a result, this situation may lead to further confusion regarding land titling and rights. The complexity of land titling and rights is further discussed in Section 4.

In the context of REDD+ development, the BPN has been involved, along with other ministries and agencies, in developing the Indicative Map for Suspension of New Permits (PIPIB); the REDD+ strategy; monitoring, review and verification (MRV); and REDD+ demonstration activities at the provincial level (Indrarto et al. 2012, 57-58; Satgas REDDPlus 2012, 1). Given its authority and power in land administration, the BPN's involvement in the current and future REDD+ platforms in Indonesia is strategic. The merger of the BPN and the Directorate General of Spatial Planning into the newly established MoASP is likely to increase the roles of both the BPN and the MoASP in REDD+ and the overall forest and land-use management in Indonesia.

Another key ministry in the land-use and forest sectors is managed under the Coordinating Ministry of Maritime Affairs:

The Ministry of Energy and Mineral Resources (MEMR)[143]

The MEMR's[144] task is to assist the president in performing government affairs in the field of energy and mineral resources.[145] It has several key functions[146] including: (a) national policy formulation, policy implementation and technical policies in the field of energy and mineral resources, (b) the management of properties/assets under the MEMR's responsibility, (c) the supervision of implementation of the tasks within the MEMR, (d) the implementation of technical guidance and supervision for the MEMR's affairs in the regions, and (e) the implementation of national technical activities.

As part of an attempt to accelerate Indonesia's development, the central government has issued a number of policies, including: PR No. 5 of 2006 on the National Energy Policy, which stipulates an energy mix for 2025 that lowers the country's dependence on oil and significantly increases the role of new and renewable energies; and Law No. 30 of 2007 on Energy, which highlights the increasing need for new and renewable energy and for energy conservation. In certain circumstances, one of the implications of the policy to accelerate renewable energy development (e.g. geothermal and biofuel) is direct conflict with the forest sector, as an estimated 60% of geothermal energy sources are located in forestry areas and also subject to Law No. 41 of 1999 on Forestry (which includes stricter conditions for the issuing of licenses) (Girianna 2009, 2). Something similar would happen if the MEMR boosts biofuel development, especially if this encourages the expansion of oil palm plantations.

142 See article 6 of HoBNPR No. 2 of 1999.

143 *Kementerian Energi dan Sumberdaya Mineral* or KemenESDM.

144 The MEMR was under the Coordinating Ministry of Economic Affairs in the previous administration.

145 See article 199 of PR No. 24 of 2010.

146 See article 200 of PR No. 24 of 2010.

The MEMR has a serious plan for exploring and exploiting geothermal energy.[147] To address this potential conflict, the MEMR has been working with the Ministry of Forestry and one of the positive outputs was the release of the Memorandum of Understanding (MoU) between the MEMR and the Ministry of Forestry No. 7662 of 2011 on the Coordination and Acceleration of Permit Issuance for Geothermal Energy Development in Production Forests and Protection Forests Protection, and Preparation for Geothermal Utilization in Forest Conservation Areas (MEMR 2011, 1). According to the MEMR (2011, 1), this MoU was going to:

- be effective for three years following its signing;
- provide a platform to accelerate permit issuance for 28 geothermal energy projects located in forest areas; and
- provide a joint framework to develop geothermal energy while conserving and sustainably managing forest areas.

The issuance of this MoU raises a further question about balancing energy development and forest protection and management. Further discussion about this issue can be found in Sub-section 4.7.

In addition to the aforementioned ministries, the following are other ministries, national agencies or institutions that report directly to the president and are pivotal to the land-use and forest sectors in Indonesia:

The Ministry of National Development Planning/ National Development Planning Agency (BAPPENAS)[148]

BAPPENAS is responsible for assisting the president in administering part of the government's duties, especially in the field of national development planning.[149] BAPPENAS has several key functions[150] including: (a) the formulation and implementation of governance affairs in the field of national development planning, (b) the coordination and alignment of policy implementation in the field of national development planning, (c) the management of properties/ assets under BAPPENAS' responsibility, and (d) the supervision of implementation of the tasks within BAPPENAS. Like the MoPW, BAPPENAS is a key ministry in development and regional planning and the land-use and forest sectors.

Particularly under the Deputy Minister of Natural Resources and the Environment, BAPPENAS also formulates policies and develops programs that consolidate the development, utilization and conservation of natural resources, including forest, marine and land-use resources (BAPPENAS 2012, 1). The advantage of BAPPENAS is that it has better human capital and more considerable coordination experience than any other Indonesian government institution (Resosudarmo et al. 2013, 82). At the sub-national level, BAPPENAS' functions and work are generally undertaken by the Provincial or District/Municipal Planning and Development Agencies (BAPPEDAs or *Badan Perencanaan Pembangunan Daerah*). The BAPPEDAs are responsible for development planning at the provincial or local levels by integrating development programs across various provincial or local government institutions (Leitmann et al. 2009, 22). To facilitate, support and monitor the work of the BAPPEDAs and other sub-national institutions in spatial planning and environmental management, the Ministry of Home Affairs (MoHA) is often involved (Leitmann et al. 2009, 22).

With regard to the level of its authority and power, BAPPENAS was relatively powerful during President Suharto's era. Nowadays it is a much weaker institution as many of its mandates, especially in relation to budgeting, have been transferred to the Ministry of Finance (MoFa) (Resosudarmo et al. 2013, 83). Datta et al. (2011, 22) argue that BAPPENAS's authority often overlaps with the MoFa's. For example, BAPPENAS is responsible for annual planning, but the annual plan affects the annual budget, which is formulated by the MoFa (Datta et al. 2011, 22).

BAPPENAS has particularly been able to demonstrate its leadership on the issue of climate change and sectoral development by producing

147 According to the Head of the MEMR's Geological Agency, R. Sukhyar (2011, 11), Indonesia's total potential geothermal resources and reserves are estimated at 28,994 megawatts-electrical (MWe), with an installed capacity of 1,196 MWe (accounting for approximately 4% of its total resources and reserves).

148 *Kementerian Perencanaan Pembangunan Nasional/Badan Perencanaan Pembangunan Nasional* or BAPPENAS.

149 See article 648 of PR No. 24 of 2010.

150 See article 649 of PR No. 24 of 2010.

several key strategic documents and reports. These included the Indonesia Climate Change Sectoral Roadmap (ICCSR) in 2010, which drew up sectoral commitments – including for the forest and other land-related sectors – for achieving the emissions reduction target (Resosudarmo et al. 2013, 83). This report served as the basis for PR No. 61 of 2011 on the National Action Plan for the Reduction of Greenhouse Gas Emissions (known as RAN-GRK) (Resosudarmo et al. 2013, 83).

The Presidential Unit for Development Monitoring and Oversight (UKP4) (discontinued and turned into the Office of Presidential Staff)[151]

The establishment of the UKP4 was regulated by PR No. 54 of 2009 on the Presidential Unit for Development Monitoring and Oversight. The UKP4's task[152] was to assist the president in monitoring and overseeing the government's development program, including, but not limited to:[153] (a) increasing the capacity and effectiveness of the national logistical system, (b) increasing the effectiveness of and accelerating bureaucratic reforms and improving the public services, (c) improving the climate for business and economic investment, (d) improving the performance and accountability of state-owned enterprises, and (e) other relevant areas. In the words of UKP4 head Dr. Kuntoro Mangkusbroto, the UKP4's main functions were: monitoring government programs, debottlenecking and policy monitoring, and establishing and operating the president's situation room (USINDO 2011, 1). The UKP4 was viewed as similar to the UK Prime Minister's Delivery Unit (Castle Asia 2010, 111) and/or the US President's West Wing. The UKP4 was an institution widely respected for its role in evaluating and monitoring the Cabinet's performance (Resosudarmo et al. 2013, 80) and considered capable of tackling issues that require cross-ministry coordination and in which normal government structures had failed to make progress (Datta et al. 2011, 20).

The UKP4 was instrumental in leading the formulation of policies and institutions that are influential in the country's land-use and forest sectors. These include PI No. 10 of 2011 on Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands, PD No. 19 of 2010 on the Task Force for Preparation of the REDD+ Agency (as renewed by PD No. 25 of 2011), PR No. 62 of 2013 on the REDD+ Agency.[154] Basically, the UKP4 was a leading force that formulated the then REDD+ Task Force and the current REDD+ Agency. It was also the agency the president charged with managing the bilateral agreement between Indonesia and Norway as well as overseeing REDD+ development (with the help of the REDD+ Task Force).

A key challenge for the UKP4 was its limited resources and scope (mostly at the national level). On one occasion, Gamawan Fauzi, the Minister of Home Affairs, suggested that the UKP4 should broaden its monitoring scope to cover sub-national governments (*Tribun News* 2014, 1). In many cases, it had to rely on the resources of other ministries and agencies, effectively giving them a great degree of influence over the UKP4's decisions (Resosudarmo et al. 2013, 81). As the previous president's term ended in late 2014, the biggest uncertainty is whether or not the newly-established Office of Presidential Staff, led by (retired) General Luhut Panjaitan and regulated by PR No. 26

151 *Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan* or the UKP4. It was discontinued in late 2014 and the current administration established the *Kantor Staf Presiden* (KSP), or Office of Presidential Staff (see PR No. 26 of 2015).

152 See paragraph 3(1) of PR No. 54 of 2009.

153 See paragraph 3(2) of PR No. 54 of 2009.

154 There were probably several reasons behind the president's decision to select the UKP4 to lead the process of policy formulation on land-use, forestry and REDD+. The first was the ability of Dr Kuntoro Mangkusubroto, the head of the UKP4, to coordinate complex and difficult cross-sectoral development programs. Prior to leading the UKP4, Dr Mangkusubroto was the head of the Rehabilitation and Reconstruction Agency (BRR) in Ache in 2005-2009. As the head of the BRR, he led the reconstruction effort with funding of nearly US$8 billion, of which 70% was foreign assistance, and the outcome of the BRR's work has become an international role model for post-disaster management (USINDO 2011, 1). The second was the fact that the president needed a unit closer to him that he trusted and that was able to directly provide him with feedback and evaluation (REDD-Monitor 2012, 1). According to Dr Mangkusubroto, this was not the first time the president had asked the UKP4 to lead and coordinate a unit to address a particular issue (the UKP4 led another Task Force on Judicial Mafia Eradication) (REDD-Monitor 2012, 1).

of 2015 on the Office of Presidential Staff,[155] will obtain a high level of authority and support from President Jokiwi, as the previous UKP4 had from President Yudhoyono (Resosudarmo et al. 2013, 81).

The REDD+ Agency[156] (discontinued, with its duties and functions integrated into the MoEF)[157]

The establishment of the REDD+ Agency was regulated by PR No. 62 of 2013 on the REDD+ Agency. The REDD+ Agency's main task[158] was to assist the president in implementing activities for the coordination, alignment, planning, facilitation, management, monitoring, overseeing and controlling of REDD+ development and implementation in the country. It was basically an upgrade on the former REDD+ Task Force.

As part of its duties, the REDD+ Agency was required to produce some crucial outputs[159] including REDD+ strategy; safeguards; policies; financial mechanisms; standards and methodology on monitoring, reporting and verification (MRV); law enforcement; conflict resolution; and monitoring and evaluation of REDD+ projects. With the enormous tasks lying ahead, the creation of the REDD+ Agency was only the beginning of forest and land-governance reforms (Mollins 2013, 1). A major challenge for this agency was to strengthen collaboration with other ministries and national agencies such as the MoF, the MoE, BAPPENAS, the Geospatial Information Agency (BIG) and the National Aeronautics and Space Institute (LAPAN), as well relevant provincial and local governments. The Corruption Eradication Commission's Deputy Chairman, Busyro Muqoddas, however, reminded the REDD+ Agency about the immediate obstacles the agency would face since the government's monitoring of the forestry sector is considered weak (Natahadibrata 2013, 1).

Since the REDD+ Agency was officially disbanded on 21 January 2015[160] and its functions and duties integrated into the MoEF, that ministry has undertaken and supervised a transitional process.[161] The former Agency is finalizing a report package highlighting priority issues, covering: (1) forest fire management; (2) indigenous community acknowledgement and protection, including the Constitutional Court (MK35) program; (3) monitoring the moratorium; (4) legal reform and enforcement; (5) the Green Village program; (6) the Green School program; (7) monitoring, reporting and verification, and forest reference emission level development; and (8) funding development preparations (personal communication from Gita Syahrani, 2 April 2015).

The National Council on Climate Change (DNPI)[162] (discontinued, with its duties and functions integrated into the MoEF)[163]

The establishment of the DNPI was regulated by PR No. 46 of 2008 on the National Council on Climate Change. The DNPI was responsible for assisting the president in coordinating the implementation of climate-change actions in Indonesia and formulating the country's position on climate change at international forums.[164] The DNPI's functions[165] included (a) the formulation of a national policy, strategy, program and activities on climate change mitigation and adaptation, (b) the coordination of activities related to adaptation, mitigation, technology transfer and financing, (c) formulating policy related to carbon trading mechanisms, (d) monitoring and supervising implementation of the tasks in climate change-related fields, and

155 The Office of Presidential Staff appears to have similar duties and functions to the UKP4, although it has different deputies in its structure (see articles 2-4 of PR No. 26 of 2015).

156 *Badan Pengelola REDD+* or BP-REDD+.

157 See articles 59 and 63 of PR No. 16 of 2015.

158 See article 4 of PR No. 62 of 2013.

159 See article 5 of PR No. 62 of 2013.

160 For further information, see: http://berita2bahasa.com/berita/1/25642-bp-redd-dilanjutkan-siti-nurbaya-setelah-gabung-ke-klhk#sthash.uov49nGF.dpuf.

161 The MoEF has established advisory and technical teams – as well as a transition team – on climate change mitigation to deal with the transition of the REDD+ Agency and the DNPI (http://www.ciputranews.com/kesra/tim-transisi-usul-moratorium-hutan-alam-dipermanenkan and http://www.mongabay.co.id/2015/04/07/mengatasi-perubahan-iklim-itu-tidak-bisa-sendiri/). The transition team is also preparing a roadmap for the lead-up to the UNFCCC Conference in Paris in December 2015 and a results framework that takes stock of all of the initiatives being merged into the new MoEF (personal communication from Gita Syahrani, 2 April 2015).

162 *Dewan Nasional Perubahan Iklim* or DNPI.

163 See articles 59 and 63 of PR No. 16 of 2015.

164 See article 2 of PR No. 46 of 2008.

165 See article 2 of PR No. 46 of 2008.

(e) strengthening Indonesia's position to encourage developed countries to take on more commitments in terms of climate change actions. With these functions, the DNPI was officially the leading body managing the government's responses to climate change, including those related to land-use and forestry emissions (Resosudarmo et al. 2013, 80).

Following its establishment, however, the council was never really able to effectively coordinate all of the cross-cutting climate change programs that had emerged from various line ministries and levels of government (Resosudarmo et al. 2013, 80). Because climate change was a cross-ministry issue, numerous government agencies had authority that overlapped with the DNPI's, including BAPPENAS, which claimed that climate change was about development planning and that it should therefore have been leading coordination on this issue (Aburaki et al. 2010, 68). This is also the case when it came to REDD+ development, especially after the REDD+ Task Force was created. As the main institution coordinating REDD+ development in Indonesia, the REDD+ Task Force (later the REDD+ Agency) effectively reduced most of the DNPI's power[166] to coordinate the development of climate change policies and programs (Resosudarmo et al. 2013, 80). Another possible explanation for the difficulty faced by the DNPI in doing its coordination work could be the fact that it did not have any budgetary authority on which to base its power and was not staffed with strong public servants linked with line ministries (Resosudarmo et al. 2013, 80).

Regardless of its position, the DNPI had a program that focused on land use, land-use change and forestry (LULUCF) and on REDD+. In 2010, for example, it published a policy memo on economic incentives for REDD+ in Indonesia through the introduction of a specific economic model (DNPI 2010, 9). The DNPI was also active in working with different ministries to develop a green economy and green development platform for Indonesia.

In a similar way to the process involved for the REDD+ Agency, since the DNPI was discontinued and its functions and duties integrated into the MoEF, that ministry has undertaken and supervised a transitional process.[167] The work on climate change negotiation continues under the leadership of Professor Rachmat Witoelar who was recently re-appointed as the Presidential Special Envoy on Climate Change.[168]

The Corruption Eradication Commission (KPK)[169]

The establishment of the KPK is supported by Law No. 30 of 2002 on the Corruption Eradication Commission. Other laws and regulations supporting this commission's creation and operation include Law No. 8 of 1981 on the Criminal Procedure Code, Law No. 28 of 1999 on the State Organizer that is Clean and Free from Corruption, Collusion, and Nepotism, Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption (as revised by Law No. 20 of 2001), Law No. 8 of 2010 on Anti-Money Laundering, and GR No. 63 of 2005 on the Human Resource Management System in the KPK (as revised by GR No. 103 of 2012) (KPK 2013, 1). The KPK's position in Indonesia's government structure is unique because this state agency is responsible to the public in performing its duties but obliged to report to the president and the DPR-RI, as well as the State Audit Board (see BPK).[170] The KPK was formed with the primary purpose of improving the effectiveness and efficiency of efforts to eradicate corruption.[171] Since it has the right of law enforcement, many state agencies and government bodies are seemingly afraid of the KPK and its power to prosecute people suspected of corruption (Parlina and Halim 2014, 1).

166 The DNPI focused its work on formulating Indonesian positions and coordinating negotiation on climate change at the global level, as well as collaborating with other ministries and national agencies to formulate policies and programs on climate change mitigation and adaptation (DNPI 2014, 1). In relation to REDD+, the DNPI conducted studies on relevant aspects that could help the REDD+ Agency (DNPI 2010), as well as coordinating the formulation of Indonesian international positions on REDD+.

167 The MoEF has established advisory and technical teams – as well as a transition team – on climate change mitigation to deal with the transition of the REDD+ Agency and the DNPI (http://www.ciputranews.com/kesra/tim-transisi-usul-moratorium-hutan-alam-dipermanenkan and http://www.mongabay.co.id/2015/04/07/mengatasi-perubahan-iklim-itu-tidak-bisa-sendiri/). A roadmap for the lead-up to the UNFCCC Conference in Paris in December 2015 and a results framework that takes stock of all of the initiatives being merged into the new MoEF are also being prepared by the transition team (personal communication from Gita Syahrani, 2 April 2015).

168 PD No. 38 of 2015 on the Appointment of the Presidential Special Envoy on Climate Change Mitigation.

169 *Komisi Pemberantasn Korupsi* or KPK.

170 See paragraph 20(1) of Law No. 30 of 2002.

171 See article 4 of Law No. 30 of 2002.

In recent years, the KPK has been more proactive in addressing forest crimes and other environmentally-related crimes. A recent legal probe by the KPK into million-dollar payments by a rogue cop-turned-timber smuggler to local, provincial and national police officials has been applauded by many NGOs and observers (EIA 2013, 1). Also, at the end of February 2014, the KPK summoned former forestry minister Malam Sambat Kaban over alleged corruption related to the "Integrated Radio Communication System" (Rizki 2014, 1). The KPK's overall work is expected to enhance the already established inter-agency environmental law enforcement team, which includes components from the MoE, the Office of Attorney General and the police. The KPK's work also led to the signing on 21 May 2013 of an MoU between the agency and the MoF on a commitment to implement the Gratuity Control Program (PPG) (Wibowo 2013, 1).

The KPK also emphasizes work on forest and REDD+ policy. In December 2010, for instance, it released the outcome of its study on forestry policies and systems, revealing that unclear definitions of forest areas in Law No. 41 of 1999 and other relevant regulations (i.e. GR No. 44 of 2004 on Forest Planning, Ministry of Forestry Decree [MoFD] No. 32 of 2001 on the Criteria and Standards for Forest Area Gazettement, and MoFR No. 50 of 2009 on the Confirmation of the Status and Function of Forest Areas) can be considered one of the indirect causes of deforestation (KPK 2010, 1). The same report also indicates that the division of authorities, roles and responsibilities among the different layers of government remains unclear and problematic, especially in determining forest areas in the spatial planning process. It also found that there was no agreed synchronized map of forest areas which can be used by stakeholders, but rather at least four different versions which use various scales and are not compatible with each other. The KPK's work and findings have contributed to another MoU signed with the MoF in February 2014 aimed at reducing corruption in the issuing of forest permits (*Republika Online* 2014, 1), as well as the development of the PIPIB map. In fact, based on its work, the KPK has secured official collaboration and support from different ministries, as indicated by the signing on 12 March 2013 of a MoU between 12 ministries and agencies and the KPK to expedite forest establishment, as witnessed by President Yudhoyono (UNORCID 2013, 1).

Amidst a recent struggle between the KPK and the Indonesian Police, the Commission has continued its work addressing corruption issues in forest, land-use and relevant natural resource sectors by signing an agreement on 19 March 2015 with 29 ministries and national agencies on the "Movement to Save Our Natural Resources."[172]

2.3.6 *Mahkamah Agung* (MA) (Supreme Court)

The MA is independent and has the highest level of judicial power in Indonesia.[173] It has the authority to hear a trial at the highest (cassation) level, to review ordinances and regulations, and to possess other areas of authority as established by law.[174] According to Law No. 14 of 1985 on the Supreme Court, the MA has the key function of providing legal advice to other state agencies and other lower courts.[175]

In the context of the MA and courts in general, there have been mixed outcomes with regard to the results of environmental cases in the past. Few successes have been achieved. In many cases, the legal and technical complexities of proving pollution or environmental damage have made it difficult for plaintiffs and prosecutors to argue against the suspected violators (Nicholson 2009, 148, 221). One of the few successful cases was a local court ruling in Aceh in January 2014 that the palm oil company PT Kallisata Alam was guilty of illegally burning forests within the Tripa peat swamps, considered part of the protected fragile Leuser Ecosystem (SOCP 2014, 1). The company was fined approximately USD 9 million in compensation and USD 21 million for restoration activities for the affected forests (SOCP 2014, 1). This could be seen as a positive sign for future law enforcement activities in the land-use and forest sectors. Generally speaking, an increase in the level of legal certainty in the land-use and forest sectors in Indonesia would also contribute added value to REDD+ activities and their results.

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172 This agreement on *Gerakan Penyelamatan Sumber Daya Alam* was followed up by the arrest of a member of the 4th DPR-RI Committee on Agriculture, Forestry, Marine Affairs and Fishery (http://m.liputan6.com/news/read/2197158/kpk-beber-penyebab-maraknya-korupsi-bidang-kehutanan-di-sumatera and http://www.bijaks.net/news/article/1222-114866/pramono-sebut-politikus-pdip-ditangkap-kpk-memalukan-dan-coreng-partai).

173 See paragraphs 24(1)-(2) of the amended Constitution.

174 See paragraph 24A(1) of the amended Constitution.

175 See articles 35 and 37-38 of Law No. 14 of 1985.

2.3.7 *Mahkamah Konstitusi* (MK) (Constitutional Court)

The MK is the newest addition to Indonesia's judicial system. It has the authority to try a case at the first and final level, and has the ultimate power of decision in reviewing laws that might violate the Constitution, resolving disputes over the authority corresponding to state institutions whose powers are granted by the Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections.[176] To ensure its accountability, Law No. 24 of 2003 on the Constitutional Court stipulates that the MK has to produce a regular report for the public.[177]

In recent years, the MK has begun to play a decisive role in the land-use and forest sectors. Examples of this include MK Decision (MKD) No. 45 of 2011 on the Judicial Review of Law No. 41 of 1999 on Forestry, as Revised by Law No. 19 of 2004; and MKD No. 35 of 2012 on the Judicial Review of Law No. 41 of 1999 on Forestry (Paragraphs 1(6), 4(3), 5(1)-(4), and Article 67).[178] These decisions have recognized that customary forests are not part of state forests as regulated by Law No. 41 of 1999 (AMAN 2013, 1). The Indigenous Peoples' Alliance of the Archipelago[179] (AMAN) (2013, 1) believes that these decisions will serve as the basis for recognizing indigenous peoples as legal subjects in this country. For further discussion on this see Sub-section 4.4.

2.3.8 *Badan Pemeriksa Keuangan* (BPK) (State Audit Board)

The BPK is an independent agency that is the highest agency with the authority and duty to investigate the management and accountability of state finances.[180] Laws and regulations supporting the creation and operation of the BPK include Law No. 15 of 2006 on the Revision of Law No. 5 of 1973 on the State Audit Board, Law No. 15 of 2004 on Auditing the Management and Accountability of State Finances, Law No. 1 of 2004 on the State Treasury, and Law No. 17 of 2003 on State Finance (BPK 2014, 1). According to Law No. 15 of 2006, the BPK's scope of authority and work ranges from the national to the local levels[181] and the BPK has offices in every province.[182]

The BPK has also strengthened its capacity to conduct environmental audits. In early 2014, it submitted an audit of central and local government activities in relation to the control of water pollution in the Ciliwung River for the period 2004-2008 (*JPPN* 2014, 1). One of the findings, subsequently reported to the police, is suspected water pollution incidents by 17 companies along the river (*JPPN* 2014, 1). The BPK has also been gradually building its capacity to carry out an environmental audit in the land-use and forest sectors (*JPPN* 2014, 1). The driving force behind the BPK's commitments in environmental auditing is the fact that it is now chairing the Working Group on Environmental Auditing of the International Organization of Supreme Audit Institutions (INTOSAI) and that one-third of Indonesia's national budget (approximately USD 39.15 billion) comes from natural resource utilization (Azizah 2013, 1; INTOSAI 2013, 1). In general, this proactive action by the BPK can help improve REDD+ development and implementation as well as wider forest and land-use reforms in the country.

2.3.9 Provincial governments

In general, the head and deputy-head of a province (governor and vice-governor) and members of the provincial councils of people's representatives are elected[183] directly by the people of their respective provinces. According to Law No. 32 of 2004, the structure of a provincial government[184] is composed of the following bodies:

176 See paragraph 24C(1) of the amended Constitution.

177 See articles 35 and 37-38 of Law No. 14 of 1985.

178 As another example, the MK has also revoked Law No. 7 of 2004 on Water Resources.

179 *Aliansi Masyarakat Adat Nusantara* or AMAN.

180 See paragraph 23(1) of the amended Constitution.

181 See paragraph 6(1) of Law No. 15 of 2006.

182 See paragraph 3(2) of Law No. 15 of 2006.

183 See paragraphs 18(3)-(4) of the amended Constiitution and 24(5) and 56(1) of Law No. 32 of 2004. Provinces with special status, such as Yogyakarta, have different rules.

184 See paragraph 3(1) of Law No. 32 of 2004.

Dewan Perwakilan Rakyat Daerah Provinsi (DPRD-P) (Provincial Council of People's Representatives)[185]

The DPRD-P is the provincial legislative body that serves as an element in the running of the regional administration.[186] The DPRD-P has provincial-level legislation, budgeting and control functions.[187] It has various tasks and elements of authority,[188] including: (a) producing provincial regulations (*peraturan daerah provinsi*) based on discussions with its respective governor, (b) discussing and agreeing on a provincial budget with its governor, (c) controlling the implementation of regulations and the budget at the provincial level, (d) proposing the appointment and dismissal of the governor and vice-governor, (e) providing views and considerations and giving approval to its governor on possible international cooperation, (f) requesting an accountability report from its governor, (g) supervising provincial-level elections. The DPRD-P also has the rights of interpellation and inquiry and to voice its views.[189]

Governor

The governor is the executive body of a provincial government.[190] Governors are representatives of the central government and have authority given from the central level as part of a deconcentration process.[191] They are therefore ex-officio the representatives of the central government in their respective provinces and responsible to the president.[192] Governors also have the following tasks and authority:[193] (a) to monitor local governments, (b) to coordinate the implementation of the central government's affairs at the provincial and local levels, and (c) to coordinate monitoring of the implementation of assistance tasks (as required by the central government) at the provincial and local levels.

It is, however, a huge challenge for provincial governments to coordinate and monitor a development program that requires cross-district support. Provincial-level offices often have to wait to be invited to address cross-district environmental issues or disputes and eventually become involved in initiating and facilitating dialogue (Leitmann et al. 2009, 22).

With regard to the scope and powers of the provincial governments' autonomy, including their fields of governance (as previously discussed in sub-sections 2.1 and 2.2) as stipulated in Law No. 32 of 2004 and Law No. 23 of 2014, they now have a greater role in defining development planning, spatial planning and land administration, as well as the environment and other relevant sectors in their respective provinces. The direction of these development programs, including in the land-use and forest sectors, mostly depends on the leadership of a particular governor or member of the DPRD-P, as well as incentives created for the respective provinces. Examples that have been translated into provincial regulations include West Java Provincial Regulation No. 19 of 2001 on Forest Management in West Java and Jambi Provincial Regulation No. 6 of 2012 on Environmental Management in Jambi. According to Leitmann et al. (2009, 25), in some provinces and districts/municipalities the quality of such regulations is linked to the quality of their leaders. Better elected political leaders also contributed to improved inter-agency collaboration, increased community involvement and the integration of environmental management through spatial planning (Leitmann et al. 2009, 25).

2.3.10 District and city governments

Similarly to provinces, the head and deputy-head of a district and/or city (*bupati*, vice-*bupati*, and/or mayor and deputy-mayor) and members of the district or city council of people's representatives are directly elected by the people of their respective provinces.[194] According to Law No. 32 of 2004, the

185 *Dewan Perwakilan Rakyat Daerah Provinsi* or DPRD-P.

186 See article 40 of Law No. 32 of 2004.

187 See article 41 of Law No. 32 of 2004.

188 See article 41 of Law No. 32 of 2004.

189 See paragraph 43(1) of Law No. 32 of 2004.

190 See paragraph 18(4) of the amended Constitution and 24(2) of Law No. 32 of 2004.

191 See paragraph 1(8) of Law No. 32 of 2004.

192 See article 37 of Law No. 32 of 2004. Also, as discussed in Sub-section 2.1, Law No. 32 of 2004 reduces the power given to local governments and restores some authority to the provincial government. This authority includes greater lawmaking powers and having the provincial governors as official central government representatives who answer to the president.

193 See paragraph 38(1) of Law No. 32 of 2004.

194 See paragraphs 18(3)-(4) of the amended Constiitution and 24(5) and 56(1) of Law No. 32 of 2004.

structure of a local government[195] is composed of the following bodies:

Dewan Perwakilan Rakyat Daerah Kabupaten or Kota (DPRD-K) (District or City Council of People's Representatives)[196]

The DPRD-K is the local legislative body that serves as an element in the running of the local administration.[197] Its functions, tasks and authority are similar to those of the DRPD-P, but applied at the local level.

Bupatis and mayors

The *bupati* or mayor is the executive body of a local government.[198] *Bupatis* or mayors have the following tasks and authority,[199] among others: (a) to lead local administrations, (b) to propose draft versions of local regulations, (c) to endorse local regulations after securing the DPRD-K's seal of approval, (d) to formulate local budgets, (e) to ensure the fulfillment of local governments' obligations, and (f) to carry out other relevant tasks as required by laws and regulations. They also need to submit accountability reports to the DPRD-K and announce these to the public.[200]

As in the case of provincial regulations, the quality of local regulations varies. Some local governments may promote environmental protection while others increase natural resource exploitation. Examples include Magelang District Regulation No. 23 of 2001 on Mining Business Permits (in Central Java Province), Kepahiang District Regulation No. 1 of 2007 on the Prohibition of Fishing Using Bombs, Electrocution and Poison (in Bengkulu Province) and Bontang City Regulation No. 7 of 2003 on Mangrove Forest Protection (in East Kalimantan Province). Generally speaking, regulations and policies issued by provincial and local governments are usually more practical in nature, enumerating the standardized protocols, methods, and quality indicators for environmental assessment and natural resource management in the respective regions (AECEN and ICEL 2008, 9). With the introduction of Law No. 23 of 2014, some of the authority previously given to local governments has now been taken back and given to the provincial and national governments.[201]

2.3.11 The dynamics of regional autonomy

Since the passing of decentralization laws, Indonesia has experienced a significant increase in the number of regulations and policies issued by local and provincial governments, particularly on land-related sectors and environmental management. Figure 2 shows a sample of this trend of regulations and policies issued by local governments (districts and cities) on land-related issues (i.e. spatial planning, general land development, creation of new subdistricts, agriculture development, forestry development, mining extraction, infrastructure development, environmental protection and other relevant sectors) on four major islands (Sumatra, Kalimantan, Sulawesi and Papua) during the period 1990-2009. This figure clearly shows a spike in the issuance of such regulations and policies, especially at the beginning of decentralization (after the issuance of decentralization laws in 1999 and 2004). It also clearly shows a downward trend in the issuance of such regulations since 2007. The reasons, however, are still unclear. There is a suggestion that Law No. 26 of 2007 on Spatial Planning and Law No. 12 of 2008 on the Second Revision of Law No. 32 of 2004 on Regional Governance may have slowed down the intention of local governments to issue land-related regulations and policies since they might be concerned that such regulations could create further conflicts with the national government (*Berita Daerah* 2013, 1).

The increase in the level of authority of local governments may not necessarily lead to better land use and natural resource governance. This is probably due to the fact that the division of authorities, roles and responsibilities among the different layers of government remains unclear in many respects. As mentioned in Section 1, such a variety of laws and regulations has created overlaps and confusion, including in the conservation, environmental management and forestry sectors (Dermawan et al. 2006, 5; Seymour and Turner 2002, 38, 43).

195 See paragraph 3(2) of Law No. 32 of 2004.

196 *Dewan Perwakilan Rakyat Daerah Kabupaten* or *Kota* or DPRD-K.

197 See article 40 of Law No. 32 of 2004.

198 See paragraphs 18(4) of the amended Constitution and 24(2) of Law No. 32 of 2004.

199 See article 25 of Law No. 32 of 2004.

200 See paragraph 27(2) of Law No. 32 of 2004.

201 See articles 13-14 of Law No. 23 of 2014.

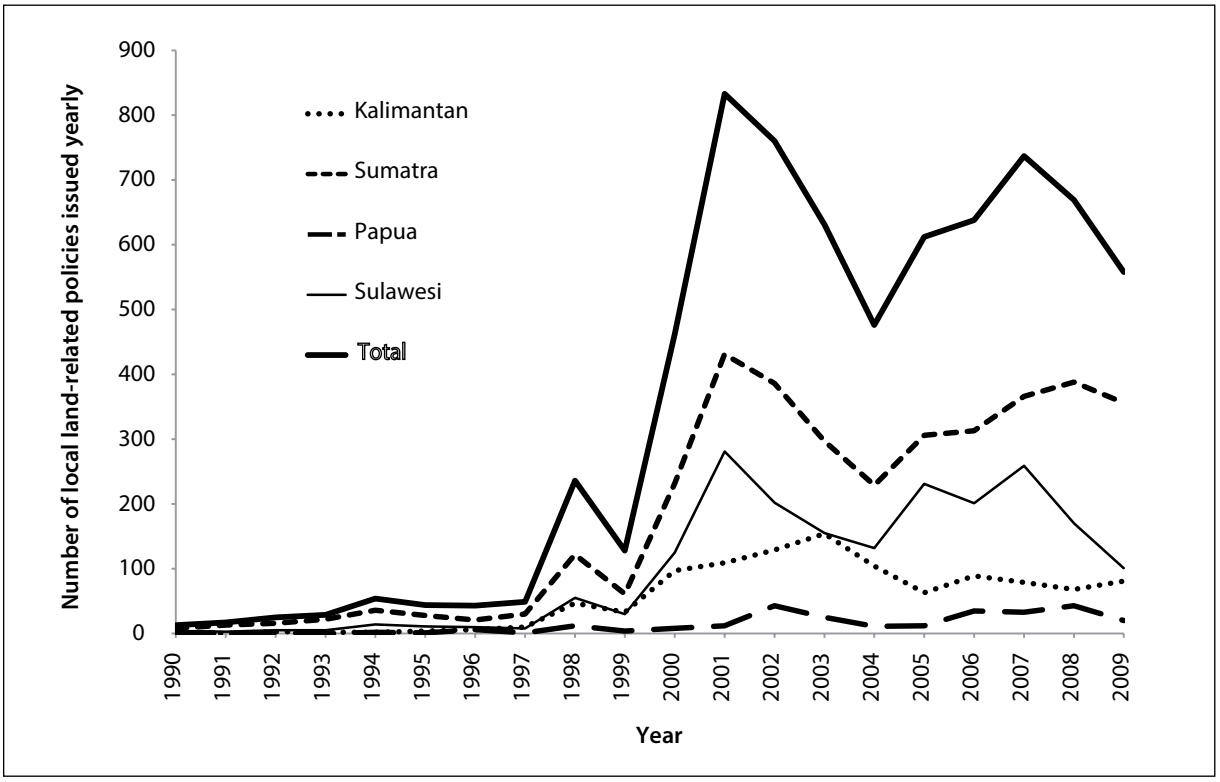

Figure 2. Land related policies issued at local level (aggregate per major islands).

Source: First author's calculation based on local government policies obtained from the Ministry of Home Affairs, the Ministry of Laws and Human Rights, the Constitutional Court, the Indonesian Supreme Audit Board (BPK) and the Regional Autonomy Implementation Monitoring Committee (KPPOD).

There has also been a certain tendency toward re-centralization after the initial reform. The 1999 Forestry Law, for example, rolls back to the central government much of the authority decentralized under the 1999 Regional Governance Law, while Law No. 43 of 1999 on the Civil Service fails to refer to the decentralization of all personnel management and establishment (Turner et al. 2003, 16). The recent Law No. 23 of 2014 clearly has a spirit of increased recentralization, particularly in the forestry sector.[202] In that same sector, regulations issued in early 1999 can be seen to favor decentralized forest management, but soon after the central government began trying to recentralize forest administration (Dermawan et al. 2006, 5). Figure 3 illustrates such a change in terms of "a tug-of-war" between decentralization and recentralization in the forest and land-use sectors since 1999.

The overall situation may not necessarily be gloomy. One example of an effort to promote collaboration (reconciling recentralization and decentralization) is MoFR No. 47 of 2011 on the Partial Transfer of Authority on Forestry Governance from the MoF to the *Bupatis* of Berau, Malinau and Kapuas Hulu under the Framework of REDD+ Demonstration Activities. According to this regulation, the district heads (*bupatis*) in these districts are given the authority to develop procedures for the monitoring, reporting and verification (MRV) of local institutions for REDD+ readiness. One immediate challenge with this regulation is that no authority is given to local governments for managing and distributing the funds obtained from a REDD+ scheme. As a result, they may not feel that they own the REDD+ process. In the future, the success of this type of regulation or policy may depend on whether it can effectively facilitate and accommodate the needs of local governments.

202 See article 14 of Law No. 23 of 2014.

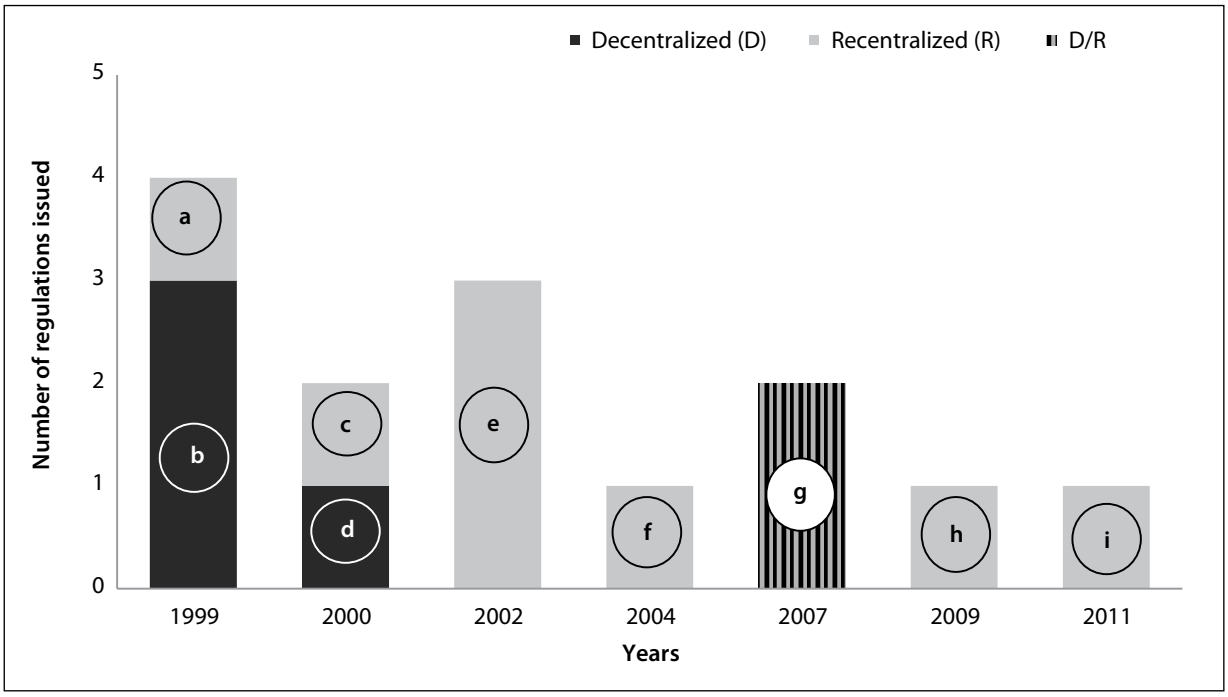

Figure 3. An example of regulatory change in the forestry sector.

a Law No. 41 of 1999 on Forestry.

b Law No. 22 of 1999 on Regional Governance; MoF Decrees No. 310 and 317 of 1999 on the Guidelines for Granting Forest Product Harvesting Rights and Harvesting Permits for Customary Communities in Production Forests; and GR No. 6 of 1999 on forestry enterprises.

c MoF Decree No. 84 of 2000 on the Suspension of the Administrative Authority of District Heads.

d MoF Decree No. 05.1 of 2000 on the Criteria and Standards for Licensing of the Utilization of Forest Products.

e MoF Decree No. 541 of 2002 on the Revocation of MoF Decree No. 05.1 of 2000; MoF Decree No. 6886 of 2002 on Guidelines and Procedures for Granting Forest Product Harvesting Permits in Production Forests; and GR No. 34 of 2002 on Forest Administration for Forest Management, Forest Utilization and the Use of Forest Estates.

f Law No. 32 of 2004 on Regional Governance (revising Law No. 22 of 1999).

g GR No. 6 of 2007 on Forest Planning (revised by GR No. 3 of 2008), transferring only a selection of minor powers to the districts; and GR No. 38 of 2007 on the Division of Roles between National, Provincial and Local Governments.

h MoFR No. 50 of 2009 on the Confirmation of the Status and Function of Forest Areas.

i PI No. 10 of 2011 on Suspension of the Granting of New Licenses and Improvement of the Governance of Primary Natural Forests and Peatlands.

Source: First authors' compilation, including an update from Dermawan et al. (2006, 5).

2.4 Financial sources at the three levels of government

According to the amended Constitution, financial sources are assigned to each level of government (national, provincial and local governments) as regulated by laws and regulations. The main laws regulating these financial sources and budgets are Laws No. 17 of 2003, No. 1 of 2004, No. 25 of 2004, No. 32 of 2004, No. 33 of 2004 and No. 15 of 2004.

2.4.1 National government resources

The national government has the following financial sources (Ministry of Finance 2013a, 3):

- *Domestic revenues*:
  a. Tax revenues: domestic tax revenues (i.e. income tax,], value added tax, land and building tax, duties on land and building transfer, excises, and others), and international trade tax (i.e. import duties and export duties).

b. Non-tax revenues: natural resources (i.e. oil and gas; and non-oil and gas, including general mining, forestry, fishery, geothermal), profit transfer from state-owned enterprises, other non-tax revenues, and revenue from public service units.

- *Grants*

2.4.2 Provincial and local government resources

Based on Law No. 25 of 1999 (as revised by Law No. 33 of 2004), provincial and local governments have the following financial sources:

- *Provincially- and/or locally-generated revenues* (*Pendapatan Asli Daerah*, or PADs),[203] which consist of local taxes, regional levies, profits from provincially/locally-owned enterprises, local wealth, and other sources.
- *The Balancing Fund,*[204] which consists of the General Allocation Fund (*Dana Alokasi Umum, or* DAU), Special Allocation Fund (*Dana Alokasi Khusus,* or DAK) and Shared Revenues (*Dana Bagi Hasil*, or DBH) derived from the exploitation of natural resources and other taxes (e.g. the land and property tax and personal income tax). The DAU was created to deal with vertical and horizontal fiscal imbalances between the levels of government and equalize fiscal capacities across regions to finance public services (Murniasih 2010, 7; Sidik and Kadjatmiko 2004, 147). The DAK is a conditional or earmarked scheme of transfers to specific provinces or districts for certain sectoral programs (Murniasih 2010, 6), including to support environmental protection. Conditional terms are attached to the DAK and certain limitations placed on provincial and district government use of the fund. In the earlier decentralization process, DAK allocations were mainly derived from the country's reforestation program, but now reforestation has shifted to a revenue sharing mechanism (Murniasih 2010, 6; Sidik and Kadjatmiko 2004, 154). The central government developed the DBH to accommodate the long-standing dissatisfaction among natural resource-rich regions and respond to local aspirations for increased access to and control over revenues and the problem of vertical fiscal imbalances (Hofman and Kaiser 2004, 29; Murniasih 2010, 5; Sidik and Kadjatmiko 2004, 148). The calculation of these intergovernmental transfers (and their evolution) can be seen in Table 4.

Decentralization laws have essentially reformed intergovernmental fiscal relations in the country. During President Suharto's era, most resources were transferred from the central government to the provincial and district governments through earmarked grants, but there is no earmarking in this new system (Hofman and Kaiser 2004, 27). The omission of earmarking signals a wider sense of regional autonomy. The law also provides provincial and district governments with an increased share of revenues from these transfers, particularly from natural resources through revenue sharing and from the DAU and the DAK. The bulk of the provincial and district government budgets is financed by these intergovernmental transfers (or the Balancing Fund), which can amount to 80-90% (Hofman and Kaiser 2004, 27-28). Some scholars argue that provinces and districts endowed with natural resources will retain significant proportions of the revenues generated from their respected area (Seymour and Turner 2002, 39).

2.5 The stages of the decentralization process

In relation to the history and evolution of decentralization in Indonesia, Sub-section 1 provides a general description of the decentralization process, which is also shown in Figure 4.

As stipulated in Chapter II of Law No. 32 of 2004 (and refined in Law No. 23 of 2014),[205] a new region can only be given the status of autonomous region if it follows the procedure shown in Figure 5. According to this law, a candidate for autonomous region has to meet three requirements: administrative, technical and physical. The administrative aspects require a candidate region to have approval from its original DPRD and *bupati*/mayor and from the governor of the parent province, as well as a recommendation

203 See Chapter V of Law No. 33 of 2004.

204 See Chapter VI of Law No. 33 of 2004.

205 See articles 33-43 of Law No. 23 of 2014.

from the MoHA. The technical aspects require the region to show it has the basic elements to be an autonomous region, including economic capacity, regional potentials, socio-culture, socio-polities, population, size, defense, security, and other factors facilitating the implementation of regional autonomy. Lastly, the physical requirements mean that a candidate region has to have at least seven districts/cities for the establishment of a province, at least 5 (five) sub-districts for the establishment of a district and 4 (four) sub-districts for the establishment of a city, as well as a location for a prospective capital, and administrative facilities and infrastructure.

Table 4. Percentage of revenue sharing before decentralization and then based on Law No. 25 of 1999 and Law No. 33 of 2004.

Revenue-shared sources	Before decentralization					Law No. 25 of 1999					Law No. 33 of 2004				
	CG	PG	LGs of origin	Other LGs in same Prov.	All LGs	CG	PG	LGs of origin	Other LGs in same Prov.	All LGs	CG	PG	LGs of origin	Other LGs in same Prov.	All LGs
PIT	100	-	-	-	-	80	8	12	-	-	80	8	12	-	-
Property tax	10	16.2	64.8	-	-	9	16.2	64.8	10	-	9[a]	16.2	64.8	-	10[b]
Land and building transfer fee	20	16	64	-	-	-	16	64	-	20	-	16	64	-	20
Forestry: *land rent*	55	30	15	-	-	20	16	64	-	-	20	16	64	-	-
Forestry: *resource rent*	55	30	15	-	-	20	16	32	32	-	20	16	32	32	-
Forestry: *reforestation*	-	-	-	-	-	-	-	-	-	-	60	-	40[c]	-	-
Mining: *land rent*	20	16	64	-	-	20	16	64	-	-	20	16	64	-	-
Mining: *royalty*	20	16	64	-	-	20	16	32	32	-	20	16	32	32	-
Fishery	100	-	-	-	-	20	-	-	-	80	20	-	-	-	80
Oil	100	-	-	-	-	85	3	6	6	-	84.5	3 0.1[d]	6 0.2[d]	6 0.2[d]	-
Gas	100	-	-	-	-	70	6	12	6	-	69.5	6 0.1[d]	12 0.2[d]	12 0.2[d]	-
Geothermal energy	-	-	-	-	-	-	-	-	-	-	20	16	32	32	

a 9% of the property tax revenue collected is defined as administration costs and distributed equally to all local governments.

b 10% of the property tax revenue collected is allocated to all local governments based on the actual property tax revenue collection in the current year. 6.5% is distributed to all local governments and 3.5% is given as an incentive for local governments whose revenues exceed the previous year's collection target.

c Revenue sharing from reforestation is an earmarked grant to rehabilitate forests in the originating local governments.

d 0.5% of the revenue sharing from oil and gas is allocated to provinces and local governments as an additional fund for education (earmarked grant).

Key: PIT= Personal income tax, CG = Central government, PG = Provincial government, LGs = Local governments.

Source: Murniasih (2010, 5-6), Seymour and Turner (2002, 39), and Sidik and Kadjatmiko (2004, 149).

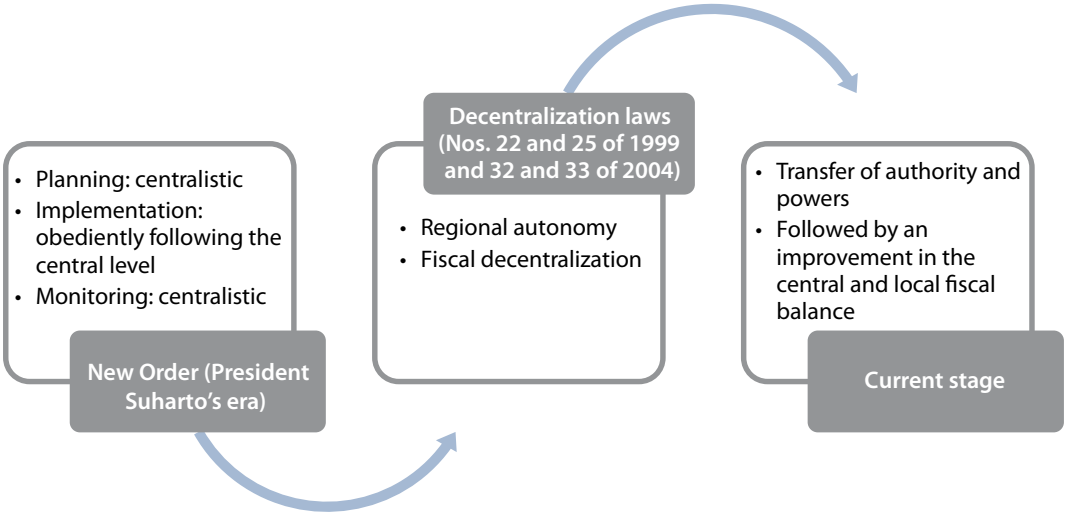

Figure 4. The stages and process of decentralization in Indonesia.

Note: Based on Law No. 23 of 2014, some elements of authority previously given to local governments have now been taken back and given to the provincial and national governments.

Source: First author's description based on decentralization laws and previous laws on regional governance.

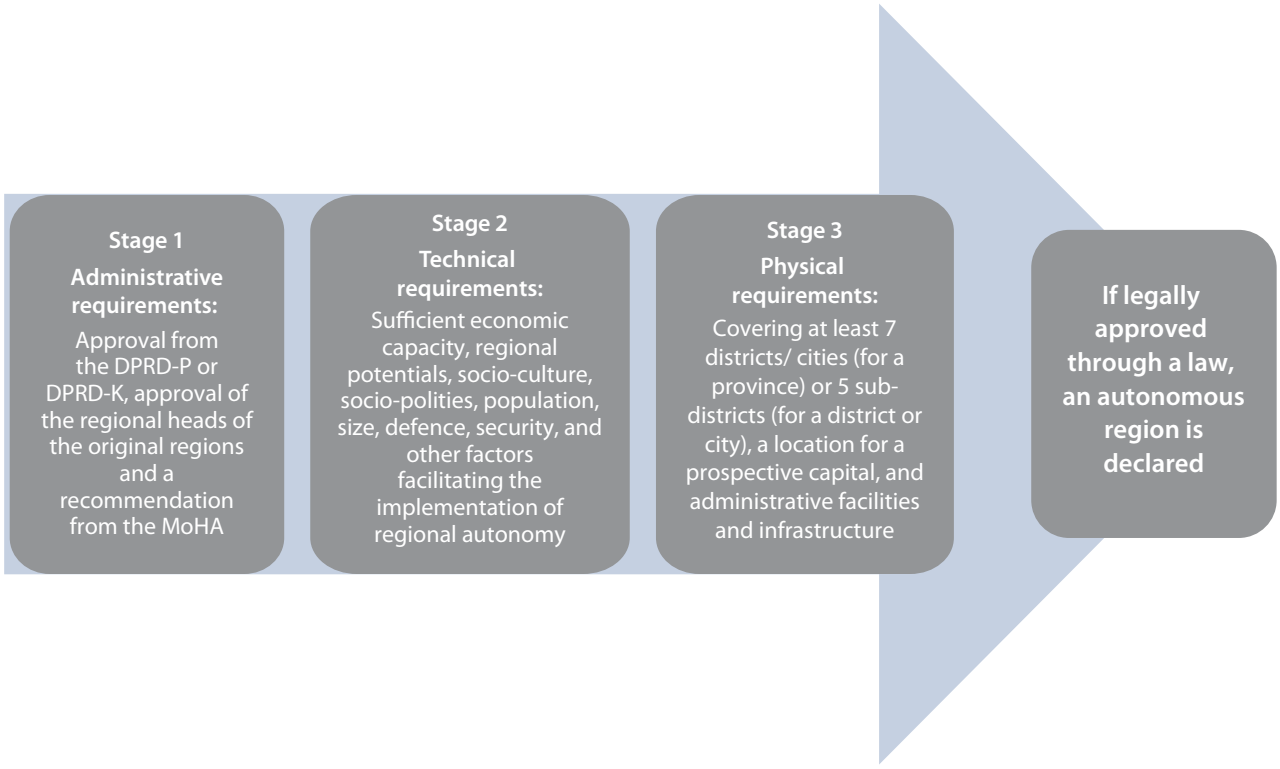

Figure 5. The stages and requirements for becoming an autonomous region.

Source: First author's description based on Law No. 32 of 2004.

2.6 Public participation in the decentralization process

2.6.1 Decentralization laws and public participation

One of the goals of decentralization in Indonesia, as stipulated in Law No. 32 of 2004 (refined in Law No. 23 of 2014), is to have a prosperous community. Hence, public participation and community involvement are an integral part of regional autonomy or the decentralization process in Indonesia.[206] In fact, non-state actors (actors that are not governments and state agencies) such as local and indigenous people, NGOs and the private sector play a significant role in shaping the country's decentralization agenda. Law No. 32 of 2004 acknowledges the rights, interests,[207] aspirations[208] and/or needs of the public (or non-state actors), including:

- the improved level of people's quality of life,[209] including[210] the improvement of basic services, education, health facilities, social facilities and other public facilities;
- the improved level of people's welfare;[211] and
- freedom of democracy.[212]

Decentralization laws are also based on the principles of good governance, public interest, transparency and accountability.[213] This means that the public has the right to information. In the case of good governance, the Director for Regional Development Performance Evaluation at BAPPENAS, Dadang Solihin (2005, 7), further explains that in the decentralization process the public has the rights to comment and ask for information on particular aspects of development in their respective region. The level of good governance that ensures public participation, however, varies across districts and provinces, as shown by the different levels of performance of Village Consultative Bodies (*Badan Permusyawaratan Desa*) (Purba 2010, 7-10; Widianingsih 2005, 5-7).

206 See articles 41 and 354 of Law No. 23 of 2014, as the refinement of Law No. 32 of 2004.

207 See paragraph 1(5) of Law No. 32 of 2004.

208 See paragraph 1(6) of Law No. 32 of 2004.

209 See paragraph 22(b) of Law No. 32 of 2004.

210 See paragraph 167(2) of Law No. 32 of 2004.

211 See paragraph 27(b) of Law No. 32 of 2004.

212 See paragraph 75(8) of Law No. 32 of 2004.

213 See paragraph 20(1) of Law No. 32 of 2004.

2.6.2 Public participation and the involvement of non-state actors in environmental management

In terms of environmental management and/or protection, there has been a significant transformation in the involvement of non-state actors, particularly led by environmental organizations. Even during Suharto's repressive regime, environmental organizations made a decisive contribution both in ensuring better environmental management and improving the country's democratic situation (Okamoto 2001, 13-14). Subsequently, Indonesia entered the decentralization process, which further enabled political openness, and a multitude of NGOs have since been established at the national and local levels. These NGOs attempt to influence environmental governance through a range of activities including public education, advocacy, environmental protection and conservation, research and data collection, and information exchange (Yakin 2005, 2-3). Community and other interest groups can directly send their petitions, engage governments or corporations, and request them to take actions to reduce environmental degradation and address natural resource depletion (Yakin 2005, 13). If a proponent of a development project or initiative, including REDD+, fails to engage the communities, that initiative may have unwanted results as a consequence.

The 2013 United Nations Development Programme report further elaborates on the growing involvement of different community members when it comes to forest and land management, including in REDD+ (Situmorang et al. 2013, 24). These include indigenous peoples, women and forest-dependent communities (Situmorang et al. 2013, 24). The development of guidelines on free, prior and informed consent and the requirement for parties to involve stakeholders in all REDD+ processes and agreements, among others, may not ensure the effective participation of these community groups in REDD+ planning, but at least they can further facilitate their involvement (Situmorang et al. 2013, 25).

Such active participation and/or involvement are recognized by law. Law No. 32 of 2009 on Environmental Protection and Management acknowledges the environmental rights of the citizens of Indonesia, including the rights to a healthy living environment, environmental

education, access to information, participation, and access to justice.[214] Furthermore, this law acknowledges a class action procedure and legal standing for NGOs.[215] It is not the only law or regulation that has progressively acknowledged the rights of the citizens. Law No. 26 of 2007 on Spatial Planning explicitly mentions the importance of public participation, including in the formulation, use and implementation, and monitoring of spatial and land-use planning.[216] This law broadens the scope of public participation by acknowledging the rights of the citizens to planning-related information, benefits from the planning, compensation when planning activities result in negative impacts, and legal standing, among others.[217]

In addition to communities and NGOs, the involvement of non-state actors has reached beyond the so-called traditional stakeholders and incorporated the private sector, which is one of key stakeholders in the land-use and forest sectors. Although there has not yet been a comprehensive assessment of the contribution made by the private sector in this country, certain sections of the sector appear to have approached sustainability as a business opportunity. Several corporations, for instance, have established their own foundations to advance environmental management in their corporations or among the general public. This work is usually driven by the principle of corporate social responsibility (Kartakusuma 2006, 1).

Another aspect driving the private sector's involvement in land-use, forestry and environmental management is probably the increasing scrutiny of Indonesian corporations – particularly the big ones. In the context of the global commodities trade, corporations that have links with foreign investors or buyers in Europe and/or North America may be pushed to accept stricter environmental requirements. These include the application of sustainability standards for their national- and local-level operations. If these corporations do not comply with such requirements, they could face pressure from consumers with negative consequences, such as consumer boycotts, as happened in relation to pulp and paper products in Japan (Hidayat 2007, 60). Another platform in which corporations are being involved is NGO-private sector collaboration to promote certified sustainable commodities and practices, including the Roundtable on Sustainable Palm Oil, the Forest Stewardship Council and the World Business Council for Sustainable Development.

2.7 Government control

In a decentralized government system, Indonesia has various ways of monitoring and controlling the implementation of development programs, budgets and activities. At the district and city level, the DPRD-K has control functions when it comes to the implementation of local regulations and budgets.[218] Another agency, the Development and Financial Supervisory Agency (BPKP)[219] is actively involved in the internal supervision of state finance accountability to support good governance and the eradication of corruption, nepotism and collusion (BPKP 2013, 1), as mandated by PD No. 103 of 2001 on the Structure, Functions and Authority of Non-Ministerial Agencies (as revised by PR No. 64 of 2005).[220] There is a similar situation at the provincial level with the DPRD-P controlling the implementation of provincial regulations and budgets and the BPKP controlling the implementation of budgets. Provincial governments in general, and the governors in particular, have a mandate to oversee and control district and city administration and cross-district coordination.[221]

At the national level and across the board, several institutions have monitoring, oversight and control functions. As explained in Sub-section 2.3, these include:

- The DPR-RI, which has budgeting and oversight functions as well as the right to question.[222]
- The president, with the help of the MoHA, who oversees the implementation of development programs carried out by governors and provincial governments, and to some extent by local governments. The MoHA, for instance,

214 See article 65 of Law No. 32 of 2009.

215 See articles 91-92 of Law No. 32 of 2009.

216 See article 65 of Law No. 26 of 2007.

217 See article 60 of Law No. 26 of 2007.

218 See article 62 of Law No. 32 of 2004 and article 22 of Law No. 23 of 2014.

219 *Badan Pengawasan Keuangan dan Pembangunan* or BPKP.

220 See article 52 of PD No. 103 of 2001.

221 See article 38 of Law No. 32 of 2004.

222 See paragraphs 20A(2)-(3) of the amended Constitution.

has regularly reviewed provincial and local regulations and can cancel and revoke them if they are deemed to be contradictory to higher-level regulations.[223] The president is also supported by the UKP4 when it comes to monitoring and overseeing development activities across the country.

- Line or technical ministries have a mandate, regulated by law, to control the implementation of sectoral development programs. This can be challenging, however, as some district heads may not see the need to follow the guidance and regulations issued by these ministries.
- When it comes to the monitoring and supervision of finances, one of the MoFa's functions is to supervise intergovernmental fiscal transfers to the regions. The BPK, however, is the agency with the ultimate authority and duty to investigate the management and accountability of state finances.[224]
- The KPK is a non-ministerial agency that has gained a high level of respect when it comes to controlling development activities. As discussed in Sub-section 2.3.5.14, it has been feared by many state agencies and government bodies because it has the right to law enforcement, particularly to prosecute people suspected of corruption (Parlina and Halim 2014, 1).

2.8 Balancing the decentralization process

Balancing the process of decentralization appears to be a delicate act. The central government's actions to supervise, monitor and control the activities of provincial and local governments may not necessarily be viewed as positive interventions by these sub-national governments. Standardization, which is initially thought to be an effort to improve the quality of delivery of development programs or public services at the provincial and local levels, may be seen by some local governments as an attempt to impose uniformity upon them. After surveying 25 local governments, Sutmuller and Setiono (2011, 10) argue that well-performing local governments feel they are being punished by a uniform approach that has most likely been designed in response to the worst cases.

223 See paragraph 185 of Law No. 32 of 2004.

224 See paragraph 23(1) of the amended Constitution.

Table 5. Local policies cancelled by the MoHA.

Year	Total policies revoked by the MoHA	Percentage of policies revoked by MoHA that are in the four heavily forested islands
2002	20	70.00%
2003	106	60.38%
2004	237	70.04%
2005	127	67.72%
2006	114	73.68%
2007	173	69.94%
2008	229	66.81%
2009	99	58.59%

Source: First author's calculation based on local government policies obtained from the MoHA, the Ministry of Laws and Human Rights, the Constitutional Court, the BPK, and the KPPOD.

Actions carried out by the MoHA to revoke[225] many regulations and policies issued by local governments can be seen as an attempt to balance some of the powers given to them. Table 5 provides interesting information on the number of local policies that have been cancelled by the MoHA and the percentage of local policies from forested regions cancelled in the period 2002-2009.[226] This table shows that the majority of policies cancelled every year from 2002 to 2009 were from the heavily forested areas of Sumatra, Kalimantan, Sulawesi and Papua. This is an interesting phenomenon requiring further study that raises the question of whether local governments in forested regions used their assumed authority to issue local regulations without taking into account the alignment of those regulations with relevant higher-level ones.

Another example of attempts to balance the decentralization process in Indonesia is through the formulation and disbursement of intergovernmental fiscal transfers. As mentioned in Sub-section 2.4, the national government has formulated a Balancing Fund (consisting of the DAU, the DAK and the DBH) that can address

225 See paragraph 145(2) of Law No. 32 of 2004.

226 In this review, the term "forested regions" refers to districts and cities which are part of four major islands (Sumatra, Kalimantan, Sulawesi and Papua) that have considerably large forest areas.

vertical and horizontal fiscal imbalances between the different levels of government (Murniasih 2010, 7; Sidik and Kadjatmiko 2004, 147) and result in a balanced decentralization capacity and process. The DAK, for instance, is usually formulated by the national government to encourage provinces or districts to undertake certain sectoral programs set as national priorities (Murniasih 2010, 6), including support for environmental protection. Such an approach, using the DAK and attaching conditional terms to it, can be seen as a way for the national government to exercise its authority and further balance the decentralization process.

3 Distribution of financial resource mechanisms

Understanding the current financial resource distribution mechanisms applied in the forest sector is an important step, particularly prior to exploring different options that can be developed under the REDD+ framework. By understanding these mechanisms, gaps can be identified, improvements can be suggested and new options may be explored. The following two sub-sections examine the current mechanisms, consisting of the elaboration of forest fees and royalties and the existing status of payment for ecosystem services as regulated by laws or regulations. The final sub-section deals with the financial benefit distribution schemes proposed under the country's REDD framework.

3.1 Forest fees and royalties

Several laws, regulations and policies provide the legal framework for forest fees and royalties. Table 6 below gives a summary of the key forest sector fees and royalties stipulated in these regulations.

As the table below shows, fees and royalties applied in the forest sector cover not only production-related activities such as logging, but also activities related to ecosystem or environmental services, including tourism, water use, energy use, biodiversity, ecosystem restoration and, recently, forest carbon. This means that the Indonesian government has established the basis for exploring other financing options for ecosystem services, including – but not limited to – REDD+. Another interesting aspect of the current mechanisms for forest fees and royalties, as regulated by GR No. 12 of 2014, is that the government has covered activities in conservation forests, mostly related to ecosystem services. This implies that the government is considering future options to support the financing of conservation and protection activities in these high conservation value areas.

The details of the distribution mechanism for royalties and fees obtained in the forest sector are provided in Sub-section 2.4.2 and Table 4. Based on Law No. 33 of 2004, revenue-shared resources in the forest sector involve three recognized components: land rent, resource rent and reforestation. According to this law, the central government will receive 20% of the revenue from forestland rent, while the provincial government and local government of origin will receive 16% and 64% respectively. The central government will receive 20% of shared-revenue from forest resource rent, while the provincial government, local government of origin and other local governments in the same province will receive 16%, 32% and 64% respectively. Meanwhile, the central government will receive 60% and the local government of origin 40% percent from the reforestation fund. Revenue sharing from reforestation, however, is an earmarked grant to rehabilitate forests in areas administered by the local governments of origin.

3.2 Payment for ecosystem service (PES) schemes

The World Bank (2011, 1) defines PES simply as "those who provide environmental services get paid for doing so ('provider gets')" and "those who benefit from environmental services pay for their provision ('user pays')." The concept is used to internalize the benefits from environmental services. According to Wunder (2005, 3), the PES principle can be described by the following criteria : (1) a voluntary transaction; (2) well-defined environmental services; (3) a minimum of one buyer; (4) a minimum of one service provider; and (5) the provider secures environmental service provision. The FAO (2007, 88) argues, however, that PES should not be limited to the framework of voluntary transactions, but also include: (a) direct payments (public and private), offsets (both voluntary and mandatory) and product certification (ecolabels).

Table 6. Forest fees and royalties.[a]

No.	Laws or regulations	Title	License fees	Royalties	Other information
1	GR No. 22 of 1967	Forest Concession License Fees and Royalties.	*Iuran Hak Pengusahaan Hutan* (Forest concession fee) = *f* (the size of forest areas, the period of activities, the value of timber); annually (per ha/year).	*Iuran Hasil Hutan* (Royalties) = *f* (traded timber, factors related to forest exploitation, marketing, and corporation costs); (per m^3).	To finance: local development, local forestry development, and the national reforestation and forestry program.
2	GR No. 21 of 1980	Revision of GR No. 22 of 1967 on Forest Concession License Fees and Royalties.	Logging residue is excluded.		
3	PD No. 37 of 1980	Revision of PD No. 55 of 1974 on the Implementation of Revenue Sharing from License Fees and Regional Development Fees.			20% (for regional development fee), 40% (for financing provincial development), 15% (for financing local forestry development), 25% (for financing the national reforestation and forestry program).
4	GR No. 59 of 1998	Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation.	**Tariffs:** IDR 15,000–50,000/ha (IHPH). IDR 2,600–30,000/ha (IHPHTI). 6%+60%-6%+180% per m^3 (penalties for not following RKT, TPTI). IDR 15,000–1,350,000/ha and 10% annually (tourism).	**Tariffs:** 6%+2%-6%+60% per m^3 (for penalties). Wood: 6% per m^3, ton or stump. NTFP: 6% per ton, stump, kg or liter. 6–10% per commodity or kg (wildlife catch). IDR 1,000–3,000,000 (entrance fee, research, photography).	
5	GR No. 74 of 1999	Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation.	**Tariffs:** 10%+100%-10%+300% per m^3 (penalties for not following RKT, TPTI).	**Tariffs:** 10%+2%-10%+100% per m^3 (for penalties). Wood: 10% per m^3, ton or stump. NTFP: 6% per ton, stump, kg or liter.	
6	GR No. 92 of 1999	Second Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation.			**Tariffs:** USD 0–18/m^3 (for Restoration Fund).

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Table 6. Continued

No.	Laws or regulations	Title	License fees	Royalties	Other information
7	GR No. 2 of 2008	Type of and Tariffs on Non-Tax State Revenue (PNBP) from the Use of Forest Areas for Non-Forest Development Activities Valid at the Ministry of Forestry.			**Formula:** PNBP = (L1 x tariff) + (L2 x 4 x tariff) + (L3 x 2 x tariff) IDR/year **Notes:** L1: forest area disturbed due to infrastructure and mining development (ha). L2: forest area that is temporarily disturbed and can be reclaimed (ha). L3: forest area that is permanently disturbed and cannot be reclaimed (ha). **Tariffs:** IDR 1,800,000–3,000,000 per ha/year.
8	GR No. 12 of 2014	Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry (cancelling GR No. 59 of 1998).	**Tariffs:** IIUPHHK-HA (IDR 2,000–5,000 per ha/year). THPB (IDR 250 per ha/year). IIUPHHBK (IDR 250–500 per ha/year). The use of forest areas (IDR 2,000 per ha/year). IIUPHHK-RE (IDR 1,500–2,500 per ha/year). IIUPJL (environmental services license fee: IDR 1,000 per ha/year). IIUPHHK-HTR, IIUPHHK-HKm and IIUPHHK-HD (IDR 2,600 per ha/year). Ecotourism license fee (IDR 10,000,000–50,000,000 per ha, or IDR 100,000–1,000,000 per license, or IDR 50,000–800,000 per month). IUPA (IDR 1,250,000–1,250,000,000 per license). IUPEA (IDR 1,000,000–5,000,000 per license). PUPA (2–8% x local basic price per volume use). PUPEA (2% x basic electricity price per volume use).	**Royalties:** Compensation of standing tree (100% x basic price per m^3). Penalties for exploitation (DPEH, 10-15 x 10% of the basic price per m^3 or 50% of the basic price per m^3). Penalties in forest conservation (5,000% x basic price per unit). Provision of forest resources (PSDH) (10% x basic price per m^3, ton, kg or stump). Auction of illegal timber and wildlife catch (100% x results of auction). Revenue from nature-based tourism (5–10% x net profit per traded product or IDR 3,000–250,000 per person/day or IDR 1,500–50,000,000 per unit/day). Wildlife utilization (IDR 500,000–25,000,000 per license or 5–200% x basic price per wildlife).	Reforestation Fund (DR, USD 10.50-18.00 per m^3). Forest carbon transaction (10% x carbon credit traded). Products of silvopastural and silvofishery systems (10% x basic price per ton).

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Table 6. Continued

No.	Laws or regulations	Title	License fees	Royalties	Other information
			Nursery license fee (1–6% x basic price per unit). Seeds/seedlings certification fee (IDR 25,000–250,000 per ha or 6% x basic price per kg). Research and development fees (IDR 100,000–15,000,000 per person), etc.		

a Other notable regulations include PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties; PD No. 29 of 1991 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties; PD No. 41 of 1993 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties, as Previously Revised by PD No. 29 of 1991 and PD No. 67 of 1998 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties as Previously Revised by PD No. 41 of 1993.

Notes: *f* = function of; IHPH = Forest concession fee for production forests; IHPHTI = Forest license fee for industrial timber plantation forests; NTFP = Non-timber forest products; RKT = Annual production plan; TPTI = Indonesian selection cutting and planting system; IIUPHHK-HA = Logging concession fee for natural forests; THPB = clearcutting with artificial regeneration; IIUPHHBK = Non-timber forest product collection permit fee; IIUPHHK-RE = Ecosystem restoration concession fee; IIUPJL = Environmental services license fee; IIUPHHK-HTR = Community plantation forest concession fee; IIUPHHK-HKm = Community forest concession fee; IIUPHHK-HD = Village forest concession fee; IUPA = Water utilization fee in conservation forests; IUPEA = Micro/mini-water utilization fee in conservation forests; PUPA = Water business activities fee in conservation forests; and PUPEA = Micro/mini-water business activities fee in conservation areas.

Source: First author's compilation based on relevant regulations.

3.2.1 PES status in Indonesia

The Indonesian government has issued the regulations and policies presented below (see Table 7), which can be considered as providing the basis of the legal framework for PES implementation in the country. The government is also still formulating appropriate policies to strengthen PES development and implementation, especially when related to REDD+.

As shown in Table 7, the Indonesian government has made efforts to develop a payment mechanism for environmental services. Some of the earlier work included the development of ecosystem restoration concessions, water use and catchment area protection, nature-based tourism and eventually forest carbon. There was an attempt to quantify the percentage of benefit distribution from forest-carbon activities (see MoFR No. 36 of 2009), but that move by the MoF (now the MoEF) was deemed invalid as it is the MoFa that has the authority to regulate financial distribution mechanisms (Huber 2013, 3). Since 2010, the MoFa has been conducting consultations and discussions with stakeholders at the local level to gather inputs that will be used as the basis for the revision of MoFR No. 36 of 2009, particularly regarding aspects related to benefit-sharing mechanisms (Iwied 2010, 1).

With regard to the work on PES and REDD+, based on the regulations listed in Table 7, at least two agencies have led the process and claimed the authority. The first is the MoEF, which is currently in charge in issuing licenses for ecosystem restoration and other PES-type activities, including water use, micro-water activities and tourism. The MoEF has also contributed to the development of PES/REDD-type activities, although previously the REDD+ Agency (formerly the REDD+ Task Force) was considered to have greater authority in this issue. At that time, the REDD+ Agency was leading the process of formulating REDD+ strategy, policy and financial mechanisms, but its subsequent discontinuation and the integration of its functions and roles into the new MoEF are likely to increase the role of the part of this new ministry corresponding to the old MoF.

Table 7. PES-related regulations in Indonesia.

No.	Regulations	Key components						Remarks
		Objectives	Forest areas eligible	Focus activities	Institutions involved (or to be created)	Time	Authorities	
1	GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans (as revised by GR No. 3 of 2008).	To formulate forest planning as part of forest management in Indonesia.	Production forest management units (KPHP). Protection forest management units (KPHL). Conservation forest management units (KPHK).	Incorporating environmental services as forest sector activities, including: – water utilization – nature-based tourism – biodiversity conservation – environmental protection – carbon sequestration and/or storage.	MoF (now MoEF), forest license holders.	25 years		
2	MoFR No. 61 of 2008 on the Procedures for Obtaining Permits for the Utilization of Timber Products in Ecosystem Restoration Activities in Production Forests (as revised by MoFR No. 50 of 2010).	To develop ecosystem restoration in production forests.	Production forests: 14,000–200,000 hectares. IUPK. Environmental service concessions (IUPJL). Logging concessions (IUPHHK).	Protection. Enrichment and maintenance. Biodiversity conservation. NTFP utilization.	MoEF, corporations, forest concession holders.	Maximum of 65 years (extension: 35 years)	MoEF	
3	MoFR No. 68 of 2008 on the Implementation of Demonstration Activities for Reducing Emissions from Deforestation and Forest Degradation.	To develop REDD demonstration activities.	State forest. Rights forest.	Developing REDD methodology, technology and institutions.	MoEF (WG on Climate Change), international organizations, forest concession holders, customary forest managers.	5 years	MoEF	

continued on next page

Table 7. Continued

No.	Regulations	Key components						Remarks
		Objectives	Forest areas eligible	Focus activities	Institutions involved (or to be created)	Time	Authorities	
4	MoFR No. 30 of 2009 on the Implementation of the Procedure for Reducing Emissions from Deforestation and Forest Degradation (REDD).	To prevent and reduce emissions from deforestation and forest degradation.	Logging concession in natural forest (IUPHHK-HA). Plantation forest concession (IUPHHK-HT). Community forest concession (IUPHHK-HKm). Community plantation forest concession (IUPHHK-HTR). Ecosystem restoration concession (IUPHHK-RE). Protection forest management unit (KPHL). Conservation forest management unit (KPHK). Conservation forest. Customary forest. Rights forest. Village forest.	Conducting forest management activities as part of REDD implementation. Setting the reference emission level prior to REDD implementation. Conducting monitoring. Submitting a monitoring report to the MoF. Distributing financial benefit based on relevant regulations.	Independent Appraisal (to be created). REDD Commission (to be created – now discontinued with responsibility lying with the MoEF). MoEF. National registry (to be created). Provincial governments. Local governments. Forest license holders. International organizations.	30 years	MoEF (license issuing). Local governments (issuing recommendations).	This MoFR is no longer valid since the creation of the REDD+ Task Force (and eventually the REDD+ Agency) by the president. The REDD+ Agency has how been discontinued).
5	MoFR No. 36 of 2009 on the Implementation of the Permit Issuance Procedure for Carbon Sequestration and/or Carbon Storage Business Activities in Production and Protection Forests.	To develop forest carbon sequestration and storage activities.	Environmental services concession in production forests (IUPJL-HP). Logging concession in natural forests (IUPHHK-HA). Plantation forest concession (IUPHHK-HT). Community forest concession (IUPHHK-HKm). Community plantation forest concession (IUPHHK-HTR). Ecosystem restoration concession (IUPHHK-RE). Production forest management unit (KPHP). Protection forest management unit (KPHL). Conservation forest management unit (KPHK). Conservation forest. Customary forest. Rights forest. Village forest.	Forest carbon sequestration and storage as part of the environmental service activities in production and protection forests, which include a series of activities under sustainable forest management.	MoEF (DG of Planning, FG Forest Production). Forest license holders.		MoEF, governor and *bupatis*/mayors (license issuing).	Funds can come from internal corporations (concession holders), CSR, donor agencies. Distribution mechanism (depending on forest status): – government (10-50%) – community (20-70%) – developer (20-60%) This distribution mechanism is eventually cancelled by the MoFa.

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Table 7. Continued

No.	Regulations	Key components						Remarks
		Objectives	Forest areas eligible	Focus activities	Institutions involved (or to be created)	Time	Authorities	
6	PD No. 19 of 2010 on the Task Force for Preparation of the REDD+ Agency.	To develop REDD+ readiness and prepare for the REDD+ Agency.	All forests.	Formulation of REDD+ national strategy and national action plan on greenhouse gas mitigation (RAN-GRK). Preparation for REDD+ Agency. Formulation of REDD+ finance mechanism. Preparation for MRV agency. Formulation of criteria for pilot provinces.	REDD+ Task Force (discontinued). Line ministries: MoF (now MoEF), BAPPENAS, MoFa, etc. UKP4 (discontinued).		UKP4 (discontinued)	Fund comes from APBN and Norway-Indonesia LoI.
7	PD No. 25 of 2011 on the Task Force for Preparation of the REDD+ Agency.	Continuation of PD No. 19 of 2010.	All forests.		REDD+ Task Force (discontinued). Line ministries: MoEF, BAPPENAS, MoFa, MoA, MEMR, etc. UKP4. BPN.	Until 31 Dec 2012.	UKP4 (discontinued).	
8	MoFR No. 47 of 2011 on a Partial Transfer of Authority on Forestry Governance from the MoF to the *Bupatis* of Berau, Malinau and Kapuas Hulu under the Framework of REDD+ Demonstration Activities.	To improve the efficiency and effectiveness of the government's delivery of public services in the forest sector, particularly at local level.	All forests. State forests.	Carbon accounting in forest areas. MRV preparation. REDD readiness activities.	MoEF. Berau *Bupati*. Malinau *Bupati*. Kapuas Hulu *Bupati*.	Not available.	MoEF. Berau *Bupati*. Malinau *Bupati*. Kapuas Hulu *Bupati*.	MoEF to provide additional budget to respective local governments.

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Table 7. Continued

No.	Regulations	Key components						Remarks
		Objectives	Forest areas eligible	Focus activities	Institutions involved (or to be created)	Time	Authorities	
9	MoFR No. 20 of 2012 on Forest Carbon Implementation.	To implement forest-carbon activities in accordance with sustainable forest management principles.	Production forests. Protection forests. Conservation forests.	Demonstration activities and/or full implementation, consisting of: – nursery and planting – forest-carbon enrichment – protection of forests in logging concessions – biodiversity conservation – sustainable forest management – sustainable forest protection management – forest conservation management – community empowerment – carbon baselining, MRV – boundary mapping and establishment	MoEF (i.e. WG on Climate Change). Forest license holders.	Not available.	MoEF (license issuing).	The government to receive non-tax revenues from carbon credits traded. Benefit distribution mechanisms to be regulated by law or relevant regulations.
10	MoFR No. 22 of 2012 on Guidance on Environmental Service Tourism Activities in Protection Forests.	To provide guidance for nature-based tourism activities.	Nature based tourism service providers (IUPJLWA-PJWA). Nature based tourism facility providers (IUPJLWA-PSWA).	Activities to provide nature-based tourism services. Activities to provide nature-based tourism facilities.	MoEF. Nature-based tourism providers.	20 years	MoEF (license issuing). Local governments (extending licenses).	

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Table 7. Continued

No.	Regulations	Key components						Remarks
		Objectives	Forest areas eligible	Focus activities	Institutions involved (or to be created)	Time	Authorities	
11	PR No. 62 of 2013 on the REDD+ Agency (which was integrated into the MoEF through PR No. 16 of 2015)	To achieve REDD+ objectives in Indonesia by developing relevant policies and implementing REDD+ projects (addressing deforestation, forest degradation and peatland degradation).	All forests and peatlands.	Coordination and planning for REDD+ development and implementation in Indonesia, which includes developing: – The REDD+ national strategy – REDD+ safeguards – Actions to mainstream REDD+ in the development agenda – Financial benefit distribution mechanism – Improving capacity, law enforcement and MRV	REDD+ Agency (discontinued). Line ministries: MoEF, BAPPENAS, MoFa, MoA, MEMR, etc. UKP4. BPN.		REDD+ Agency (ministry-ranking, but now discontinued).	Stakeholders' committee to be established. Funds for REDD+ Indonesia to be established.

Source: First author's compilation based on relevant regulations.

3.2.2 Development of a future benefit distribution mechanism in Indonesia

PES, with its principle of financial benefit distribution mechanisms, is one of the feasible options to support the implementation of REDD+ in Indonesia. Under the REDD+ Task Force the Working Group on Funding Instruments focused on the development of such financial mechanisms and by 2013 it had produced a concept of financing mechanisms for REDD+ in Indonesia. The following is a summary of this concept, as written by its chair, Agus Sari (2013, 10-23):

- This scheme, called the Trust Fund for REDD+ in Indonesia (FREDDI), is a "fund of funds," which means it is a fund that will invest in other funds. The funds beneath FREDDI can be special purpose vehicle units or companies, fund managers, or collective investment agreements. These subsidiary funds can form joint ventures with other funds from different companies, among others, to use as disbursement vehicles and as leverage to mobilize the other funds needed to support REDD+ development and implementation.
- Three REDD+ funding instrument sequencing modalities were developed under FREDDI. The first is "grants," consisting of small, medium, and large grants that will be established to support REDD+ readiness, infrastructure development and capacity-building activities. There are three grant sub-modalities: (a) input-based (i.e. straight-forward grant making), (b) output-based (i.e. payment against products), and (c) outcome-based (i.e. payment against performance and milestones). The second modality is "trade intermediary," which was being designed by the REDD+ Agency (it now depends on the MoEF to refine or adopt it) and can only be operationalized when the MRV systems and instruments have been put in place. The returns on this modality are expected in terms of performance units. The last modality is "investments," which can only be activated when REDD+ readiness and capacity are in place and somewhat "mature." The returns on this modality are expected in the form of monetary and performance units.
- With regard to institutional arrangements, Figure 6 shows that FREDDI was designed to be supposedly coordinated under the REDD+ Agency, but still retains its independence by having its own board of trustees, safeguard committee and disbursement and investment committee. It also has its own executing agency, in close collaboration with partner agencies. Following the discontinuation of the REDD+ Agency, it is unclear whether FREDDI will be independent, under the MoEF or the MoFa, or associated with an established trust fund institution such as the Indonesian Climate Change Trust Fund (ICCTF).[227]
- FREDDI fund mobilization is designed for the utilization of its fund to leverage other public and private funds (see Figure 7). This is carried out, for instance, by placing funds through joint corporate financing or joint project financing. A "Joint Supervisory Board" can be designed and established to provide guidance for the use of such specific funds.
- In this context of fund mobilization, FREDDI is designed to contribute to the process of changing the financing paradigm from mainly depending on foreign-public financial sources (budget approach) to depending on domestic-private sources (investments). This can only be done if FREDDI has a gradual plan to expand its funding sources, incorporating the private sector's contribution and/or investment.[228] To achieve this, FREDDI needs to have a strategy to enable "environmental service certificates" resulting from REDD+ or forest-carbon activities to be transformed and categorized as asset classes (see Figure 8).
- Another important aspect developed under FREDDI is guidance and principles for benefit-sharing and incentive mechanisms. Under this design, FREDDI appears to have the motivation to change the community participation approach towards community or co-ownership. The design also tries to define benefits in terms of both cash received from forest-carbon activities and other intangible benefits. Figure 9 illustrates this idea of transformation.

227 The ICCTF was established following the rules stipulated in PR No. 80 of 2011 on Trust Funds.

228 It appears that one of FREDDI's long-term intentions is to encourage domestic corporations and firms to be proactively involved and invest in the scheme. The current carbon market piloting in China, aimed at encouraging domestic firms to sell and buy carbon emission permits (Chen and Reklev 2014, 1; *Reuters* 2013, 1), can be taken as one of the references for FREDDI.

To achieve this ideal design in the context of the current administration, however, FREDDI needs to be discussed by the MoFa and the new MoEF (or with BAPPENAS, which was instrumental in developing the ICCTF). It is clear that these ministries have to work out which current government structures and regulations FREDDI fits in with. In terms of ensuring FREDDI's local-level acceptance, this fund mechanism needs to ensure that the existing system of property rights over forest resources in Indonesia is supportive of the development of REDD+ and produces a relatively high level of legal certainty. Without this, it will prove challenging to measure and distribute benefits from REDD+ in an equitable manner.

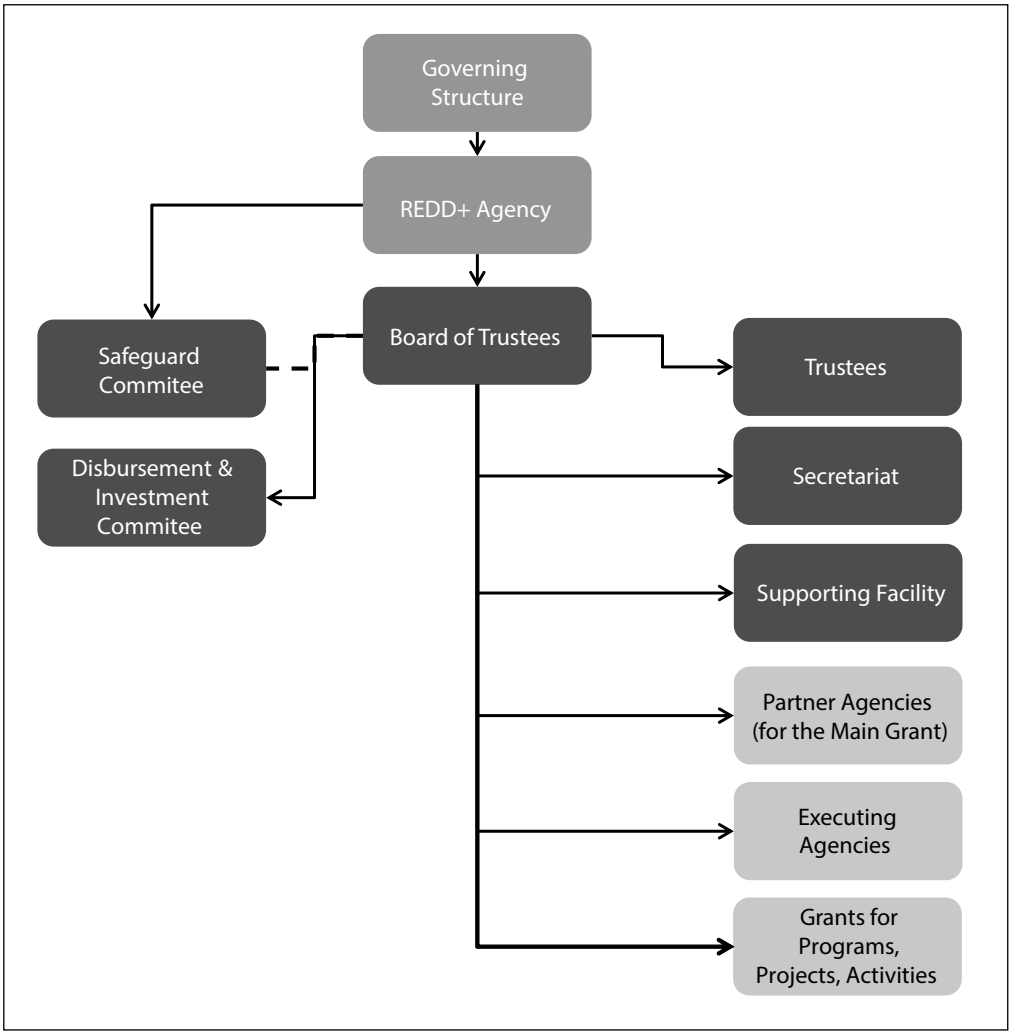

Figure 6. Structure of FREDDI.

Source: Sari (2013, 12).

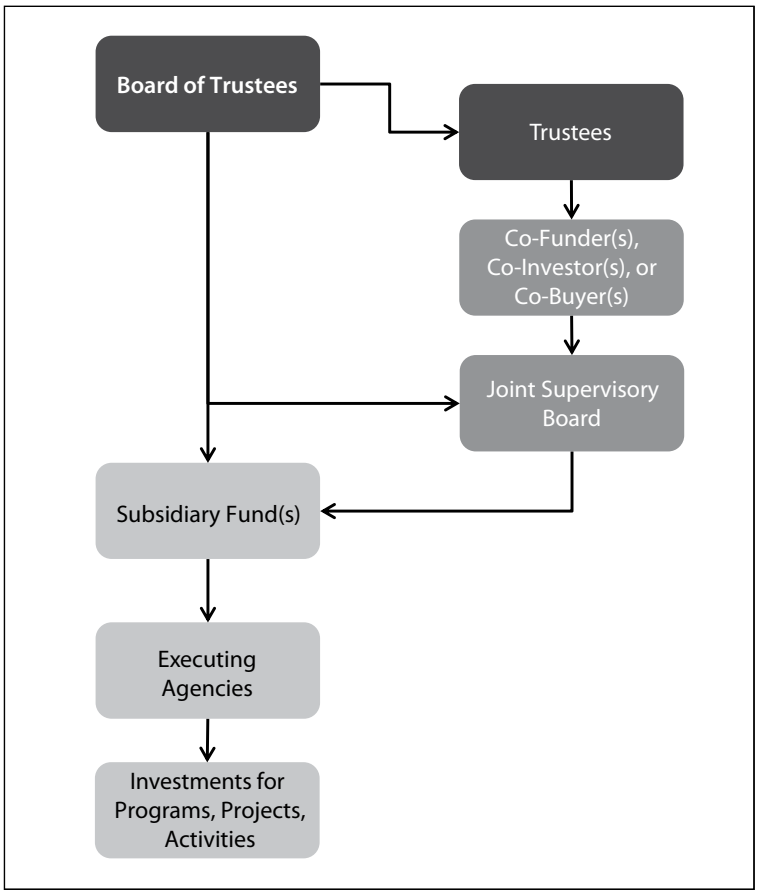

Figure 7. FREDDI fund mobilization.

Source: Sari (2013, 13).

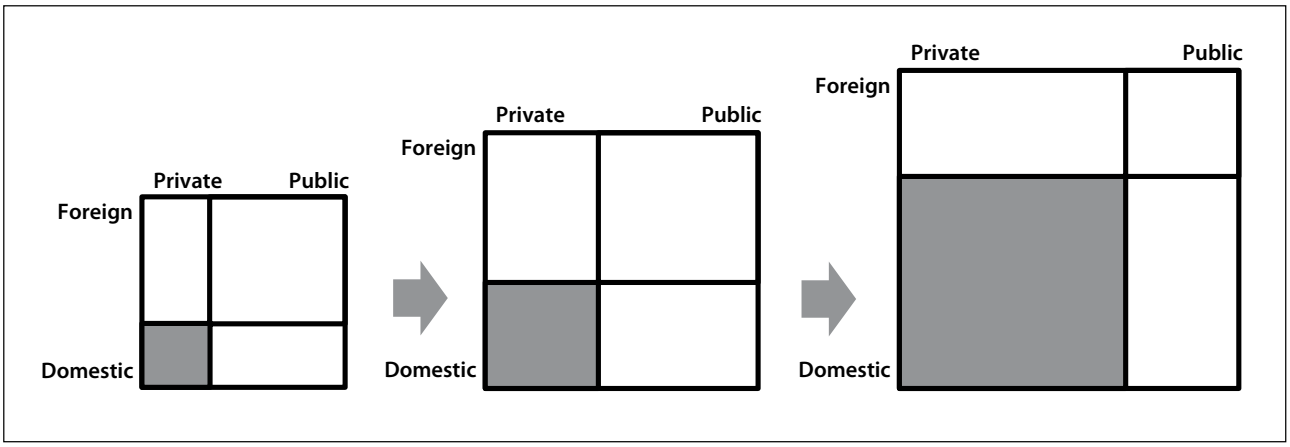

Figure 8. Fund mobilization and increasing the private sector's role.

Source: Sari (2013, p. 15).

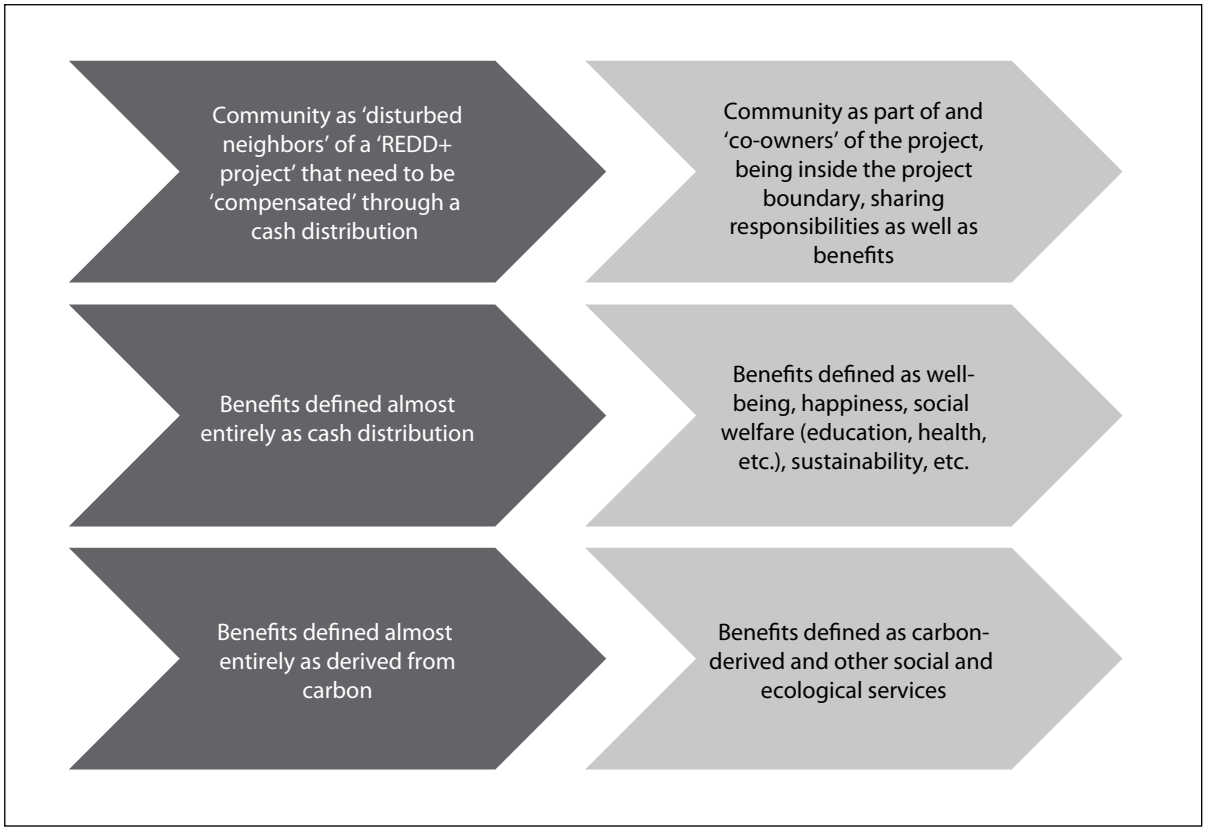

Figure 9. Paradigm shift in benefit-sharing mechanisms.

Source: Sari (2013, 18).

4 Different government roles in land-use decision-making and policy arenas affecting forests in a decentralized Indonesia

A national REDD+ strategy and financial mechanism can only be successfully implemented at the national, provincial and local levels if such a program actively involves key-land use sectors and actors that are influential in causing land-use change. The development sectors in forestry (e.g. logging concessions, industrial timber plantations); agriculture (e.g. oil palm plantations); oil, gas and mining; and infrastructure are key development sectors in land use and land-use change in Indonesia, and their incorporation into decision-making processes is therefore key to the success of REDD+. As a result, governments at different levels have tasks and roles in these sectors and land-use policy development in general that are coherent with REDD+. The following sub-sections describe the different government roles in the decision-making processes of land-use and key development sectors.

4.1 Spatial and land-use planning

Sub-section 2.3.5 briefly discusses the responsibility of the MoPW in assisting the president in administering spatial planning[229] at the national level in the previous administration (the same role is now led by the MoASP[230]), as regulated by Law No. 26 of 2007 on Spatial Planning. Its duties and responsibilities were to: (a) coordinate and supervise spatial planning, (b) implement national spatial planning (RTRWN),[231] and (c) coordinate the formulation and implementation of cross-sectoral and cross-border spatial planning. RTRWN is the highest level of reference for spatial planning in the country.[232] Examples of cross-border spatial planning include PR No. 3 of 2012 on Kalimantan Island Spatial Planning and PR No. 13 of 2012 on Sumatra Island Spatial Planning. As part of its supervisory role, the MoPW (now the MoASP) had the duty to assist provincial and local governments in formulating and developing their spatial and land-use planning.[233]

At the national, provincial and local levels, spatial plans are key documents that will be referred to by other official policy documents such as long-term and medium-term development planning, detailed land-use planning, regional investment planning, and strategic area planning.[234] It is therefore expected that a spatial planning document will be one of the first documents governments and land users will refer to if there is any conflict related to land and land use. A spatial planning document contains at least:[235] (a) the goal, objectives and strategy of planning, (b) spatial structure planning, (c) spatial pattern planning, (d) directions and guidance for the future spatial projection of a particular area or region, and (e) directions for controlling the implementation of spatial planning, including by designating a zoning system or introducing other policy and economic instruments.

At sub-national levels, provincial and local governments have the authority to formulate their provincial and district/city spatial planning documents, respectively.[236] If they have agreed on the documents with their DPRD counterparts, these governments can issue formal policies in the form of *peraturan daerah* (*perda* or local regulations). Governors, *bupatis* and mayors can also issue their own regulations or policies, in the form of *peraturan*

229 See article 9 of Law No. 26 of 2007.

230 See article 7 of PR No. 165 of 2014.

231 *Rencana Tata Ruang Wilayah Nasional* (RTRWN).

232 See paragraph 1(1) of GR No. 26 of 2008.

233 See article 392 of PR No. 24 of 2010, article 13 of Law No. 26 of 2007 and article 7 of PR No. 165 of 2014.

234 See paragraphs 20(2), 23(2) and 26(2) of Law No. 26 of 2007.

235 See paragraphs 20(1), 23(1) and 26(1) of Law No. 26 of 2007.

236 See articles 22-31 of Law No. 26 of 2007.

gubernur (*pergub* or gubernatorial regulations), *peraturan bupati* (*perbup* or district head regulations) or *peraturan walikota* (*perwal* or mayoral regulations), to further translate or implement spatial planning documents. Figure 10 shows the process of spatial planning policy formulation and Table 8 distinguishes the division of authority among government institutions at different levels with regard to spatial planning.[237]

Having good quality spatial planning documents at the provincial and local levels is a key instrument for bringing about effective and sustainable land-use management at the local level. Law No. 26 of 2007,for instance, instructs district/ municipal governments to develop their policies in a way that will ensure synergy and balance among the different sectors, as well as the sustainability of the development in their respective districts/ municipalities.[238] This law also specifically stipulates that the formulation of a provincial or local land-use policy or spatial planning shall be based on the respective region's environmental carrying capacity.[239] So if the spatial planning regulations or policies issued by the district, city or province still result in ongoing deforestation and forest and peatland degradation, this means that the quality of the formulation, implementation and supervision of spatial and land-use planning is still weak and inconsistent with the law.

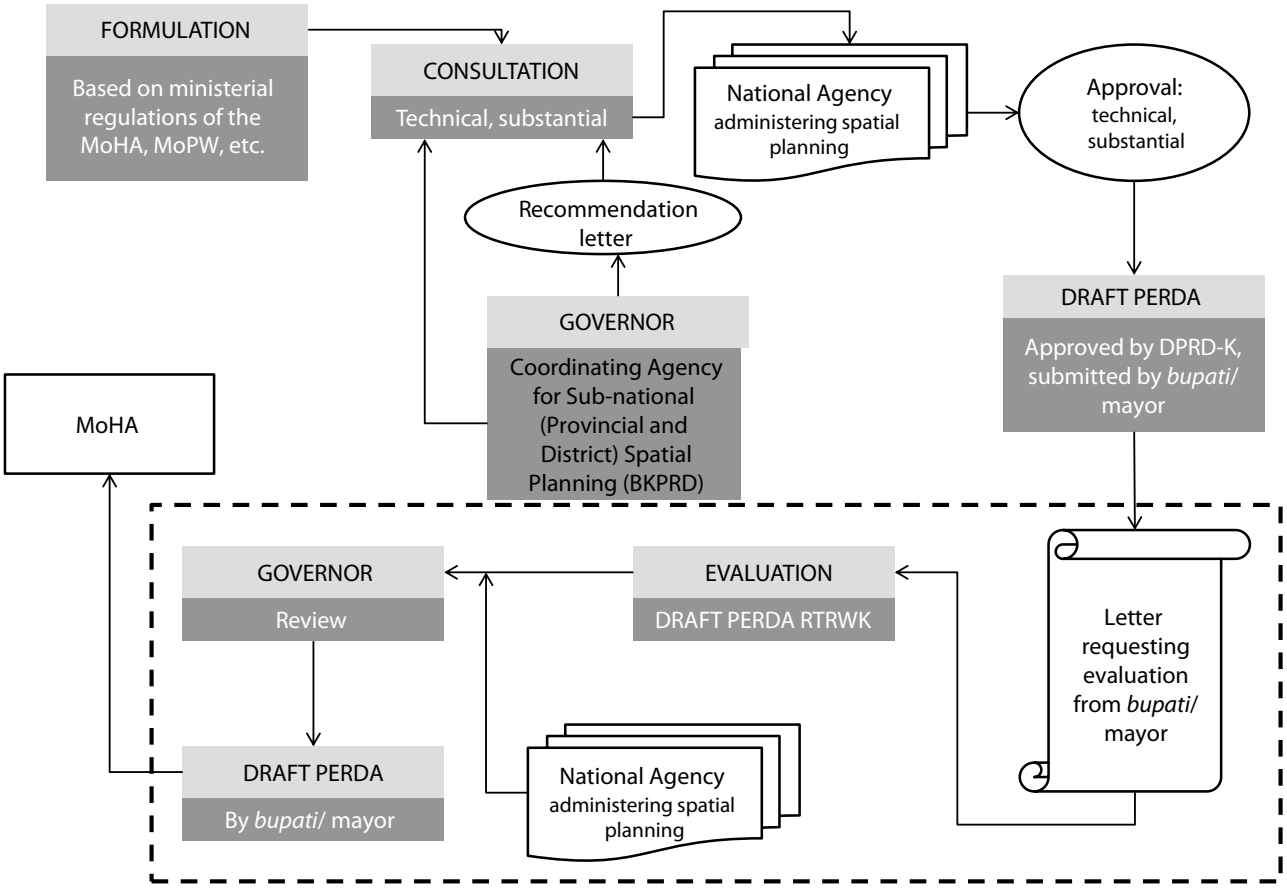

Figure 10. RTRWK (local spatial planning) policy formulation process.

Source: MoHA Regulation No. 28 of 2008 on the Procedure for Evaluating Local Spatial Planning (Gunawan 2008, 1).

237 Note that "regency" refers to the district level here.

238 See articles 22 and 25 of Law No. 26 of 2007.

239 See paragraphs 22(2) and 25(2) of Law No. 26 of 2007.

Table 8. Division of authority – spatial planning and land use.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoPW (now MoASP)	National	– Article 9 and paragraphs 1(34), 8(1c), 21(2) of Law No. 26 of 2007 (transferred to the MoASP based on article 7 of PR No. 165 of 2014). – Paragraphs 18(1)-(2) of Law No. 26 of 2007.	– Authority to formulate and issue national spatial planning, island spatial planning, national strategic area/ zone planning. – Authority to substantially approve provincial and district/ city spatial planning.
		BPN[a] (now integrated into the MoASP)	National	– Law No. 5 of 1960 (transferred to the MoASP based on article 7 of PR No. 165 of 2014).	– Authority to develop land information and management system.
		Provincial government	Province	– Article 10 of Law No. 26 of 2007 (strengthened based on article 91 of Law No. 23 of 2014). – Paragraph 18(2) of Law No. 26 of 2007 (strengthened based on article 91 of Law No. 23 of 2014).	– Authority to formulate and issue provincial spatial planning, provincial strategic area/ zone planning. – Authority to recommend the approval of district/ city spatial planning.
		District/ city government	Local	– Article 11 of Law No. 26 of 2007 (reduced with some authority transferred to the provincial level based on article 245 of Law No. 23 of 2014).	– Authority to formulate and issue district/ city spatial planning and district/ city strategic area/ zone planning.

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Table 8. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
2	Administration (implementation)	MoPW (now MoASP)	National	– Article 9 and paragraph 1(34) of Law No. 26 of 2007 (transferred to the MoASP based on article 7 of PR No. 165 of 2014). – Paragraphs 24(2) and 27(2) of Law No. 26 of 2007.	– Authority to administer/ implement national spatial planning – Authority to coordinate cross-sector and cross-administration spatial planning. – Authority to provide guidance for provincial and local governments in formulating their spatial planning.
		BPN (now MoASP)	National	– Law No. 5 of 1960 (transferred to the MoASP based on article 7 of PR No. 165 of 2014).	– Authority to clarify the legal status of land. – Authority to improve the quality of land registry.
		Provincial government	Province	– Article 10 of Law No. 26 of 2007 (strengthened based on article 91 of Law No. 23 of 2014).	– Authority to administer/ implement provincial spatial planning and provincial strategic area/ zone planning. – Authority to provide guidance on the implementation and monitoring of provincial spatial planning.
				– Paragraph 4(2) of GR No. 15 of 2010 on Spatial Planning Implementation.	– Authority to issue permits and incentives for the use of space or land.
		District/ city government	Local	– Article 11 of Law No. 26 of 2007 (reduced with some authority transferred to the provincial level based on article 245 of Law No. 23 of 2014).	– Authority to administer/ implement district/ city spatial planning and district/ city strategic area/ zone planning.
				– Paragraphs 16(1) and 53 of Law No. 5 of 1960; paragraph 4(3) of GR No. 15 of 2010; article 2 of PD No. 34 of 2003 on National Policy in the Land Sector.	– Authority to issue permits and incentives for the use of space or land (e.g. location permits). – Authority to carry out land acquisition for development.

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Table 8. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
3	Control/ monitoring	MoPW (now MoASP)	National	– Article 9 and paragraphs 1(34), 55(3) of Law No. 26 of 2007; paragraph 4(1) of GR No. 15 of 2010; the Elucidation part of Law No. 23 of 2014.	– Authority to monitor and supervise the implementation of spatial planning. – Authority to take over the provincial government's role in provincial spatial planning if the provincial government is viewed as incapable.
		Provincial government	Province	– Article 10 of Law No. 26 of 2007; paragraph 4(2) of GR No. 15 of 2010; the Elucidation part of Law No. 23 of 2014. – Article 11 of Law No. 26 of 2007; the Elucidation part of Law No. 23 of 2014.	– Authority to monitor and supervise the implementation of provincial spatial planning and provincial strategic area/ zone planning. – Authority to take over the role of the local government in district/ city spatial planning if a local government is viewed as incapable.
		District/ city government	Local	– Article 11 of Law No. 26 of 2007; paragraph 4(3) of GR No. 15 of 2010; article 2 of PD No. 34 of 2003; the Elucidation part of Law No. 23 of 2014.	– Authority to monitor and supervise the implementation of district/ city spatial planning and district/ city strategic area/ zone planning. – Authority to facilitate land conflict resolution.
4	Auditing	BKPRN[b]	National and province	– PI No. 1 of 2010 on the Acceleration of the Implementation of National Development Priorities in 2010.	– Authority to audit and stock-take the implementation of spatial planning at the national and provincial levels.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	Judicial system (including courts)	National to local	– Chapter 9, articles 69-75 of Law No. 26 of 2007.	– Authority to prosecute and convict those breaching spatial planning regulations.
		Provincial government	Province	– Paragraph 4(2) of GR No. 15 of 2010.	– Authority to issue administrative sanctions against those breaching provincial spatial planning regulations.
		District/ city government	Local	– Paragraph 4(3) of GR No. 15 of 2010.	– Authority to issue administrative sanctions against those breaching district/ city spatial planning regulations.

a See Sri P (2012, 2-5).

b The BKPRN involves various ministries, including the MoPW, in conducting spatial planning audits. See Pusat Komunikasi Publik-PU (2010, 1).

Source: First author's compilation based on relevant regulations and references.

Therefore, another aspect that is crucial to address in spatial and land-use planning is the interpretation of the spatial categories introduced by Law No. 26 of 2007: *kawasan lindung* (protected area), *kawasan budidaya* (cultivation area), *kawasan perdesaan* (rural area), and *kawasan perkotaan* (urban area).[240] Based on Law No. 26 of 2007, Minister of Public Works Regulation (MoPWR) No. 15 of 2009 on Guidance on Formulating Provincial Spatial Planning and other relevant regulations,[241] the different layers of government define those spatial categories,[242] particularly on protected and cultivated areas, as follows:

- A protected area is an area that protects its:
  - command area:[243] among others, protection forest area,[244] peatlands,[245] and catchment area;[246]
  - local protected area: among others, coastline,[247] river banks,[248] lakes/ reservoirs, and areas surrounding spring water;
  - nature reserves[249] and cultural heritage:[250] among others, marine and water-related nature reserves, coastal mangrove areas, national parks, grand forest parks,[251] nature recreation parks;[252]
  - strict nature reserves,[253] wildlife sanctuaries,[254] cultural and scientific heritage;[255]
  - natural disaster-prone areas:[256] among others, volcanic-prone areas,[257] earthquake-prone areas,[258], landslide-prone areas,[259] tidal wave-prone areas,[260] and flooding-prone areas;[261]
  - other protected areas, such as hunting parks,[262] biosphere reserves,[263] biodiversity protection areas,[264] wildlife refuge areas,[265] and coral reefs.
- A cultivated area is an area allocated as a production forest area,[266] community forest area, agriculture area, fishery area, mining area, settlement area, industrial area, tourism area, religious site, educational area, and security zone.[267]

There are basically a number of guidances that the different layers of government need to follow, such as MoPWE No. 15 of 2009, for determining areas as protected or cultivated. Local governments need to follow a complex process (see Figure 11) to gazette an area as a protected or cultivated area as part of their spatial plans. The enormous pressure exerted on forests and land by forestry, agro-industrial and mining development has led to disconnection and conflicts both vertically and horizontally among different government entities in terms of policy formulation and objectives (Resosudarmo 2012, 5).

Another important aspect in spatial planning is to resolve any conflicts over land use and synchronize the different levels of spatial planning regulations. To achieve this, there is a national-level

240 See paragraphs 1(20)-(23) of Law No. 26 of 2007.

241 See also MoPWR No. 41 of 2007 on Technical Guideines on the Criteria for Cultivated Areas and PD No. 32 of 1990 on Protected Area Management.

242 See the Elucidation part and paragraph 5(2) of Law No. 26 of 2007.

243 *Kawasan bawahan*.

244 *Kawasan hutan lindung*.

245 *Kawasan bergambut*.

246 *Kawasan resapan air*.

247 *Sempadan pantai*.

248 *Sempadan sungai*.

249 *Kawasan suaka alam*.

250 *Cagar budaya*.

251 *Taman hutan raya*.

252 *Taman wisata alam*.

253 *Cagar alam*.

254 *Suaka margasatwa*.

255 *Kawasan cagar budaya dan ilmu pengetahuan*.

256 *Kawasan rawan bencana alam*.

257 *Kawasan rawan letusan gunung berapi*.

258 *Kawasan rawan gempa bumi*.

259 *Kawasan rawan tanah longsor*.

260 *Kawasan rawan gelombang pasang*.

261 *Kawasan rawan banjir*.

262 *Taman buru*.

263 *Cagar biosfer*.

264 *Kawasan perlindungan plasma nutfah*.

265 *Kawasan pengungsian satwa*.

266 *Kawasan hutan produksi*.

267 *Kawasan peruntukan hutan produksi, kawasan peruntukan hutan rakyat, kawasan peruntukan pertanian, kawasan peruntukan perikanan, kawasan peruntukan pertambangan, kawasan peruntukan permukiman, kawasan peruntukan industri, kawasan peruntukan pariwisata, kawasan tempat beribadah, kawasan pendidikan, dan kawasan pertahanan keamanan*.

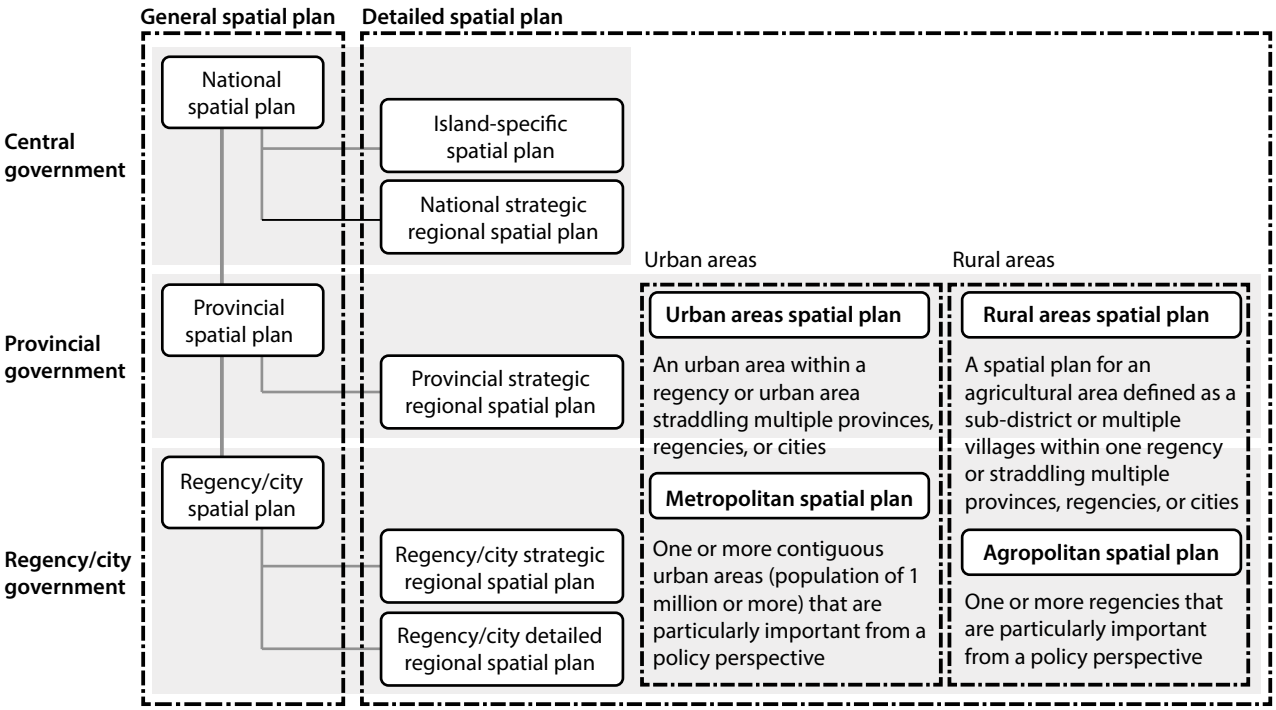

Figure 11. Spatial planning system.

Source: Ministry of Land, Infrastructure, Transport and Tourism, Japan (MLIT 2013, 1).

coordinating agency,[268] *Badan Koordinasi Penataan Ruang Nasional* (BKPRN or the Coordinating Agency for National Spatial Planning), which is led by the Coordinating Minister of Economic Affairs. This agency's daily functions and operations have been led by the Ministry of Public Works (transferred to the Ministry of Agrarian and Spatial Planning under the current administration).[269] The national government expects that the presence of the BKPRN and the MoASP will lead to the reduction of spatial and land-use conflicts, at least among the different government entities at different levels.

4.2 Defining land vocation and conversion rights

As mentioned in Sub-section 1.1, this report defines the vocation of soil or land as the selection of the most appropriate use of land, among the suitable ones, in line with the present development conditions (Comerma 2010, 129). Based on this definition, land selection or suitability depends not only on physical factors but also on the interactions with other political, social, economic and infrastructural variables (Comerma 2010, 129-30).

The norm in Indonesia is that the MoA is the agency often administering land suitability processes. The MoA also issued a number of regulations that provide guidance on conducting land suitability for different crops. For example, MoAR No. 79 of 2013 on Guidance for the Land Suitability of Food Crops emphasizes using the land suitability classification originally developed by the FAO in 1976. By using the FAO guidelines, and following the rigorous application of land evaluation systems (as often used by the government's Center for Agriculture Land Resource Research and Development), two options for land suitability can be identified: S (Suitable) and N (Not Suitable).

However, the MoA is not the only agency that conducts land suitability analysis when it comes to selecting land for development purposes. The MoF (now MoEF), for instance, also employs a particular land suitability analysis which is combined with aspects or variables considered important in the forest sector. In MoFR No. 32 of

268 See article 3 of PD No. 4 of 2009 on the Coordinating Agency for National Spatial Planning.

269 See article 7 of PR No. 165 of 2014.

2009 on the Procedure for Developing a Technical Plan for Reforestation and Water Catchment Area Rehabilitation, the ministry employs a method called KPL[270] (Land-Use Capability Classification).[271] By using this classification, the ministry can identify land that is suitable based not only on crop production (as employed by the MoA), but also on other important biophysical factors and forest status. There is a similar situation in other ministries and agencies. Table 9 explains the different roles of government agencies when it comes to the land vocation process.

Table 9. Division of authority – land vocation.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoA	National to local	– Paragraph 24(2) of GR No. 25 of 2012 on the Information System on Land for Sustainable Food Crops; MoAR No. 79 of 2013.	– Authority to set standards for mapping and identifying land suitability and relevant aspects.
2	Administration (implementation)	Provincial agriculture office	Province	– Article 10 of MoAD No. 357 of 2002 on Guidance on Plantation Business Permits.	– Authority to provide technical recommendations on land suitability.
		District/ city agriculture office	Local	– Article 10 of MoAD No. 357 of 2002.	– Authority to provide technical recommendations on land suitability.
3	Control/ monitoring	MoA	National to local	– Paragraphs 1(6) and 24(2) of GR No. 25 of 2012 on the Information System on Land for Sustainable Food Crops; MoAR No. 79 of 2013.	– Authority to control land suitability.
4	Auditing	MoA	National to local	– Chapter 4 of the Elucidation part of MoAR No. 79 of 2013.	– Authority to evaluate land suitability.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	Not available	Not available	Not available	Not available

Source: First author's compilation based on relevant regulations and references.

270 *Klasifikasi Kemampuan Penggunaan Lahan* (KPL).

271 See the Elucidation part of MoFR No. 32 of 2009.

When it comes to utilizing or converting the land for development purposes, however, land suitability is only one of various methods applied. The general process of using or converting the land for development activities is regulated, among others, by Law No. 20 of 1961 on the Revocation of Rights to Land and the Objects Thereon, GR No. 39 of 1973 on the Procedure for Compensation Resulting from the Revocation of Rights to Land and the Objects Thereon, and PR No. 65 of 2006 on the Revision of PR No. 36 of 2005 on Land Procurement for the Implementation of Development for the Public Interest. These government regulations have been subsequently revised by Law No. 2 of 2012 on Land Procurement for the Public Interest (Land Acquisition Law) and PR No. 71 of 2012 on Land Procurement for the Implementation of Development for the Public Interest. Based on these regulations, a combination of biophysical factors, development objectives and negotiation processes is taken into account as part of the land selection criteria.

Four principles are also acknowledged in these regulations: (a) certainty over development processes, (b) accountability and public participation, (c) recognition of land rights, and (d) just and fair treatment for those who have given up their land for development activities (Baskara 2012, 1). Law No. 2 of 2012, however, simplifies the principles into: (a) humanity, (b) justice, (c) utility, (d) certainty, (e) openness, (f) agreement, (g) participation, (h) welfare, (i) sustainability, and (j) synergy.[272] Based on PR No. 71 of 2012, the government claims it will provide further legal certainty in the planning, preparation, execution, and delivery of outcomes for the development of public facility infrastructures that have previously been hampered by land acquisition issues (Hanafiah Ponggawa and Partners 2012, 1). Figure 12 illustrates the complete process for the use and conversion of land for public purposes, while Table 10 shows the different government roles in land acquisition processes.

4.3 Titling of agricultural land

Agricultural activities are vital for many Indonesians, as indicated by the proportion of land dedicated to them,[273] which stands at 26% of the country's total (Pusat Komunikasi Publik-PU 2010, 4). It is therefore understandable that this type of land has been regulated since the 1960s. Law No. 5 of 1960 on Basic Agrarian Principles (often referred to as the 1960 Basic Agrarian Law or BAL) and its implementing regulations provide the legal framework for the titling of agricultural land in Indonesia. Article 10 of this law clearly states that "every person and every corporate body having a certain right to agricultural land is in principle obliged to cultivate or exploit it actively by him or herself, without employing *unlawful* methods such as extortion". Another basic law that specifically regulates agricultural land is GR in Lieu of Law No. 56 of 1960 on Stipulation of the Size of Agricultural Land. This law set a size limit for anyone who owns agricultural land.

In the period from the 1960s to the end of the 1990s, Law No. 5 of 1960 was used to recognize the authority of the national and sub-national governments[274] in relation to agricultural land. In fact, it also recognizes the right of control of land by *adat* communities.[275] Furthermore, the authority of sub-national governments over agricultural land has been re-affirmed since the issuance of the decentralization laws.[276]

At the national level, the authority for designing a policy that affects agricultural land lies with the MoA (See Table 11). The BPN (now the MoASP), however, is the agency that eventually decides on the titling of agricultural land.[277] The decentralization laws and policies delegate some of the authority of the BPN (MoASP) to the relevant land offices at the sub-national level,

272 See article 2 of Law No. 2 of 2012.

273 MoPWR No. 41 of 2007 provides technical guidelines for defining agricultural lands, taking up directions given by Law No. 6 of 1967 on the Provisions for Livestock and Animal Health, Law No. 12 of 1992 on Plant Cultivation Systems and Law No. 31 of 2004 on Fishery. MoPWR No. 41 of 2007 basically states that agricultural lands are areas used mainly for agricultural activities, including plant cultivation, livestock and/or fishery (see page 41 of the regulation for details). See also article 7 of PR No. 165 of 2014.

274 See paragraph 2(4) of Law No. 5 of 1960.

275 *Ibid.*

276 See the Elucidation part of paragraph 13(2) of Law No. 32 of 2004. See also paragraphs 18(2) and 18(5) of the amended Constitution.

277 This relates to general "*tanah pertanian*" (agricultural land): see paragraph 19(3) of Law No. 5 of 1960 and paragraph 2(2) of GR in Lieu of Law No. 56 of 1960.

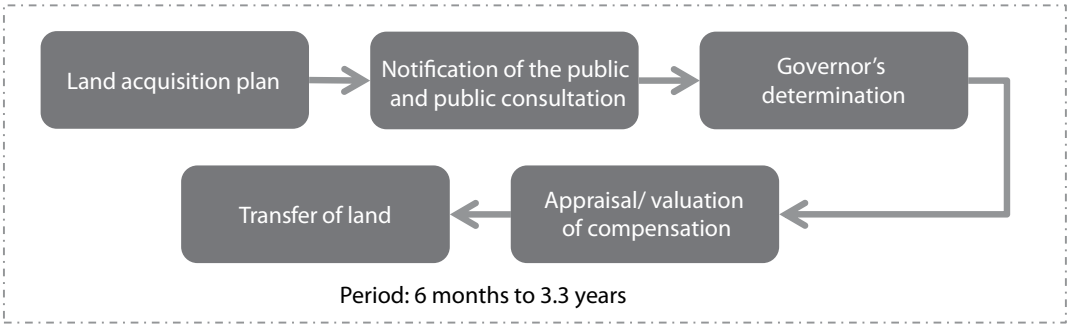

Figure 12. Land acquisition process.

Source: Law No. 2 of 2012 as described by Hamzah and Pasaribu (2012, 1).

Table 10. Division of authority – revocation of land rights.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	President	National to local	– Article 1 of Law No. 20 of 1961.	– Authority to define public interests that is used as the basis for revoking land rights.
		National government	National	– Articles 6 and 7 of Law No. 2 of 2012.	– Authority to procure land for public interests based on the spatial planning, development planning, strategic planning and work planning of relevant government ministries and agencies. – Authority to procure land for oil, gas and geothermal infrastructures based on the strategic and work planning of relevant government ministries and agencies.
		Provincial government	Province	– Article 3 of Law No. 20 of 1961.	– Authority to provide recommendations to the national government regarding aspects considered as public interests.
		District/ city government	Local	– Article 3 of Law No. 20 of 1961.	– Authority to provide recommendations to the national government regarding aspects considered as public interests.

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Table 10. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
2	Administration (implementation)	BPN (now MoASP, and its provincial and local offices)	National to local	– Article 2 of Law No. 20 of 1961 (see also article 7 of PR No. 165 of 2014). – Article 37 of Law No. 2 of 2012. – Paragraphs 1(16)-(19) of PR No. 71 of 2012.	– Authority to execute the revocation of land rights. – Authority to calculate compensation. – Authority to negotiate compensation. – Authority to execute the procurement of land.
		National government	National to local	– Article 11 of Law No. 2 of 2012.	– Authority to execute the procurement of land.
		National to local governments	National to local	– Paragraph 9(2) of Law No. 2 of 2012.	– Authority to establish compensation.
		Provincial land acquisition committee (under the BPN/ now MoASP)	Province	– Article 1(17) of PR No.71 of 2012 (see also article 7 of PR No. 165 of 2014).	– Authority to assist executing the procurement of land.
		Governor	Province	– Paragraph 26(1) of Law No. 2 of 2012; article 8 of PR No. 71 of 2012. – Paragraph 19(6) of Law No. 2 of 2012.	– Authority to decide on the location of the procured land. – Authority to coordinate and conduct public consultation.
		District/ city government	Local	– Article 11 of Law No. 2 of 2012.	– Authority to own and administer the procured land.
3	Control/ monitoring	BPN (now MoASP) and its provincial and local offices	National to local	– Articles 3 and 6 of Law No. 20 of 1961; article 7 of PR No. 165 of 2014.	– Authority to monitor and supervise the execution of the revocation of land rights.
		National government	National to local	– Article 51 of Law No. 2 of 2012.	– Authority to monitor and evaluate the process of land procurement.
4	Auditing	BPKP	National to local	– Articles 53-54 of PD No. 103 of 2001 on the Structure, Functions and Authority of Non-Ministerial Agencies.	– Authority to audit and assess the government's development programs.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	Provincial court	Province	– Article 8 of Law No. 20 of 1961; articles 1-6 of GR No. 39 of 1973.	– Authority to solve land conflict cases (including compensation issues) resulting from the implementation of this law.

Source: First author's compilation based on relevant regulations and references.

yet the BPN (MoASP) still conserves its control in administering the titling process. At the sub-national level, governors and *bupatis*/mayors have the authority at their respective levels.[278] Table 11 breaks down the different authority and roles corresponding to government institutions.

To have their agricultural land recognized, respective owners have to register their ownership of lands with the BPN (MoASP). Receiving the evidence of ownership will give the owners of agricultural lands a stronger legal status in using and managing their lands.

4.4 Titling of indigenous land within forest areas

Constitutional Court Decision No. 35 of 2012 recognizes customary forests and their removal from the state forest estate. That decision has been viewed as a significant starting point for the country in terms of acknowledging the rights of indigenous and local communities when it comes to forest and land management, and eventually for helping resolve land conflicts connected to forest status (REDD-Monitor 2013, 1). Through this decision, the Court has agreed to delete the word "state" from paragraph 1(6) of Law No. 41 of 1999 because it was in conflict with the Constitution. The original sentence in this law was "*Adat* (customary) forest means state forests located in the traditional jurisdiction areas." This deletion means that the MoF (now MoEF) has no jurisdictional control over *adat* forest.[279] There is also another Constitutional Court Decision – No. 45 of 2011 – that challenges Law No. 41 of 1999 in which forest areas are merely "designated" by the national government.

It is worth mentioning here, however, that these decisions have not yet been operationalized and the control and day-to-day decision-making process are still under the authority of the MoEF. As reported by *Global Legal Monitor* (2013, 1), a Ministry of Forestry official stated that it would be some time before these decisions could be implemented through local government regulations. If they are not implemented in a timely manner, some NGOs predict this may result in an increase in disputes over land rights (*Global Legal Monitor* 2013, 1). On the contrary, poor implementation of these Constitutional Court decisions could create an opportunity for local governments to convert contested forest areas to oil palm plantations using their local regulations (REDD-Monitor 2013, 1). One negative implication, for instance, is that if not supported by clear implementing rules and regulations, the deletion of *adat* forest from state forest can be used by interest groups to lobby local governments to gazette these areas and convert them into oil palm or non-forest areas, especially since local governments may view them as no longer under the authority of the national government.

While waiting for full implementation of these decisions, the current situation may remain as stipulated by Law No. 41 of 1999, in which the central government (i.e. MoEF) has "total control" over all state forests.[280] This gives the MoEF full authority to regulate and organize all aspects related to the forests and their management, assign forest status, and determine legal relations between people and forests.[281] Although this law instructs the MoEF to respect customary laws, this comes with a caveat: only if the customary laws do not contradict national interests.[282] Table 12 shows the different levels of authority government institutions have with regard to titling indigenous land in forest areas.

278 See paragraphs 13(1k) and 14(1k) of Law No. 32 of 2004. See also the Elucidation part of Law No. 23 of 2014.

279 While *adat* forest is not state forest, the MoEF still has similar jurisdictional control over the way it is managed to its authority over forests subject to rights (*hutan hak*). According to Law No. 41 of 1999, forests can be divided into two categories: (1) *hutan negara* (state forests) and (2) *hutan hak* (forests subject to rights as stipulated in paragraph 5(1) of Law No. 41 of 1999). With these Constitutional Court decisions, customary (*adat*) forests have changed from state forests into the *hutan hak* category. According to Law No. 41 of 1999, the owners of *hutan hak* have the right to utilize their forests as long as this does not conflict with the forest's function (see article 36). This means that the MoF or the government may only intervene in designating the functions of particular forests. The utilization of rights forests with protection and conservation functions can be undertaken as long as it does not disturb those functions.

280 See paragraph 4(1) of Law No. 41 of 1999. As explained in footnote 215, Law No. 41 of 1999 has only given the MoEF (the national government) total control to manage state forests (*kawasan hutan negara*). The MoEF can only provide guidance regarding forest functions for other non-state forests.

281 See paragraph 4(2) of Law No. 41 of 1999.

282 See paragraph 4(3) of Law No. 41 of 1999.

Table 11. Division of authority – titling of agricultural land.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	BPN (now MoASP)	National to local	– Paragraphs I(5), II(1), II(2), III(2), IV(1), and IV(3), and article VI of Law No. 5 of 1960; Elucidation part (z) of GR No. 38 of 2007. – Paragraph 2(2) of GR in Lieu of Law No. 56 of 1960. – PR No. 10 of 2006; paragraph 1(6) of PD No. 62 of 2001 on the Revision of PD No. 166 of 2000 on the Position, Roles, Functions, Authority and Structure of Non-Departmental Agencies, as Previously Revised by PD No. 42 of 2001. – Elucidation part of Law No. 23 of 2104; article 7 of PR No. 165 of 2014.	– Authority to develop guidance, policy, maps and programs for land ownership conversion, management and control. – Authority to designate agricultural land. – Authority to determine the size of agricultural land. – All authority not yet transferred to provinces and districts/ cities.
		Provincial government	Province	– Paragraphs 14(2) and 14(3) of Law No. 5 of 1960; paragraph 13(2) of Law No. 32 of 2004. – Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to plan to use agricultural land. – Authority to develop guidance, policy, maps and programs at the provincial level. – Authority to designate agricultural lands.
		District/ city government	Local	– Paragraphs 14(2) and 14(3) of Law No. 5 of 1960; paragraph 14(2) of Law No. 32 of 2004; Elucidation part of Law No. 23 of 2014. – Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to plan to use agricultural land. – Authority to develop guidance, policy, maps and programs at the district level. – Authority to designate agricultural lands.

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Table 11. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
2	Administration (implementation)	BPN (MoASP)	National to local	– Paragraph 19(3) of Law No. 5 of 1960. – Paragraphs I(5), II(1), II(2), III(2), IV(1), and IV(3), and article VI of Law No. 5 of 1960; Elucidation part of Law No. 23 of 2014. – Paragraph 2(1) of PD No. 34 of 2003; Elucidation part of Law No. 23 of 2014.	– Authority to accept land registration. – Authority to issue land ownership (no longer for permits for opening up land, which was given to district/ city governments). – Authority to issue permits (no longer for permits for opening up land, which was given to district/ city governments) and establish compensation.
		Provincial government	Province	– Paragraph 2(4) of Law No. 5 of 1960; article 13(1k) of Law No. 32 of 2004.	– Authority to administer cross-district agricultural land.
		District/ city government	Local	– Paragraph 2(4) of Law No. 5 of 1960; article 14(1k) of Law No. 32 of 2004; paragraph 2(2) of PD No. 34 of 2003. – Elucidation part of Law No. 23 of 2014.	– Authority to administer agricultural land. – Authority to issue permits for opening up land.
3	Control/ monitoring	BPN (MoASP)	National to local	– Articles 7, 28 and 29 of Law No. 5 of 1960. – Article 8 of Law No. 5 of 1960. – Elucidation part of Law No. 23 of 2014.	– Authority to control excessive land ownership. – Authority to control the exploitation of agricultural resources.
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to identify, control and protect agricultural land.
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to identify, control and protect agricultural land.
4	Auditing	MoA	National	– MoFD No. 2796 of 2013 on the Indonesia Moratorium Map.	– Authority to conduct agricultural land audits.

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Table 11. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
5	Prosecuting crime/ sanctioning breaches (compliance issue)	BPN (MoASP)	National to local	– Paragraph VII(3) of Law No. 5 of 1960; paragraph 2(1) of PD No. 34 of 2003; Elucidation part of Law No. 23 of 2014.	– Authority to facilitate land conflict resolution.
		Judicial system (courts)	National to local	– Articles 10-11 of GR in Lieu of Law No. 56 of 1960.	– Authority to prosecute and convict those breaching this law.

Source: First and second authors' compilation based on relevant regulations and references.

Table 12. Division of authority – titling of indigenous land within forest areas.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoF (now MoEF)	National to local	– Paragraph 5(2) of Law No. 41 of 1999. – Elucidation part (aa) of GR No. 38 of 2007. – Article 5 of PR No. 165 of 2014; Elucidation part of Law No. 23 of 2014.	– Authority to define *adat* forests. – Authority to formulate norms, standards, procedures, and criteria to establish and gazette *adat* forests.
		Not available	National to local	– Constitutional Court Decision No. 35 of 2012.	– The MoF no longer has the authority to define *adat* forests.
2	Administration (implementation)	MoEF	National to local	– Article 37 of Law No. 41 of 1999. – Elucidation part (aa) of GR No. 38 of 2007. – Article 5 of PR No. 165 of 2014; Elucidation part of Law No. 23 of 2014.	– Authority to administer adat forests. – Authority to establish and gazette *adat* forest.
3	Control/ monitoring	MoF	National to local	– Article 37 of Law No. 41 of 1999.	– Authority to monitor and control *adat* forests.
4	Auditing	Not available	Not available	– Not available	– Not available
5	Prosecuting crime/ sanctioning breaches (compliance issue)	Not available	Not available	– Not available	– Not available

Source: First author's compilation based on relevant regulations and references.

The decisions of the Constitutional Court could therefore allow indigenous people to exercise their rights to manage their own forests without having to worry about any development plan being imposed on those pieces of forestland. Throughout the years, and partially as a result of Law No. 41 of 1999, the MoF (now MoEF) has leased a significantly large area of forests, including *adat* forest, for natural resource exploitation, and some have even been eventually cleared for other land uses. Based on its 2011 research, the Rights and Resources Initiative (RRI) suggests that Indonesia is paying a high price for failing to give local communities enforceable rights to contested forests, causing significant economic losses (Rights Resources Initiative 2011, 1). The RRI says that the 0.60 million hectares that Indonesia reserved for communities in 2002 appeared to have fallen to 0.23 million hectares by 2008 (Rights Resources Initiative 2011, 2). The 2010 data shows that less than 100,000 hectares had been legally recognized as under local control, falling well short of the target to devolve at least 500,000 hectares per year (Rights Resources Initiative 2011, 2).[283]

Another milestone achieved in the Constitutional Court decisions is moving *adat* forest from the state forest category, as previously regulated in Law No. 41 of 1999.[284] This means that *adat* forest can be registered as rights forest in the future. Work has been done to help register indigenous peoples' forests. For example, with the help of the Participatory Mapping Network (JKPP), the Indigenous Peoples' Alliance of the Archipelago (AMAN) has produced a set of indigenous maps and added them to the MIM. This product, which was submitted to the then UKP4 and the Geospatial Information Agency[285] as part of the MIM exercise, may well prove to be a good initial step as the basis for implementing not only the recent Constitutional Court decision acknowledging indigenous and customary forests, but also REDD+ development. It appears that the new MoEF is willing to strengthen this process.[286]

4.5 The governments' ownership and administration of the land

According to the amended Constitution, resources under public domain – such as land important for public purposes – are "under the powers of the state" (under the control of the state)[287] and in some cases can be considered state-owned property.[288] Paragraph 33(3) of the amended Constitution clearly stipulates that "the land, the waters and the natural resources within them shall be under the powers of the State and shall be used to the greatest benefit of the people." In general, the MoF (now MoEF) is the agency that claims the ultimate authority to administer forest areas (forest land),[289] although this has resulted in land and resource conflicts at the local level (CSO Coalition 2011, 6). The BPN (now MoASP) has the authority to administer other types of land in collaboration with sectoral ministries.[290]

Sub-national governments (i.e. provincial and district/ city) have been given a high level of authority in managing land in their respective areas (although in the case of forest estates the authority of district and city governments has been significantly reduced).[291] They also have authority to issue permits related to specific types of land and natural resource management. The national government provides intergovernmental fiscal transfers to sub-national governments to manage their resources, including land.[292]

283 The Minister of Forestry, Zulkifli Hasan, however, reported in 2010 the achievement of 70% of the 0.6 million hectares reserved for community forest plantations and village forests (ANTARA News 2010, 1).

284 See paragraph 5(1) of Law No. 41 of 1999.

285 The BIG plays a significant role in the process to create Indonesia's single map. It leads the development of national spatial data infrastructure and works with other agencies to ensure the consistency of geospatial information, leading to accountable spatial planning and development policy, particularly in the context of the forest conversion moratorium (Africa 2013, 1; Samadhi 2013, 11).

286 See http://medialingkungan.com/index.php/component/k2/item/1235-klhk-luncurkan-indeks-tata-kelola-kehutanan-2014.

287 See Article 33 of the amended Constitution.

288 Though treated as property, this does not mean that the state is the owner of various types of land (Deddy 2006, 91). The state, however, does claim ultimate control including, to some extent, all aspects of human activity within it (Deddy 2006, 91).

289 See paragraph 1(15) of Law No. 41 of 1999.

290 See paragraph 19(3) of Law No. 5 of 1960.

291 See articles 13-14 of Law No. 32 of 2004; Elucidation part of Law No. 23 of 2014.

292 See paragraph 1(13) of Law No. 32 of 2004.

4.6 Natural protected areas

Based on Law No. 41 of 1999 (and Law No. 5 of 1990), the followings forest areas[293] are considered to have protection and/or conservation status:

- *Protection forest:*[294] a forest area whose main function is protecting life-supporting systems for hydrology, preventing floods, controlling erosion, preventing sea-water intrusion and maintaining soil fertility.
- *Conservation forest:*[295] a forest area with specific characteristics whose main function is to preserve plant and animal diversity and its ecosystem.
- *Nature reserve:*[296] a forest area with specific characteristics whose main function is to preserve plant and animal diversity and its ecosystem, as well as life-supporting systems.
- *Nature conservation forest:*[297] a forest area with specific characteristics whose main function is protecting a life supporting system, preserving the species diversity of plants and animals, and the sustainable use of biological resources and its ecosystem.
- *Hunting park:*[298] a forest area designed to be used as a park area for hunting.

GR No. 68 of 1998 on Nature Reserves and Nature Conservation Forests further clarifies the division of nature reserve and nature conservation forest. According to this regulation, nature reserves can be categorized into *cagar alam* (strict nature reserve) and *suaka margasatwa* (wildlife sanctuary).[299] Nature conservation forests can be divided into *taman nasional* (national park), *taman hutan raya* (*tahura* or grand forest park) and *taman wisata alam* (nature recreation park).[300]

In general, the authority to gazette natural protected areas lies with the MoF (MoEF), while some authority to manage them has been given to provincial and local governments (under the new Law No. 23 of 2014, district and city governments only have the authority to manage grand forest parks).[301] The natural protected areas managed by sub-national governments are: (1) protection forests[302] and grand forest parks (see previous explanation for local governments).[303] GR No. 62 of 1998 on the Granting to Local Governments of Some of the Central Government's Authority over Matters Concerning Forestry, for instance, states that protection forest management has been shifted to local governments (but Law No. 23 of 2014 says that local governments only have the authority to manage grand forest parks).[304] Furthermore, Law No. 22 of 1999 and GR No. 25 of 2000 on the Authority between the Central Government and the Provincial Government as an Autonomous Region (as revised by GR No. 38 of 2007) stipulates that sub-national governments have the authority to manage the national resources available within their respective regions and are responsible for maintaining environmental sustainability as regulated by law.[305] Table 13 shows the different authority corresponding to government institutions in managing natural protected areas.

4.7 Mining concessions

A business entity can only operate its mining area or concessions if it obtains mining permits (*izin usaha pertambangan,* or IUPs), permits to conduct exploration (*IUP Eksplorasi*), and permits to operate (*IUP Operasi Produksi*).[306] The IUP was issued by a governor (if a mining area was cross-district) and/ or by the *bupati*/mayor, but this is no longer the case since Law No. 23 of 2014 revokes

293 See article 1 of Law No. 41 of 1999.

294 *Hutan lindung*.

295 Conservation forest (*hutan konservasi*) can be divided into three categories: (1) nature reserve, (2) nature conservation forest, and (3) hunting park (see article 7 of Law No. 41 of 1999).

296 *Hutan suaka alam*.

297 *Kawasan hutan pelestarian alam*.

298 *Taman buru*.

299 See article 6 of GR No. 68 of 1998.

300 See article 30 of GR No. 68 of 1998.

301 See the elucidation part of Law No. 23 of 2014.

302 See article 5 of GR No. 62 of 1998 and paragraph 3(5) of GR No. 25 of 2000.

303 See paragraph 3(5) of GR No. 25 of 2000. Provincial governments have the authority to manage cross-district grand forest parks.

304 See article 5 of GR No. 62 of 1998 and the Elucidation part of Law No. 23 of 2014.

305 See article 10 of Law No. 22 of 1999. If the areas are cross-district, the management corresponds to the provincial governments.

306 See article 1 of Law No. 4 of 2009.

Table 13. Division of authority – natural protected areas.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoF	National to local	– Elucidation part (aa) of GR No. 38 of 2007.	– Authority to develop a macro plan. – Authority to gazette all forest statuses and develop standards for conservation of forests and their ecosystems.
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to develop a macro plan (cross-districts) (no longer applicable under the new law).
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to develop a macro plan (for the respective district) (no longer applicable under the new law).
2	Administration (implementation)	MoF	National to local	– Elucidation part (aa) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to develop standards and criteria for natural protected area management.
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to manage cross-district protection forests and other relevant natural protected areas. – Authority to manage permits covering cross-district protection forests.
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007. – Elucidation part of Law No. 23 of 2014.	– Authority to manage district/ city protection forests and other relevant natural protected areas (now limited to managing grand forest parks). – Authority to manage permits in the respective districts/ cities (no longer applicable according to the new law).
3	Control/ monitoring	National government	National to local	– Elucidation part of Law No. 23 of 2014.	– Authority to supervise activities in protection forests.
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to supervise activities in protection forests (no longer applicable according to the new law).
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to supervise activities in protection forests (no longer applicable according to the new law).
4	Auditing	BPK, KPK and PPATK[a]	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to audit and investigate forest-related crime.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	KPK and judicial system	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to prosecute and convict those breaching laws and having significant negative environmental impacts on natural protected areas.

Source: First author's compilation based on relevant regulations and references.

a The PPATK is the Indonesian Financial Transaction Reports and Analysis Center.

the authority of local governments.[307] Figure 13 shows the procedure for obtaining such permits. Prior to the issuance of Law No. 4 of 2009 on the Mining of Mineral Resources and Coal, many companies operated under a *Kontrak Karya* (work contract, or COW) with the government of Indonesia, which allowed the company to conduct exploration, mining and production activities. The COW is acknowledged[308] in the current Law, but attempts have been made by the national government, led by the MEMR, to review many COWs so that they are aligned with the law.

The issues become complicated, for example, when mining concessions interact with the forest sector. Bachriadi (2004, 1) argues that the majority of mining activities occur within national forest areas (i.e. forest controlled by the MoEF). A 2001 study also reported that in the 1990s a gold mining operation – the Kelian mine site of Kelian Equatorial Mining in East Kalimantan – occupied 1,285 ha of forest within a limited production forest area (*hutan produksi terbatas*, or HPT) administered by the MoF, which had issued the mine with a separate land-use permit (Ballard 2001, 32).

According to the 1999 Forestry Law, the use of forest areas for mining activities can be allowed based on a land-use license issued by the MoEF, taking account of area limitations, the timeframe and environmental sustainability.[309] In fact, only open-pit mining is not allowed in protection forest (*hutan lindung*) areas.[310] According to the MoEF,

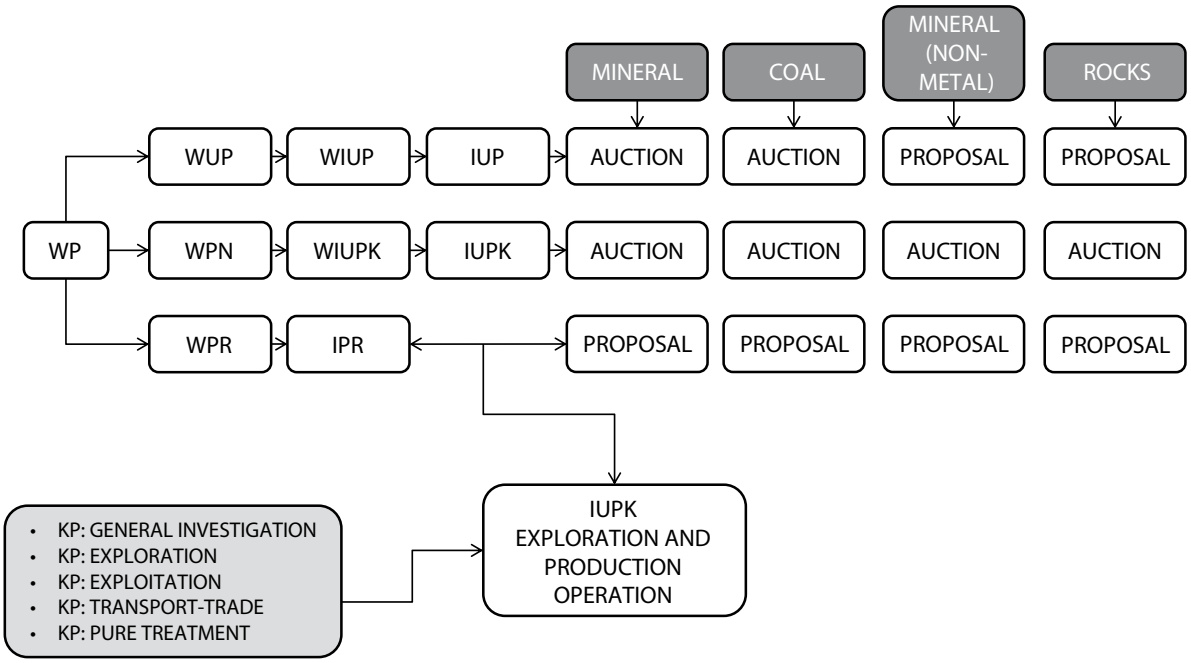

Figure 13. Mining permit process.

Note: The mining activities permit (IUP) is issued by a governor or *bupati*/mayor. The IUP and special mining activities permit (IUPK) can be obtained by submitting a direct proposal or winning an auction process, except in the case of obtaining community mining activities permits (IUPR). WP = mining area; WUP = mining activities area; WPN = national mining area; WPR = community mining area; WIUP = mining activity permit area; WIUPK = special mining activity permit area; IPR = community mining permit; and KP = mining rights.

Source: Adjusted from Ekonomi Luwu (2012, 1).

307 See article 37 of Law No. 4 of 2009 – all these licenses can only be granted for mining zones (Wilayah Pertambangan); and Elucidation part of Law No. 23 of 2014.

308 See article 169 of Law No. 4 of 2009.

309 See paragraph 38(3) of Law No. 41 of 1999.

310 See paragraph 38(4) of Law No. 41 of 1999.

the ministry issued 842 licenses for mining exploration and exploitation between 2005 and 2011, covering 2.03 million hectares of forest (Ministry of Forestry 2011a, 1). However, 13 major companies still hold permits to conduct open-pit mining within the boundaries of protection forests. The then President Megawati issued an exemption for these companies, which were granted their concessions prior to the 1999 Forestry Law (see Interim Law No. 1 of 2004 on the Revision of Law No. 41 of 1999 on Forestry). This exemption is further re-affirmed by GR No. 24 of 2010 on the Utilization of Forest Areas (as amended by GR No. 61 of 2012) and PR No. 28 of 2011 on the Use of Protection Forests for Underground Mining Activities. Table 14 shows the authority corresponding to different government institutions in terms of managing mining concessions.

Table 14. Division of authority – mining concessions.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MEMR	National to local	– Article 4(2) of Law No. 22 of 2001; article 5(a-c) of Law No. 27 of 2003; article 6(1a-d) of Law No. 4 of 2009.	– Authority to develop national laws and regulations on coal and mineral mining, geothermal exploitation, and oil and gas (mining concessions). – Authority to develop standards, guidelines and criteria for mining concessions.
		MoEF	National to Local	– Article 38 of Law No. 41 of 1999; MoF Reg. No. P.18/ Menhut-II/ 2011 as amended by MoF Reg. No. P.38/ Menhut-II/ 2012, as further amended by MoF Reg. No.P.14/ Menhut-II/ 2013.	– Authority to develop guidelines and criteria on Borrow and Use Permits (*Pinjam-Pakai*) for mining in forest areas.
		Provincial government	Province	– Article 6(1a) of Law No. 27 of 2003; article 7(1a) of Law No. 4 of 2009.	– Authority to develop provincial laws and regulations on geothermal exploitation, coal and mineral mining. – Authority to develop standards, guidelines and criteria for cross-district mining concessions (excluding oil and gas).
		District/ city government	Local	– Article 7(1a-b) of Law No. 27 of 2003; article 8(1a) of Law No. 4 of 2009; Elucidation part of Law No. 23 of 2014.	– Authority to develop district laws and regulations on geothermal exploitation, coal and mineral mining in the respective district (excluding oil and gas) (according to the latest law, the authority now only corresponds to geothermal exploitation).

continued on next page

Table 14. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
2	Administration (implementation)	MEMR	National to local	– Article 4(2) of Law. No. 22 of 2001; article 5(d) of Law No. 27 of 2003; article 6(1g-h) of Law No. 4 of 2009.	– Authority to issue mining permits for mining concessions nationwide (for oil and gas) and within inter-provincial areas (geothermal exploitation, coal and mineral mining).
		MoEF	National to local	– Article 38 of Law No. 41 of 1999; MoF Reg. No. P.18/ Menhut-II/ 2011 as amended by MoF Reg. No. P.38/ Menhut-II/ 2012, as further amended by MoF Reg. No. P.14/ Menhut-II/ 2013.	– Authority to issue the Borrow and Use Permits (*Pinjam-Pakai*) required for mining in forest areas.
		Provincial government	Province	– Article 6(1c) of Law No. 27 of 2003; article 7(1c-d) of Law No. 4 of 2009.	– Authority to manage permits for mining concessions which cover cross-district areas (applies to geothermal exploitation, coal and mineral mining only).
		District/ city government	Local	– Article 7(1c) of Law No. 27 of 2003; article 8(1b-c) of Law No. 4 of 2009; Elucidation part of Law No. 23 of 2014.	– Authority to manage permits for mining concessions in the respective districts/ cities (applies to geothermal exploitation, coal and mineral mining only) (according to the latest law, the authority now only corresponds to geothermal exploitation).
3	Control/ monitoring	MEMR	National to local	– Article 38 of Law. No 22 of 2001; article 5(d) of Law No. 27 of 2003; article 6(1j and 1o); Law No. 4 of 2009	– Authority to supervise mining activities nationwide (for oil and gas) and within inter-provincial areas (geothermal exploitation, coal and mineral mining).
		MoEF	National to local	– Article 38 of Law No. 41 of 1999; MoF Reg. No. P.18/ Menhut-II/ 2011 as amended by MoF Reg. No. P.38/ Menhut-II/ 2012, as further amended by MoF Reg. No. P.14/ Menhut-II/ 2013.	– Authority to supervise the implementation of Borrow and Use Permits (*Pinjam-Pakai*) for mining in forest areas.

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Table 14. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
		Provincial government	Province	– Article 6(1c) of Law No. 27 of 2003; article 7(1c and 1m) of Law No. 4 of 2009.	– Authority to supervise mining activities that cover cross-district areas (applied for geothermal exploitation, coal and mineral mining only).
		District/ city government	Local	– Article 7(1c) of Law No. 27 of 2003; article 8(1c and 1k) of Law No. 4 of 2009; Elucidation part of Law No. 23 of 2014.	– Authority to supervise mining activities in the respective districts/ cities (applies for geothermal exploitation, coal and mineral mining only) (according to the latest law, the authority now corresponds only to geothermal exploitaiton).
4	Auditing	BPK, KPK and PPATK	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to audit and investigate mining-related crime.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	KPK and judicial system	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to prosecute and convict those breaching laws and having significant negative environmental impacts on mining concession areas.

Source: First and second authors' compilation based on relevant regulations and references.

The mining sector and the actors involved in it have been influential in terms of land use and are likely to remain so in the future. Presidential Decree No. 28 of 2011 issued on 19 May 2011 – just a day before the forest moratorium decree was released – shows that this sector has a high degree of influence on key land-use policies in Indonesia as it allows conditional underground mining in protection forests. Its influence probably correlates to its investment, which has significantly contributed to the country's GDP. It is reported that the mining industry accounted for 10.8% of Indonesia's GDP in 2009, with minerals and related products contributing one-fifth of the country's total exports (*Business Wire* 2011, 1). Furthermore, Indonesia's mining industry looks set to post strong average annual double-digit growth of 11.2% in real terms to reach USD 149.8 billion in 2015 (*Business Wire* 2011, 1).

Since land clearing and other mining activities may result in negative environmental impacts, REDD+ proponents need to proactively engage the mining sector (including the MEMR and other key actors involved in this sector) in order to ensure successful REDD+ formulation and development. Options and alternatives also need to be explored, including adjustment of land-use policies, so that a balance can be achieved between REDD+ and sectoral development. One case relating to geothermal energy development may be used as an example. To address a potential conflict between forest protection and geothermal energy development, as mentioned in Sub-section 2.3.5, the MEMR and MoF signed MoU No. 7662 of 2011 on Coordination and Acceleration of Permit Issuance for Geothermal Energy Development in Production Forests and Protection Forests, and Preparation for Geothermal Utilization in Forest Conservation Areas (MEMR 2011, 1).

4.8 Forest concessions

In general, logging concession permits (known previously as *hak pengusahaan hutan*, or HPHs, and currently as IUPHHKs) for state forests are issued by the MoF (now MoEF), with the process administered by the Directorate General of Forestry Production. Key regulations governing these concessions are Law No. 41 of 1999 on Forestry, GR No. 61 of 2012 on the Revision of GR No. 24 of 2010 on the Utilization of Forest Areas, GR No. 72 of 2010 on State-Owned Forestry Companies, GR No. 3 of 2008 on the Revision of GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans, and MoFR No. 50 of 2010 on Granting Licenses for Timber Production in Natural Production Forests. Based on the definitions used in these regulations, forest concessions can only be considered legal if, among other factors, they (a) have the correct legal status and area and the right to utilize the forest, (b) are in compliance with the legal requirements for harvesting, and (3) are in compliance with the environmental and social aspects related to harvesting (EFI 2013, 1).

Since Law No. 41 of 1999 gives a huge amount of authority to the MoF (now MoEF) to manage and administer state forests, this ministry undeniably has the strongest role compared to other government agencies and/or institutions. In fact, as discussed in Sub-section 2.3.11 and illustrated in Figure 3, regulations following up on Law No. 41 of 1999 have a certain tendency to re-centralize some of the authority already given to local governments. This situation more or less shows the "unwillingness of the central government to transfer its authority to local governments when it comes to managing forest resources" (see Table 15 showing the authority of the different government institutions in forest concessions).

Table 15. Division of authority – forest concessions.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoF (now MoEF)	National to local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to formulate norms, standards, procedures, and criteria for establishing and changing functions (and land status) of forest concessions. – Authority to formulate norms, standards, procedures, and criteria for establishing and planning *Kesatuan Pengelolaan Hutan Produksi* (KPHPs or production forest management units) and forest production units. – Authority to formulate norms, standards, procedures, and criteria for permit and (non-tax revenue) tariff issuance for forest concessions.
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to provide technical recommendations for the planning of KPHPs and forest production units.
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to propose the planning of KPHPs and forest production units (no longer the case, based on the new law).

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Table 15. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
2	Administration (implementation)	MoEF	National to local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to delineate (the boundary – including to map) and gazette forest concessions. – Authority to change functions (and land status) of forest concessions. – Authority to issue permits and determine (non-tax revenue) tariffs for forest concessions.
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to provide technical considerations for delineation and gazettement of forest concessions. – Authority to provide technical recommendations for the change in functions (and land status) of forest concessions. – Authority to provide technical recommendations for the issuance of forest concession permits.
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– The following authority used to be given to local governments, but this is no longer the case based on the latest law: – Authority to propose forest concessions. – Authority to propose the change in functions (and land status) of forest concessions. – Authority to propose permit issuance for forest concessions. – Authority to implement (non-tax revenue) tariffs for forest concessions at the district level.
3	Control/ monitoring	MoEF	National	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to formulate norms, standards, procedures, and criteria for the inventory of forest concessions at the national level. – Authority to monitor and control forest production activities and boundary security.

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Table 15. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
		Provincial government	Province	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to formulate norms, standards, procedures, and criteria for the inventory of cross-district forest concessions. – Authority to provide technical recommendations for monitoring and controlling forest production activities and boundary security. – Authority to monitor cross-district forest production activities.
		District/ city government	Local	– Elucidation part (aa) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– The following authority used to be given to local governments but this is no longer the case based on the latest law: – Authority to formulate norms, standards, procedures, and criteria for the inventory of district forest concessions. – Authority to provide technical recommendations for monitoring and controlling forest production activities and boundary security.
4	Auditing	BPK, KPK and PPATK	National to local	Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	Authority to audit and investigate forest-related crime.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	KPK and judicial system	National to local	Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	Authority to prosecute and convict those breaching laws and having significant negative environmental impacts on forests.

Source: First author's compilation based on relevant regulations and references.

Local governments were temporarily granted the authority to issue small-scale logging permits in areas restricted to 100 hectares or less, but because these were granted in large quantities by many districts across Indonesia, the cumulative results led to significant deforestation and forest degradation, and the power was withdrawn (though the practice continued in some places). Today, under Law No. 23 of 2014, local governments have no authority over forests except for managing grand forest parks.[311] They can also use their authority to promote other land uses, however, including utilizing the timber in these areas. Immediate impacts of such activities include the encroachment of forest areas (e.g. some non-forest use areas are adjacent to forest areas) and an increase in the level of illegal logging. To address this, the MoF may need to develop a mechanism that can facilitate the needs of local governments.

311 See Elucidation part of Law No. 23 of 2014.

The introduction of PI No. 10 of 2011 on Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands (as revised and continued by PI No. 6 of 2013 and most recently by PI No. 8 of 2015), also known as the logging and forest conversion moratorium, has seen slight changes in the procedure of permit issuance for forest concessions during the moratorium period. As suggested by Austin et al. (2014, 9), these include changes in the following areas:

- *Permit coordination and transparency*. Prior to the moratorium, national agencies and local government offices often did not share information on logging permits. With the moratorium, Indonesia's REDD+ Task Force developed an online database of all forest licenses as part of the One Map Initiative (Central Kalimantan was selected as a pilot province). This has been continued by the REDD+ Agency and currently by the MoEF after the agency was discontinued.
- *Permit review process*. Prior to the moratorium, government agencies at the different levels (e.g. district heads or the MoEF) did not regularly and consistently review the compliance of permits with Indonesian regulations. With the moratorium, the REDD+ Task Force piloted a new review process in Central Kalimantan, which has subsequently been continued by the REDD+ Agency and now the MoEF.
- *Revising regulations on permits in forest areas*. Prior to the moratorium, the forest area permit process suffered from bureaucratic challenges, such as complex application processes, a lack of transparency and lengthy approval timelines. With the moratorium, the MoF (now the MoEF) has simplified the process for obtaining permits in certain high-priority areas.

The full evaluation of the moratorium and further steps taken by the REDD+ Agency (now discontinued and its mandate transferred to the MoEF) and the MoF (now under the new MoEF) needs to be awaited before the reform of this licensing process can be continued.

4.9 Oil palm

The development of oil palm, like many other development sectors, involves various government ministries and institutions, from the national to local levels. Figure 14 shows the stages in the process needed for a particular business entity to be able to develop and operate its oil palm plantation, as mandated by law. Based on Indonesian laws and regulations, an applicant needs to follow Law No. 25 of 2007 on Investment and obtain approval from the BKPM (Investment Coordinating Board) in the case of a domestic corporation and from the president in the case of foreign direct investment.[312] Subsequently, a governor can issue a location permit and a *bupati*/mayor a building permit to facilitate this oil palm development.[313] Prior to developing any plantation, the applicant also needs to receive technical approval from the MoEF, especially if the area is located in forest areas.[314] If the MoEF and local governments have issued their approval, then permits to develop and operate a plantation can be issued.

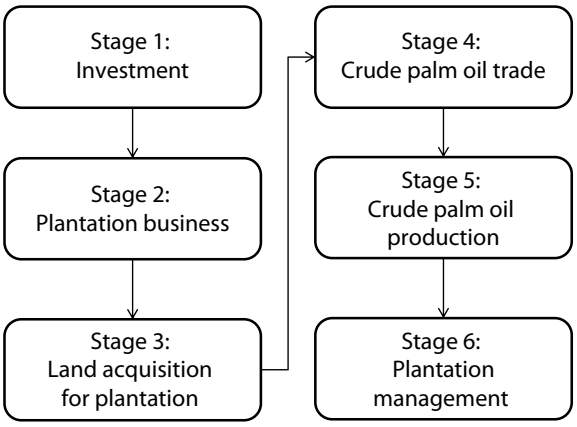

Figure 14. Legal framework for oil palm development.

Source: Relevant laws and regulations as described by Andiko and Jiwan (2012, 8).

Other key regulations forming the framework for oil palm development are:

- Law No. 5 of 1960 on Basic Agrarian Principles, which allows leasing of state land for development, including oil palm.
- Law No.26 of 2007 on Spatial Planning.
- Law No. 41 of 1999 on Forestry (particularly defining the change of use and function of forests).
- Law No.18 of 2004 on Plantations, which allows a 95-year leasing period.

312 See PD No. 33 of 1992 on Procedures for Investment.

313 See article 5 of PD No. 33 of 1992 and the Elucidation part of Law No. 23 of 2014.

314 See MoAD No. 357 of 2002 on Guidance on Plantation Business Permits.

- Law No. 23 of 2014 on Regional Governance, which regulates new roles and responsibilities for national, provincial and local governments.
- GR No. 40 of 1996, which further regulates provisions on the right to land use referred to in Chapter II of Law No. 5 of 1960.
- MoAR No. 26 of 2007 on Guidance on Permit Issuance for Plantation Companies (as revised by MoAR No. 98 of 2013), which extends the size of location permits from 20,000 ha to 100,000 ha per company in one province for oil palm plantations (although MoAR No. 98 of 2013 takes into account the aspect of sustainability).
- MoAR No.14 of 2009 on Guidelines for the Utilization of Peatlands for Oil Palm Cultivation, which allows the conversion of 3 meter-deep peatland.

The brief explanation of the legal procedure to obtain permits for plantation development and operation reveals the complex mix of agencies involved in this matter. Such complexity often leads to tensions and conflicts at different levels, particularly between the plantation and forestry sectors. Rapid expansion of oil palm plantations, driven by demand for their oil, has often caused the conversion of a significant area of forests and peatlands. As a result, conflicts have also arisen over land and forestland *vis-à-vis* plantation resources. Up to 2010, NGOs recorded 663 conflicts related to oil palm plantations (Tarigan 2012, 8). In fact, the MoA, the MoEF and the BPN (now MoASP) have created a specific desk or unit to focus on the resolution of conflicts over land, including in relation to oil palm plantations (Tarigan 2012, 8). Table 16 explains the different government institutions with authority in relation to oil palm concessions.

4.10 Infrastructure

Infrastructure, particularly roads, is key to regional development. This is probably one of the reasons that decentralization laws have given greater authority to provincial and local governments to formulate, develop and manage their own infrastructure development policies.[315] The status of roads in Indonesia also refers to the government's level of authority. As stipulated in Law No. 38 of 2004 on Roads, district and city roads are under the authority of the district and city government, while provincial and national roads are under their respective governments.[316]

The issues regarding authority over cross-district and/or cross-province road development can be complicated, particularly if the development plan for roads overlaps with forest areas, especially conservation forests. An example of such a difficult issue is the controversial Ladia Galaska highway project in the province of Aceh. The proposed project aims to connect the Gayo highlands in central Aceh to the province's east and west coasts through the development of a road network of 450 km of main roads and over 1,200 km of minor roads (*The Jakarta Post* 2003, 21). But it is feared the development plan will cause the fragmentation of the 2.6 million hectare Leuser Ecosystem (which has a high-level conservation status). This project has created tensions among government institutions at different levels (e.g. MoF, MoPW, provincial and local governments).

Another recent infrastructure development which may create a similar situation is the Master Plan for the Acceleration and Expansion of Indonesia's Economic Development (MP3EI), issued by the central government in May 2011 through PR No. 32 of 2011.[317] According to the master plan, massive infrastructure will be pushed to support the development in six corridors: (i) Sumatra will be developed as an agricultural and national energy center; (ii) Kalimantan will focus on mining and energy; (iii) Sulawesi-North Maluku will focus on agriculture and fisheries; (iv) Bali-Nusa Tenggara will focus on tourism and food; (v) Papua-Maluku will focus on natural and human resources; and (vi) Java will focus on industry and services. As shown in the past, such an infrastructure plan can lead to difficult coordination among government agencies. This plan may also overlap with REDD+ development and strategy, which are promoted by the same government. To avoid this complication, it is essential for the central government to synergize MP3EI with its REDD+ agenda (Table 17 provides further understanding of the division of government institution authority in relation to infrastructure development).

315 See paragraphs 12(1), 13(1) and 14(1) of Law No. 32 of 2004.

316 See article 9 of Law No. 38 of 2004.

317 It is still unclear whether the current adminstration will incorporate MP3EI as an important strategic document, as was done under the previous government.

Table 16. Division of authority – oil palm.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoA	National	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to formulate policy, guidance and manual on the development, management and monitoring of plantations. – Authority to develop spatial and land-use planning for national plantation development. – Authority to formulate national plantation targets.
		MoA and other ministries	National	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to formulate policy, guidance and manual on plantation support systems (e.g. water, technology, fertilizers).
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to develop maps that guide the development, management and monitoring of plantations. – Authority to develop spatial and land-use planning for provincial plantation development. – Authority to formulate provincial plantation targets.
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to design the needs and demands for oil palm development. – Authority to develop maps that guide the development, management and monitoring of plantations at the district level. – Authority to develop spatial and land-use planning for local plantation development. – Authority to formulate local plantation targets.
2	Administration (implementation)	MoA	National to local	– Elucidation part (z) of GR No. 38 of 2007.	– Not available
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to guide the development and implementation of plantations. – Authority to manage integrated provincial plantation development areas. – Authority to guide the application of plantation support systems (e.g. water, technology, fertilizers).

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Table 16. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to map and develop plantation potential. – Authority to manage integrated local plantation development areas. – Authority to designate center for plantation development. – Authority to apply plantation support systems (e.g. water, technology, fertilizers).
3	Control/ monitoring	MoA	National	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to monitor and control the spatial planning of national plantation development.
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to monitor and control the development and implementation of plantations. – Authority to monitor and control the spatial planning of provincial plantation development. – Authority to monitor the application of plantation development support systems.
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to monitor and control the local development and implementation of plantations. – Authority to monitor and control the spatial planning of local plantation development. – Authority to monitor the application of plantation development support systems.
4	Auditing	MoA, BPN, BPK, KPK and UKP4	National to local	– PI No. 10 of 2011 and PI No. 6 of 2013. – Paragraph 35(2) of MoAR No. 98 of 2013. – Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to carry out legal audits.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	KPK and judicial system	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to prosecute and convict those breaching laws and having significant negative environmental impacts as a result of plantation activities.

Source: First author's compilation based on relevant regulations and references.

Table 17. Division of authority – infrastructure.

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
1	Policy and norms	MoPW	National	– Elucidation part (c) of GR No. 38 of 2007.	– Authority to formulate regulations, policies and planning. – Authority to formulate and establish norms, standards, procedures and criteria for infrastructure development.
		MoPW and other ministries	National	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to formulate national planning and financing.
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to formulate policies for provincial infrastructure development. – Authority to develop provincial operational guidance. – Authority to formulate provincial planning and financing.
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to formulate policies for local infrastructure development. – Authority to develop local operational guidance. – Authority to formulate local planning and financing.
2	Administration (implementation)	MoPW	National to local	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to control and monitor at the macro level. – Authority to manage and maintain national infrastructure. – Authority to establish functions and status for national infrastructure development. – Authority to build and maintain national infrastructure.
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to manage and maintain provincial infrastructure. – Authority to establish functions and status for provincial infrastructure development. – Authority to build and maintain provincial infrastructure.

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Table 17. Continued

No.	Function	Key government institutions	Level	Regulations	Remarks on authority
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to establish functions and status for local infrastructure development. – Authority to give permits and recommendations. – Authority to build and maintain local infrastructure.
3	Control/ monitoring	MoPW	National	– Elucidation part (z) of GR No. 38 of 2007.	– Authority to supervise and monitor implementation at the national level. – Authority to facilitate cross-provincial conflict resolution.
		Provincial government	Province	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to supervise and monitor implementation at the provincial level. – Authority to facilitate cross-district conflict resolution.
		District/ city government	Local	– Elucidation part (z) of GR No. 38 of 2007; Elucidation part of Law No. 23 of 2014.	– Authority to supervise and monitor implementation at the local level.
4	Auditing	BPK and KPK	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to audit infrastructure development, management and maintenance.
5	Prosecuting crime/ sanctioning breaches (compliance issue)	KPK and judicial system	National to local	– Law No. 15 of 2006; Law No. 30 of 2002; Law No. 8 of 2010.	– Authority to investigate and prosecute crimes related to infrastructure development, management and maintenance.

Source: First author's compilation based on relevant regulations and references.

5 *Adat* law pertaining to land use and tenure

Concerns over injustice felt by indigenous communities have dramatically increased since the last decade – prior to and during the reform process. In Indonesia, such issues have been predominantly driven by NGOs, as seen in the adoption of the words "indigenous people" at a "Workshop on Legal Development for Indigenous People Regarding Natural Resource Management in Forest" that took place in May 1993 in Toraja, South Sulawesi (Siradjudin 2014, 1). The movement gradually earned an important place among civil society movements through the declaration of the establishment of the Alliance of Indigenous Peoples of the Archipelago (AMAN) in 1999 in Jakarta, for example (Siradjudin 2014, 1).

Despite the creation of AMAN, the movement to achieve full state recognition of indigenous peoples and their *adat* (customary) laws still faces huge challenges, even now. One of the most challenging elements is the reality that indigenous peoples in Indonesia vary greatly from one group to another in terms of their social and cultural arrangement. Indigenous entities are quite diverse and have their own dynamics.

As argued by Siradjudin (2014, 1), generally speaking indigenous peoples in Indonesia can be categorized into the following four types:[318]

- The first consists of local community groups still firmly adhering to the principle of "*pertapa bumi*" (earth recluse) and dependent on nature and natural resources. Such groups live without any intention to change their indigenous farming system, dress, consumption patterns, and many other aspects. Some of them prefer not to communicate with outsiders. They also choose to preserve natural resources and the environment using their traditional knowledge. Indigenous peoples in this first group are traditional communities that include the Kajang (Kajang Dalam) community in Bulukumba and the Baduy community in Banten.
- The second group consists of local people who still strictly maintain and implement their own customs, while keeping certain contacts or relations with outsiders. They are also dependent on nature and natural resources. Such groups include the Kasepuhan Banten Kidul and the Naga tribes (both located in West Java).
- The third group consists of other indigenous peoples who are dependent on nature (forests, rivers, mountains, seas, etc.) and natural resources. This group has developed a natural resource management system that has sustained them for generations, but does not establish strict customs when developing its houses or choosing its plants. Examples of these indigenous communities include the Dayak Penan in Borneo, the Pakava and Lindu in Central Sulawesi, the Dani and Deponsoro in Papua, the Krui in Lampung, and the Haruku in Maluku.
- The last type is indigenous entities that have been uprooted from their traditional customs and natural resource management system as a result of colonialization or exposure to development. Communities in this category are the Malay Deli in North Sumatra and the Betawi ethnic groups in Greater Jakarta.

With such diverse realities, one might assume that indigenous peoples and their customary laws are easily acknowledged or recognized in Indonesian laws and regulations. There have, of course, been cases in which laws and regulations acknowledge this important matter, but many scholars believe that the current state of recognition of indigenous peoples is inadequate.

318 In other studies, scholars may use use different criteria, and hence the types may not be comparable. Some, for instance, use genealogical, territorial or mixed aspects to formulate the typology, or focus on beliefs and tenurial arrangements, as stated by the Food and Agriculture Organization of the United Nations (Fisher et al. 1997, 9).

5.1 Definition of *adat* laws in Indonesia's legal system

The amended Constitution explicitly recognizes the term "*hukum adat*" (customary laws) as part of "*kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya*".[319] The Constitution clearly stipulates that "the State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and they shall be regulated by law".[320] This paragraph provides the basis of a constitutional position for indigenous peoples in relation to the state. It also serves as the basis for state officials to understand traditional communities and the way they should be treated. Siradjudin (2014, 1) therefore argues that this paragraph can be viewed as a declaration of: (a) the state's constitutional obligation to recognize and respect indigenous peoples, and (b) the constitutional right of indigenous peoples to gain further recognition and respect for their traditional rights. Another paragraph related to indigenous peoples in the amended Constitution is 28I(3), which states that "the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations."

Indigenous peoples and their rights are also acknowledged in other laws and regulations. MD No. IX of 2001 on Agrarian Reforms and Natural Resource Management recognizes the rights of indigenous peoples beyond land rights, including the right to land resources and natural resources.[321] This MPR-RI Decree is a key document because after the Constitution it is the highest level for policy guidelines on natural resource management, including recognition of the rights of indigenous peoples. Basically, the notion of this decree is to encourage and accelerate land reform conducted by the government in order to ensure the better management of natural and land resources and the protection of indigenous peoples' livelihoods.

These issues are also addressed by Law No. 39 of 1999 on Human Rights, which stresses that in order to promote human rights, the state needs to value and protect customary peoples.[322] It also urges the state to protect the identity of indigenous cultures, including indigenous land rights.[323] As a result of these paragraphs, it can be assumed that Indonesia already has a clear basis for respecting the plurality of identities and cultural values of indigenous communities.

In addition, the term "*adat*" is also used and recognized in some early laws, such as Law No. 5 of 1960. In fact, this law's preamble clearly mentions that "it is deemed necessary that a National Agrarian law be established, based upon the *adat*-law concerning land." This law further emphasizes this in another paragraph, stating that the implementation of control over land in this country may be delegated to both autonomous regions and *adat* law communities.

As mentioned in Sub-section 4.4, Law No. 41 of 1999 even recognizes the existence of indigenous peoples' territories.[324] However, this law included a lot of caveats when it comes to recognition of indigenous communities. For instance, customary law can only be respected as long as its existence is recognized by law and not contrary to the national interest[325] (in paragraph 2(4) of Law No. 5 of 1960, it is mentioned that indigenous peoples can have, own and administer land only if this is not contrary to national interests and is regulated by government regulations). Another example is article 67, in which a customary law community can collect forest products or undertake forest management as long as it is recognized by laws and relevant regulations (as stipulated in paragraph 67(2), there is a need for local regulations or *perda* to confirm the existence of a customary law community).

This is why – when the Constitutional Court released Decision 35 of 2012, which questions the gazettement of state forests and recognizes customary forests and their removal from the state forest estate – many scholars and NGO activists viewed this as a significant starting point for the

319 Paragraph 18B(2) states "The State recognizes and respects traditional communities along with their traditional customary rights."

320 See paragraph 18B(2) of the amended Constitution.

321 See paragraph 5(j) of MD No. IX of 2001.

322 See paragraph 6(1) of Law No. 39 of 1999.

323 See paragraph 6(2) of Law No. 39 of 1999.

324 See paragraph 1(6) of Law No. 41 of 1999.

325 See paragraph 4(3) of Law No. 41 of 1999.

state and its government officials to acknowledge the rights of indigenous and local communities when it comes to forest and land management, and eventually for contributing to resolving land conflicts connected to forest status (REDD-Monitor 2013, 1). With such decisions, the central government (i.e. the MoF, now the MoEF) may no longer have "total control," since *adat* forests are now excluded from state forests.[326] However, there are still many challenges related to transforming these decisions into practical technical regulations that can guide the process of acknowledging indigenous peoples in Indonesia's legal system and development programs.

5.2 Challenges and opportunities for further recognizing *adat* in Indonesia's forest and land-use governance

Although the Constitutional Court has released decisions in favor of full legal recognition of indigenous peoples, there are many steps[327] still required including, but not limited to:

- *Indigenous peoples and registration of territories*. This work is required not only to map the existing indigenous peoples and their territories and/or areas managed or owned by indigenous communities, but also to identify existing boundaries and potential conflicts regarding the management of land or natural resources adjacent to indigenous territories.

  As mentioned in Sub-section 4.4, AMAN has conducted an exercise to help register indigenous peoples' forests. Furthermore, with the help of the JKPP, AMAN has drawn up a set of indigenous maps and added them to the MIM (indicative maps for moratorium). Such a product can help solve potential land conflicts under the current forestry regime or in the future REDD+ system. The (now discontinued) UKP4 and the BIG – two leading national-level government agencies – have received this map and an immediate subsequent step could be its incorporation into the National Spatial Data Network (AMAN 2014a, 1).[328]
- *A scheme for the resolution of land and resource conflicts*. According to AMAN records, in 2012 there were 143 cases of conflict, expulsion and arrests related to land rights conflicts and some 300 additional land rights conflicts went undocumented (AMAN 2014b, 1). In other cases, the National Commission on Human Rights (Komnas HAM) has asked the BPN (now MoASP) to specifically conduct a re-measurement of land to help contribute to land conflict resolution (Ansyor 2012, 1).

  In this situation, there are both opportunities and challenges, particularly to establish a nationally-recognized scheme for solving land conflicts. To achieve this, a legal framework may also be required to empower the current BKPRN and BPN (now MoASP) and encourage them, in collaboration with provincial and district governments, to include organizations that represent local and indigenous communities in a structured way. An example of such a scheme currently exists in the Pacific, known as "the Land Management and Conflict Minimization Project" (LMCM). This is an initiative of the Pacific Islands Forum Secretariat (PIFS), endorsed by the Forum Regional Security Committee and the Forum Officials Committee in 2006, that focuses on the interlinkage between land management and conflict minimization. It approaches land issues in the Pacific from a holistic point of view, combining both economic development and conflict prevention perspectives (Loode et al. 2010).
- *Improved quantity and quality of local regulations on indigenous people*. Many laws and regulations require the recognition of indigenous peoples and their customary laws to be at least regulated by local regulations. The 1999 Forestry Law, for instance, states that the existence of indigenous communities shall be determined by a local regulation.[329] Law No. 26 of 2007 on Spatial

326 See paragraph 1(6) of Law No. 41 of 1999. The word "state" in this paragraph is deemed inconsistent with the Constitution and does not, therefore, have binding legal force. The new paragraph should now read: "Customary forest is a forest located in indigenous peoples' areas."

327 As explained in Sub-section 4.4, there is a possibility of an increase in disputes over land rights if these decisions are not implemented in a timely manner, but if implemented poorly, local governments may make use of their local regulations to convert contested forest areas into oil palm plantations or for other land uses. This means there is still uncertainly over the outcome of the implementation of the decisions.

328 The new MoEF appears to be willing to strengthen this process (see http://medialingkungan.com/index.php/component/k2/item/1235-klhk-luncurkan-indeks-tata-kelola-kehutanan-2014).

329 See paragraph 67(2) of Law No. 41 of 1999.

Planning also emphasizes the importance of regulations to further clarify and define indigenous peoples' rights.[330]

The question now is how to obtain such a regulation that recognizes both indigenous peoples and their customary laws. To do this, work needs to be done at the local level to help local governments and parliaments produce a legal draft that can show: (a) a form of association of indigenous peoples, (b) a form of customary rulers agreed to and followed by indigenous peoples, (c) a clear area in which the customary law is implemented, (d) an existing institution and legal instrument recognized by indigenous peoples, and (e) a traditional way of life or livelihood that can be documented.

This action is crucial since many government officials, especially those from the BPN (MoASP), only want to endorse indigenous land rights if they are recognized by local regulations. On many occasions, the then head of the BPN, Hendarman Supandji, urged local governments to come up with a clear local regulation if there were indigenous peoples living in their areas (BPN 2013, 1). This situation appears to represent both a good opportunity and a challenge for indigenous peoples and their organizations in terms of ensuring the further legal recognition of their rights.

330 See paragraph 7(2) of the Elucidation part of Law No. 26 of 2007.

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Appendix. Legal and policy documents cited

Year	Original title	Translation
1957	*Undang-Undang (UU) Nomor 1 Tahun 1957 tentang Pokok-Pokok Pemerintahan Daerah*	Law No. 1 of 1957 on Regional Governance
	Peraturan Pemerintah (PP) Nomor 64 Tahun 1957 tentang Penyerahan Sebagian dari Urusan Pemerintah Pusat di Lapangan Perikanan Laut, Kehutanan dan Karet kepada Daerah-Daerah Swatanta Tingkat I	Government Regulation (GR) No. 64 of 1957 Granting Some of the Central Government's Authority over Matters Concerning Fisheries, Forestry and Community Rubber Sectors to First-level Regional Governments
1959	*Penetapan Presiden (Penpres) Nomor 6 Tahun 1959 tentang Pemerintah Daerah*	Presidential Decree (PD) No. 6 of 1959 on Regional Government
1960	*UU Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*	Law No. 5 of 1960 on Basic Agrarian Principles
	PP Pengganti UU (Perpu) No. 56 Tahun 1960 tentang Penetapan Luas Tanah Pertanian	GR in Lieu of Law No. 56 of 1960 on Stipulation of the Size of Agricultural Land
1961	*UU Nomor 20 Tahun 1961 tentang Pencabutan Hak-Hak atas Tanah dan Benda-Benda yang Ada di Atasnya*	Law No. 20 of 1961 on Revocation of Rights to Land and the Objects Thereon
1967	*UU Nomor 6 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Peternakan dan Kesehatan Hewan*	Law No. 6 of 1967 on the Provisions for Livestock and Animal Health
	PP Nomor 22 Tahun 1967 tentang Iuran Hak Pengusahaan Hutan dan Iuran Hasil Hutan	GR No. 22 of 1967 on Forest Concession License Fees and Royalties
1968	*PP Nomor 6 Tahun 1968 tentang Penarikan Usaha Kehutanan dari Daerah Kehutanan Kabupaten ke Propinsi di Wilayah Indonesia Bagian Timur*	GR No. 6 of 1968 on Withdrawing Control over Matters Related to Forestry from District Forestry to Provincial Forestry in Eastern Indonesia
1970	*PP Nomor 21 Tahun 1970 tentang Hak Pengusahaan Hutan dan Hak Pemungutan Hasil Hutan*	GR No. 21 of 1970 on Forest Exploitation Rights and Forest Product Harvesting Rights
	PP Nomor 33 Tahun 1970 tentang Perencanaan Hutan	GR No. 33 of 1970 on Forest Planning
1973	*PP Nomor 39 Tahun 1973 tentang Acara Penetapan Ganti Kerugian oleh Pengadilan Tinggi Sehubungan dengan Pencabutan Hak Hak atas Tanah dan Benda Benda yang Ada di Atasnya*	GR No. 39 of 1973 on the Procedure for Compensation Resulting from the Revocation of Rights to Land and the Objects Thereon
1974	*UU Nomor 5 Tahun 1974 tentang Pokok-Pokok Pemerintahan di Daerah*	Law No. 5 of 1974 on Regional Governance
1975	*PP Nomor 18 Tahun 1975 tentang Perubahan Pasal 9 PP Nomor 21 Tahun 1970 tentang Hak Pengusahaan Hutan dan Hak Pemungutan Hasil Hutan*	GR No. 18 of 1975 on Revision of Article 9 of GR No. 21 of 1970 on Forest Exploitation Rights and Forest Product Harvesting Rights
1981	*UU No. 8 Tahun 1981 tentang Kitab UU Hukum Acara Pidana*	Law No. 8 of 1981 on the Criminal Procedure Code
1985	*UU Nomor 14 Tahun 1985 tentang Mahkamah Agung*	Law No. 14 of 1985 on the Supreme Court

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Year	Original title	Translation
	PP Nomor 28 Tahun 1985 tentang Perlindungan Hutan	GR No. 28 of 1985 on Forest Protection
1988	*Keputusan Presiden (Keppres) Nomor 26 Tahun 1988 tentang Badan Pertanahan Nasional*	PD No. 26 of 1988 on the National Land Agency
1990	*UU Nomor 5 Tahun 1990 tentang Konservasi Sumberdaya Alam Hayati dan Ekosistemnya*	Law No. 5 of 1990 on the Conservation of Biodiversity and Ecosystems
	PP Nomor 7 Tahun 1990 tentang Hak Pengusahaan Tanaman Industri	GR No. 7 of 1990 on Industrial Timber Plantations
	Keppres Nomor 30 Tahun 1990 tentang Pengenaan, Pemungutan dan Pembagian Hasil Iuran Hutan	PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties
	Keppres Nomor 32 Tahun 1990 tentang Pengelolaan Kawasan Lindung	PD No. 32 of 1990 on Protected Area Management
1991	*Keppres Nomor 29 Tahun 1991 tentang Perubahan Keputusan Presiden Nomor 30 Tahun 1990 tentang Pengenaan, Pemungutan dan Pembagian Iuran Hasil Hutan*	PD No. 29 of 1991 on Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties
1992	*UU No Nomor 12 Tahun 1992 tentang Sistem Budi Daya Tanaman*	Law No. 12 of 1992 on Plant Cultivation Systems
	PP Nomor 79 Tahun 1992 tentang Perubahan atas PP Nomor 32 Tahun 1969 tentang Pelaksanaan UU Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan	GR No. 79 of 1992 on the Revision of GR No. 32 of 1969 on the Implementation of Law No. 11 of 1967 on Mining Principles
1993	*Keppres Nomor 41 Tahun 1993 tentang Perubahan Keputusan Presiden Nomor 30 Tahun 1990 tentang Pengenaan, Pemungutan dan Pembagian Iuran Hasil Hutan Sebagaimana telah Diubah dengan Keputusan Presiden Nomor 29 Tahun 1991*	PD No. 41 of 1993 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties as Previously Revised by PD No. 29 of 1991
	Keppres Nomor 55 Tahun 1993 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan Kepentingan Umum	PD No. 55 of 1993 on Land Procurement for the Implementation of Development for the Public Interest
	Keppres Nomor 75 Tahun 1993 tentang Koordinasi Pengelolaan Tata Ruang Nasional	PD No. 75 of 1993 on Coordination for National Spatial Planning
	Peraturan Menteri Agraria/ Kepala Badan Pertanahan Nasional (PMNA) Nomor 2 Tahun 1993 tentang Tata Cara Memperoleh Izin Lokasi dan Hak atas Tanah bagi Perusahaan dalam rangka Penanaman Modal	Minister of Agrarian Affairs/ Head of National Land Agency Regulation (HoBPNR) No. 2 of 1993 on the Procedure for Obtaining Location Permits for Investors
1994	*UU Nomor 6 Tahun 1994 tentang Pengesahan United Nations Framework Convention on Climate Change (Konvensi Kerangka Kerja Perserikatan Bangsa-Bangsa Mengenai Perubahan Iklim)*	Law No. 6 of 1994 on the Ratification of the United Nations Framework Convention on Climate Change (UNFCCC)
	Keppres Nomor 25 Tahun 1994 tentang Koordinasi Penyelenggaraan Transmigrasi dan Pemukiman Perambah Hutan	PD No. 25 of 1994 on Coordination in the Implementation of Resettlement and the Settlement of Forest Squatters
1995	*Keppres Nomor 22 Tahun 1995 tentang Pembentukan Tim Pengamanan Hutan Terpadu*	PD No. 22 of 1995 on the Establishment of an Integrated Forest Safeguarding Team
	Keppres Nomor 82 Tahun 1995 tentang Pengembangan Lahan Gambut untuk Pertanian Tanaman Pangan di Kalimatan Tengah	PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan
	Keppres Nomor 83 Tahun 1995 tentang Pembentukan Dana Bantuan Presiden bagi Pengembangan Lahan Gambut di Kalimantan Tengah	PD No. 83 of 1995 on the Establishment of a Presidential Fund to Support the Development of Peatland Areas in Central Kalimantan

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Year	Original title	Translation
1996	*PP Nomor 40 Tahun 1996 tentang Hak Guna Usaha, Hak Guna Bangunan dan Hak atas Tanah*	GR No. 40 of 1996 on the Right of Exploitation, Right of Building and Right of Land
	PP Nomor 69 Tahun 1996 tentang Pelaksanaan Hak dan Kewajiban, serta Bentuk dan Tata Cara Peran Masyarakat dalam Penataan Ruang	GR No. 69 of 1996 on the Implementation of Rights and Duties and the Procedure for Public Participation in Spatial Planning
	Keppres Nomor 75 Tahun 1996 tentang Ketentuan Pokok Perjanjian Karya Pengusahaan Pertambangan Batubara	PD No. 75 of 1996 on Basic Regulations on Work Contracts in Coal Mining Activities
1997	*PP Nomor 24 Tahun 1997 tentang Pendaftaran Tanah*	GR No. 24 of 1997 on Land Registration
	PP Nomor 47 Tahun 1997 tentang Rencana Tata Ruang Wilayah Nasional	GR No. 47 of 1997 on National Spatial Planning
1998	*Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia (TAP MPR-RI) Nomor XV/MPR/1998 tentang Penyelenggaraan Otonomi Daerah, Pengaturan, Pembagian, dan Pemanfaatan Sumber Daya Nasional yang Berkeadilan, serta Perimbangan Keuangan Pusat dan Daerah dalam Kerangka Negara Kesatuan Republik Indonesia*	MPR-RI Decree (MD) No. XV of 1998 on Regional Autonomy, Just and Equitable Use of the Nation's Resources, and Fiscal Balance between the Central Government and Regional Governments
	PP Nomor 36 Tahun 1998 tentang Penertiban dan Pendayagunaan Tanah Terlantar	GR No. 36 of 1998 on the Control and Use of Abandoned Land
	PP Nomor 51 Tahun 1998 tentang Provisi Sumber Daya Hutan	GR No. 51 of 1998 on Forest Resource Rent Provision
	PP Nomor 58 Tahun 1998 tentang Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Departemen Pertambangan dan Energi di Bidang Pertambangan Umum	GR No. 58 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Mining and Energy in the General Mining Sector
	PP Nomor 59 Tahun 1998 tentang Tarif Jasa Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Departemen Kehutanan dan Perkebunan	GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
	PP Nomor 62 Tahun 1998 tentang Penyerahan Sebagian Urusan Pemerintahan di Bidang Kehutanan Kepada Daerah	GR No. 62 of 1998 on the Granting to Local Governments of Some of the Central Government's Authority over Matters Concerning Forestry
	PP Nomor 68 Tahun 1998 tentang Kawasan Suaka Alam dan Kawasan Pelestarian Alam	GR No. 68 of 1998 on Nature Reserves and Nature Conservation Forests
	Keppres No. 33 Tahun 1998 tentang Pengelolaan Kawasan Ekosistem Leuser	PD No. 33 of 1998 on Management of the Leuser Ecosystem Area
	Keppres Nomor 67 Tahun 1998 tentang Perubahan Keputusan Presiden Nomor 30 Tahun 1990 tentang Pengenaan, Pemungutan dan Pembagian Iuran Hasil Hutan Sebagaimana telah Beberapa Kali Diubah Terakhir dengan Keputusan Presiden Nomor 41 Tahun 1993	PD No. 67 of 1998 on the Revision of PD No. 30 of 1990 on the Imposition, Collection and Distribution of Forest Royalties, as Previously Revised by PD No. 41 of 1993
	Keppres Nomor 74 Tahun 1998 tentang Perubahan atas Keppres Nomor 82 Tahun 1995 tentang Pengembangan Lahan Gambut Untuk Pertanian Tanaman Pangan di Kalimantan Tengah	PD No. 74 of 1998 on the Revision of PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan

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Year	Original title	Translation
	Keppres Nomor 133 Tahun 1998 Perubahan atas Keppres Nomor 82 Tahun 1995 tentang Pengembangan Lahan Gambut Untuk Pertanian Tanaman Pangan di Kalimantan Tengah Sebagaimana Telah Diubah dengan Keppres No. 74 Tahun 1998	PD No. 133 of 1998 on the Revision of PD No. 82 of 1995 on the Development of Peatland Areas for Food Crops in Central Kalimantan, as Previously Revised By PD No. 74 of 1998
	Instruksi Presiden (Inpres) Nomor 6 Tahun 1998 tentang Penanaman Modal Asing di Bidang Perkebunan Kelapa Sawit	Presidential Instruction (PI) No. 6 of 1998 on Foreign Direct Investment in Oil Palm Plantations
1999	*UU Nomor 22 Tahun 1999 tentang Pemerintahan Daerah*	Law No. 22 of 1999 on Regional Governance
	UU Nomor 25 Tahun 1999 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah	Law No. 25 of 1999 on Central and Local Fiscal Balance
	UU Nomor 28 Tahun 1999 tentang Penyelenggaraan Negara yang Bersih dan Bebas dari Korupsi, Kolusi, dan Nepotisme	Law No. 28 of 1999 on the State Organizer that is Clean and Free from Corruption, Collusion and Nepotism
	UU Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi	Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption
	UU Nomor 41 Tahun 1999 tentang Kehutanan	Law No. 41 of 1999 on Forestry
	UU Nomor 43 Tahun 1999 tentang Pokok-Pokok Kepegawaian	Law No. 43 of 1999 on the Civil Service
	PP Nomor 6 Tahun 1999 tentang Pengusahaan Hutan dan Pemungutan Hasil Hutan pada Hutan Produksi	GR No. 6 of 1999 on Forest Utilization and Forest Product Collection/ Harvesting in Production Forests
	PP Nomor 27 Tahun 1999 tentang Analisis Mengenai Dampak Lingkungan Hidup	GR No. 27 of 1999 on Environmental Impact Assessment
	PP Nomor 74 Tahun 1999 tentang Perubahan atas PP Nomor 59 Tahun 1998 tentang Tarif Jasa Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Departemen Kehutanan dan Perkebunan	GR No. 74 of 1999 on the Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
	PP Nomor 92 Tahun 1999 tentang Perubahan Kedua atas PP Nomor 59 Tahun 1998 tentang Tarif Jasa Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Departemen Kehutanan dan Perkebunan	GR No. 92 of 1999 on the Second Revision of GR No. 59 of 1998 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry and Plantation
	Keppres Nomor 80 Tahun 1999 tentang Pedoman Umum Perencanaan dan Pengelolaan Kawasan Pengembangan Lahan Gambut di Kalimantan Tengah	PD No. 80 of 1999 on General Guidance for Planning and Managing Ex-Mega Rice Peatland Project Areas in Central Kalimantan
	Keppres Nomor 154 Tahun 1999 tentang Perubahan atas Keppres Nomor 26 Tahun 1988 tentang Badan Pertanahan Nasional	PD No. 154 of 1999 on the Revision of PD No. 26 of 1988 on the National Land Agency
	PMNA Nomor 2 Tahun 1999 tentang Izin Lokasi	HoBPNR No. 2 of 1999 on Location Permits
2000	*Undang Undang Dasar (UUD) Tahun 1945 (hasil perubahan kedua tahun 2000)*	The 1945 Constitution of the Republic of Indonesia (as amended by the Second Amendment of 2000)
	TAP MPR-RI Nomor III/MPR/2000 tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan	MD No. III of 2000 on the Sources of Law and the Hierarchy of Laws and Regulations

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Year	Original title	Translation
	TAP MPR-RI Nomor IV/MPR/2000 tentang Rekomendasi Kebijakan dalam Penyelenggaraan Otonomi Daerah	MD No. IV of 2000 on Policy Recommendations for Implementing Regional Autonomy
	TAP MPR-RI Nomor IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam	MD No. IX of 2001 on Agrarian Reforms and Natural Resource Management.
	PP NOmor 25 Tahun 2000 tentang Kewenangan Pemerintahn dan Kewenangan Pemerintah Provinsi Sebaga Daerah Otonom	GR No. 25 of 2000 on the Authority between the Central Government and the Provincial Government as an Autonomous Region
	PP Nomor 150 Tahun 2000 tentang Pengendalian Kerusakan Tanah untuk Produksi Biomassa	GR No. 150 of 2000 on Mitigation of Soil Degradation from Biomass Production
	Keppres Nomor 80 Tahun 2000 tentang Komite Antar Departemen Bidang Kehutanan	PD No. 80 of 2000 on Inter-Departmental Forestry Committees
	Keppres Nomor 95 Tahun 2000 tentang Badan Pertanahan Nasional	PD No. 95 of 2000 on the National Land Agency
2001	*UU Nomor 20 Tahun 2001 tentang Perubahan atas UU Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi*	Law No. 20 of 2001 on the Revision of Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption
	UU Nomor 22 Tahun 2001 tentang Minyak dan Gas Bumi	Law No. 22 of 2001 on Petroleum (Oil) and Natural Gas
	PP Nomor 4 Tahun 2001 tentang Pengendalian Kerusakan dan atau Pencemaran Lingkungan Hidup yang Berkaitan dengan Kebakaran Hutan dan atau Lahan	GR No. 4 of 2001 on the Management of Environmental Degradation and/or Pollution Linked to Forest or Land Fires
	PP Nomor 75 Tahun 2001 tentang Perubahan Kedua atas PP Nomor 32 Tahun 1969 tentang Pelaksanaan UU Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan	GR No. 75 of 2001 on the Second Revision of GR No. 32 of 1969 on the Implementation of Law No. 11 of 1967 on Mining Principles
	Keppres Nomor 10 Tahun 2001 tentang Pelaksanaan Otonomi Daerah di Bidang Pertanahan	PD No. 10 of 2001 on the Implementation of Regional Autonomy in the Land Sector
	Keppres Nomor 25 Tahun 2001 tentang Tim Koordinasi Penanggulangan Pertambangan Tanpa Izin, Penyalahgunaan Bahan Bakar Minyak serta Perusakan Instalasi Ketenagalistrikan dan Pencurian Aliran Listrik	PD No. 25 of 2001 on the Coordination Team for the Eradication of Illegal Mining, Fuel Smuggling and Electricity Theft
	Keppres Nomor 62 Tahun 2001 tentang Perubahan atas Keppres Nomor 166 Tahun 2000 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Kerja Lembaga Pemerintah Non Departemen Sebagaimana Telah Beberapa Kali Diubah Terakhir dengan Keppres Nomor 42 Tahun 2001	PD No. 62 of 2001 on the Revision of PD No. 166 of 2000 on the Position, Roles, Functions, Authority and Structure of Non-Departmental Agencies, as Previously Revised by PD No. 42 of 2001
	Keppres Nomor 81 Tahun 2001 tentang Komite Kebijakan Percepatan Pembangunan Infrastruktur	PD No. 81 of 2001 on the Committee on Policy for the Acceleration of Infrastructure Development
	Keppres Nomor 103 Tahun 2001 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Kerja Lembaga Pemerintah Non Departemen	PD No. 103 of 2001 on the Structure, Functions and Authority of Non-Ministerial Agencies
	Inpres Nomor 5 Tahun 2001 tentang Pemberantasan Penebangan Kayu Illegal (Illegal Logging) dan Peredaran Hasil Hutan Illegal di Kawasan Ekosistem Leuser dan Taman Nasional Tanjung Puting	PI No. 5 of 2001 on Eliminating Illegal Logging and the Illegal Timber Trade in the Leuser Ecosystem and Tanjung Puting National Park

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Year	Original title	Translation
	Keputusan Menteri Kehutanan (Kepmenhut) Nomor 32 Tahun 2001 tentang Kriteria dan Standar Pengukuhan Kawasan Hutan	Ministry of Forestry Decree (MoFD) No. 32 of 2001 on the Criteria and Standards for Forest Area Gazettement
	Peraturan Daerah (Perda) Provinsi Jawa Barat Nomor 19 Tahun 2001 tentang Pengelolaan Hutan	West Java Provincial Regulation No. 19 of 2001 on Forest Management in West Java
	Perda Kabupaten Magelang Nomor 23 Tahun 2001 tentang Izin Usaha Pertambangan	Magelang District Regulation No. 23 of 2001 on Mining Business Permits
2002	*Undang Undang Dasar (UUD) Tahun 1945 (hasil perubahan keempat tahun 2002)*	The 1945 Constitution of the Republic of Indonesia (as amended by the Fourth Amendment of 2002)
	UU Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi	Law No. 30 of 2002 on the Corruption Eradication Commission
	PP Nomor 34 Tahun 2002 tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Pemanfaatan Hutan dan Penggunaan Kawasan Hutan	GR No. 34 of 2002 on Forest Planning and the Formulation of Forest Management and Utilization Plans
	PP Nomor 35 Tahun 2002 tentang Dana Reboisasi	GR No. 35 of 2002 on the Reforestation Fund
	PP Nomor 63 Tahun 2002 tentang Hutan Kota	GR No. 63 of 2002 on Urban Forests
	PP Nomor 68 Tahun 2002 tentang Ketahanan Pangan	GR No. 68 of 2002 on Food Security
2003	*UU Nomor 17 Tahun 2003 tentang Keuangan Negara*	Law No. 17 of 2003 on State Finance
	UU Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi	Law No. 24 of 2003 on the Constitutional Court
	UU Nomor 27 Tahun 2003 tentang Panas Bumi	Law No. 27 of 2003 on Geothermal
	Keppres Nomor 34 Tahun 2003 tentang Kebijakan Nasional di Bidang Pertanahan	PD No. 34 of 2003 on National Policy in the Land Sector
	Perda Kota Bontang Nomor 7 Tahun 2003 tentang Perlindungan Hutan Bakau	Bontang City Regulation No. 7 of 2003 on Mangrove Forest Protection
2004	*UU Nomor 1 Tahun 2004 tentang Perbendaharaan Negara*	Law No. 1 of 2004 on the State Treasury
	UU Nomor 7 Tahun 2004 tentang Sumberdaya Air	Law No. 7 of 2004 on Water Resources
	UU Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-undangan	Law No. 10 of 2004 on the Formulation of Laws and Regulations
	UU Nomor 15 Tahun 2004 tentang Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara	Law No. 15 of 2004 on Auditing the Management and Accountability of State Finances
	UU Nomor 17 Tahun 2004 tentang Pengesahan Kyoto Protocol to The United Nations Framework Convention on Climate Change (Protokol Kyoto atas Konvensi Kerangka Kerja Perserikatan Bangsa-Bangsa tentang Perubahan Iklim)	Law No. 17 of 2004 on Ratification of the Kyoto Protocol to the UNFCCC
	UU Nomor 18 Tahun 2004 tentang Perkebunan	Law No. 18 of 2004 on Plantations (Estate Crops)
	UU Nomor 19 Tahun 2004 tentang Penetapan Peraturan Pemerintah Pengganti UU (PERPU) Nomor 1 Tahun 2004 tentang Perubahan atas UU Nomor 41 Tahun 1999 tentang Kehutanan Menjadi UU	Law No. 19 of 2004 on the Revision of Law No. 41 of 1999 on Forestry
	UU Nomor 25 Tahun 2004 tentang Sistem Perencanaan Pembangunan Nasional	Law No. 25 of 2004 on the National Development Planning System
	UU Nomor 31 Tahun 2004 tentang Perikanan	Law No. 31 of 2004 on Fishery

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Year	Original title	Translation
	UU Nomor 32 Tahun 2004 tentang Pemerintahan Daerah	Law No. 32 of 2004 on Regional Governance
	UU Nomor 33 Tahun 2004 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Pemerintahan Daerah	Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Governments
	PP Nomor 16 Tahun 2004 tentang Penatagunaan Tanah	GR No. 16 of 2004 on Land Management
	PP Nomor 44 Tahun 2004 tentang Perencanaan Kehutanan	GR No. 44 of 2004 on Forest Planning
	PP Nomor 45 Tahun 2004 tentang Perlindungan Hutan	GR No. 45 of 2004 on Forest Protection
	Keppres Nomor 4 Tahun 2004 tentang Perizinan atau Perjanjian di Bidang Pertambangan yang Berada di Kawasan Hutan	PD No. 4 of 2004 on Permits or Contracts Relating to Mining in Forest Areas
	Peraturan Menteri Kehutanan (Permenhut) Nomor 19 Tahun 2004 tentang Kolaborasi Pengelolaan Kawasan Suaka Alam dan Kawasan Pelestarian Alam	Minister of Forestry Regulation (MoFR) No. 19 of 2004 on Collaborative Management of Nature and Game Reserves
2005	*PP Nomor 63 Tahun 2005 tentang Sistem Manajemen Sumber Daya Manusia Komisi Pemberantasan Korupsi*	GR No. 63 of 2005 on the Human Resource Management System in the Corruption Eradication Commission
	Peraturan Presiden (Perpres) Nomor 36 Tahun 2005 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum	Presidential Regulation (PR) No. 36 of 2005 on Land Procurement for the Implementation of Development for the Public Interest
	Perpres Nomor 42 Tahun 2005 tentang Komite Kebijakan Percepatan Penyediaan Infrastruktur	PR No. 42 of 2005 on the Committee on Policy for the Acceleration of Infrastructure Provision
	Perpres Nomor 64 Tahun 2005 tentang Perubahan Keenam Keppres Nomor 103 Tahun 2001 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Kerja Lembaga Pemerintah Non Departemen	PR No. 64 of 2005 on the Sixth Revision of PD No. 103 of 2001 on the Structure, Functions and Authority of Non-Ministerial Agencies
	Inpres Nomor 4 Tahun 2005 tentang Pemberantasan Penebangan Kayu Secara Ilegal di Kawasan Hutan dan Peredarannya di Seluruh Wilayah Republik Indonesia	PI No. 4 of 2005 on the Eradication of Illegal Logging in Forest Areas and Distribution throughout the Territory of the Republic of Indonesia
	Permenhut Nomor 31 Tahun 2005 tentang Pelepasan Kawasan Hutan dalam rangka Pengembangan Usaha Budidaya Pekerbunan	MoFR No. 31 of 2005 on the Release of Forest Areas for Plantation Development
2006	*UU Nomor 15 Tahun 2006 Sebagai Pengganti UU Nomor 5 Tahun 1973 tentang Badan Pemeriksa Keuangan*	Law No. 15 of 2006 on the Revision of Law No. 5 of 1973 on the State Audit Board
	Perpres Nomor 5 Tahun 2006 tentang Kebijakan Energi Nasional	PR No. 5 of 2006 on the National Energy Policy
	Perpres Nomor 10 Tahun 2006 tentang Badan Pertanahan Nasional	PR No. 10 of 2006 on the National Land Agency
	Perpres Nomor 65 Tahun 2006 tentang Perubahan Perpres Nomor 36 Tahun 2005 tentang Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum	PR No. 65 of 2006 on the Revision of PR No. 36 of 2005 on Land Procurement for the Implementation of Development for the Public Interest

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Year	Original title	Translation
	Inpres Nomor 1 Tahun 2006 tentang Penyediaan dan Pemanfaatan Bahan Bakar Nabati (Biofuel) sebagai Bahan Bakar Lain	PI No. 1 of 2006 on the Supply and Use of Biofuel as an Alternative Fuel
	Inpres Nomor 2 Tahun 2006 tentang Penyediaan dan Pemanfaatan Batubara yang Dicairkan sebagai Bahan Bakar Lain	PI No. 2 of 2006 on the Supply and Use of Liquid Coal as an Alternative Fuel
2007	*UU Nomor 17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional Tahun 2005-2025*	Law No. 17 of 2007 on National Long-Term Development Planning 2005-2025
	UU Nomor 26 Tahun 2007 tentang Penataan Ruang	Law No. 26 of 2007 on Spatial Planning
	UU Nomor 27 Tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil	Law No. 27 of 2007 on Coastal and Small Island Management
	UU Nomor 30 Tahun 2007 tentang Energi	Law No. 30 of 2007 on Energy
	PP Nomor 6 Tahun 2007 tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, serta Pemanfaatan Hutan	GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans
	PP Nomor 59 Tahun 2007 tentang Kegiatan Usaha Panas Bumi	GR No. 59 of 2007 on Geothermal Business Activities
	Perpres Nomor 89 Tahun 2007 tentang Gerakan Nasional Rehabilitasi Hutan dan Lahan	PR No. 89 of 2007 on the National Movement for Forest and Land Rehabilitation
	Inpres Nomor 2 Tahun 2007 tentang Percepatan Rehabilitasi dan Revitalisasi Kawasan Pengembangan Lahan Gambut di Kalimantan Tengah	PI No. 2 of 2007 on the Acceleration of the Rehabilitation and Revitalization of Ex-Mega Rice Peatland Project Areas in Central Kalimantan
	Peraturan Menteri Pertanian (Permentan) Nomor 26 Tahun 2007 tentang Pedoman Perizinan Perusahaan Perkebunan	Ministry of Agriculture Regulation (MoAR) No. 26 of 2007 on Guidance on Permit Issuance for Plantation Companies
	Peraturan Menteri Pekerjaan Umum (PermenPU) Nomor 41 Tahun 2007 tentang Pedoman Kriteria Teknis Kawasan Budidaya	Minister of Public Works Regulation (MoPWR) No. 41 of 2007 on Technical Guidelines on the Criteria for Cultivated Areas
	Perda Kabupaten Kepahiang Nomor 1 Tahun 2007 tentang Pelarangan Penangkapan Ikan Menggunakan Bom, Listrik dan Racun	Kepahiang District Regulation No. 1 of 2007 on the Prohibition of Fishing Using Bombs, Electrocution and Poison
2008	*UU Nomor 39 Tahun 2008 tentang Kementerian Negara*	Law No. 39 of 2008 on State Ministries
	PP Nomor 2 Tahun 2008 tentang Jenis dan Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berasal dari Penggunaan Kawasan Hutan untuk Kepentingan Pembangunan di Luar Kegiatan Kehutanan yang Berlaku pada Departemen Kehutanan	GR No. 2 of 2008 on the Type of and Tariffs on Non-Tax State Revenue from the Use of Forest Areas for Non-Forest Development Activities Valid at the Ministry of Forestry
	PP Nomor 3 Tahun 2008 tentang Perubahan atas Peraturan Pemerintah Nomor 6 Tahun 2007 tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, serta Pemanfaatan Hutan	GR No. 3 of 2008 on the Revision of GR No. 6 of 2007 on Forest Planning and the Formulation of Forest Management and Utilization Plans
	PP Nomor 7 Tahun 2008 tentang Dekonsentrasi dan Tugas Pembantuan	GR No. 7 of 2008 on Deconcentration and Assistance
	PP Nomor 26 Tahun 2008 tentang Rencana Tata Ruang Wilayah Nasional	GR No. 26 of 2008 on National Spatial Planning

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Year	Original title	Translation
	PP Nomor 76 Tahun 2008 tentang Rehabilitasi dan Reklamasi Hutan	GR No. 76 of 2008 on Forest Rehabilitation and Reclamation
	Perpres Nomor 26 Tahun 2008 tentang Pembentukan Dewan Energi Nasional dan Tata Cara Penyaringan Calon Anggota Dewan Energi Nasional	PR No. 26 of 2008 on the Establishment of the National Energy Council and the Selection of its Members
	Perpres Nomor 46 Tahun 2008 tentang Dewan Nasional Perubahan Iklim	PR No. 46 of 2008 on the National Council on Climate Change
	Permenhut Nomor 35 Tahun 2008 tentang Izin Usaha Industri Primer Hutan	MoFR No. 35 of 2008 on Permits for Primary Forest Industrial Activity
	Permenhut Nomor 61 Tahun 2008 tentang Ketentuan dan Tata Cara Pemberian Izin Usaha Pemanfaatan Hasil Hutan Kayu Restorasi Ekosistem dalam Hutan Alam pada Hutan Produksi Melalui Permohonan	MoFR No. 61 of 2008 on the Procedures for Obtaining Permits for the Utilization of Timber Products in Ecosystem Restoration Activities in Production Forests
2009	*UU Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara*	Law No. 4 of 2009 on the Mining of Mineral Resources and Coal
	UU Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup	Law No. 32 of 2009 on Environmental Protection and Management
	UU Nomor 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan	Law No. 41 of 2009 on the Protection of Land for Sustainable Food Crops
	PP Nomor 31 Tahun 2009 tentang Perlindungan Wilayah Geografis Penghasil Produk Perkebunan Spesifik Lokasi	GR No. 31 of 2009 on the Protection of Areas Producing Specific Estate Crop Produce
	PP Nomor 60 Tahun 2009 tentang Perubahan atas PP Nomor 45 Tahun 2004 tentang Perlindungan Hutan	GR No. 60 of 2009 on the Revision of GR No. 45 of 2004 on Forest Protection
	Perpres Nomor 54 Tahun 2009 tentang Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan	PR No. 54 of 2009 on the Presidential Unit for Development Monitoring and Oversight
	Permentan Nomor 14 Tahun 2009 tentang Pedoman Pemanfaatan Lahan Gambut Untuk Budidaya Kelapa Sawit	MoAR No. 14 of 2009 on Guidance for the Utilization of Peatlands for Oil Palm Cultivation
	PermenPU Nomor 15 Tahun 2009 tentang Pedoman Penyusunan Rencana Tata Ruang Wilayah Provinsi	MoPWR No. 15 of 2009 on Guidance on Formulating Provincial Spatial Planning
	Permenhut Nomor 50 Tahun 2009 tentang Penegasan Status dan Fungsi Kawasan Hutan	MoFR No. 50 of 2009 on the Confirmation of the Status and Function of Forest Areas
2010	*UU Nomor 8 Tahun 2010 tentang Tindak Pidana Pencucian Uang*	Law No. 8 of 2010 on Anti-Money Laundering
	PP Nomor 10 Tahun 2010 tentang Tata Cara Perubahan Peruntukan dan Fungsi Kawasan Hutan	GR No. 10 of 2010 on the Procedure for Changing the Status and Functions of Forest Areas
	PP Nomor 11 Tahun 2010 tentang Penertiban dan Pendayagunaan Tanah Terlantar	GR No. 11 of 2010 on the Control and Use of Abandoned Land
	PP Nomor 15 Tahun 2010 tentang Penyelenggaraan Penataan Ruang	GR No. 15 of 2010 on Spatial Planning Implementation
	PP Nomor 22 Tahun 2010 tentang Wilayah Pertambangan	GR No. 22 of 2010 on Mining Areas
	PP Nomor 23 Tahun 2010 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral Dan Batubara	GR No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities

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Year	Original title	Translation
	PP Nomor 24 Tahun 2010 tentang Penggunaan Kawasan Hutan	GR No. 24 of 2010 on the Utilization of Forest Areas
	PP Nomor 55 Tahun 2010 tentang Pembinaan dan Pengawasan Penyelenggaraan Pengelolaan Usaha Pertambangan Mineral dan Barubara	GR No. 55 of 2010 on the Supervision and Control of Mineral and Coal Mining Business Activities
	PP Nomor 68 Tahun 2010 tentang Bentuk dan Tata Cara Peran Masyarakat dalam Penataan Ruang	GR No. 68 of 2010 on the Procedure for Public Participation in Spatial Planning
	PP Nomor 70 Tahun 2010 tentang Perubahan PP Nomor 59 Tahun 2007 tentang Kegiatan Usaha Panas Bumi	GR No. 70 of 2010 on the Revision of GR No. 59 of 2007 on Geothermal Business Activities
	PP Nomor 72 Tahun 2010 tentang Perusahaan Umum (Perum) Kehutanan Negara	GR No. 72 of 2010 on State-Owned Forestry Companies
	PP Nomor 78 Tahun 2010 tentang Reklamasi dan Pasca Tambang	GR No. 78 of 2010 on Reclamation and Post-Mining Activities
	Perpres Nomor 5 Tahun 2010 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2010-2014	PR No. 5 of 2010 on the Medium-Term National Development Plan 2010-2014
	Perpres Nomor 24 Tahun 2010 tentang Kedudukan, Tugas, dan Fungsi Kementerian Negara serta Susunan Organisasi, Tugas, dan Fungsi Eselon I Kementerian Negara	PR No. 24 of 2010 on the Hierarchy, Duties and Functions of State Ministries
	Perpres Nomor 78 Tahun 2010 tentang Penjaminan Infrastruktur dalam Proyek Kerja Sama Pemerintah dengan Badan Usaha yang Dilakukan Melalui Badan Usaha Penjaminan Infrastruktur	PR No. 78 of 2010 on Guaranteeing Infrastructure in Government Cooperation Projects with Business Entities Done through the Infrastructure Guarantee Agency
	Inpres Nomor 1 Tahun 2010 tentang Percepatan Pelaksanaan Prioritas Pembangunan Nasional Tahun 2010	PI No. 1 of 2010 on the Acceleration of the Implementation of National Development Priorities in 2010
	Keppres Nomor 19 Tahun 2010 tentang Satuan Tugas Persiapan Pembentukan Kelembagaan REDD+	PD No. 19 of 2010 on the Task Force for Preparation of the REDD+ Agency
	Permenhut Nomor 50 Tahun 2010 tentang Tata Cara Pemberian dan Perluasan Areal Kerja Izin Usaha Pemanfaatan Hasil Hutan Kayu (IUPHHK) dalam Hutan Alam, Iuphhk Restorasi Ekosistem, atau IUPHHK Hutan Tanaman Industri pada Hutan Produksi	MoFR No. 50 of 2010 on Granting Licenses for Timber Production in Natural Production Forests
	Letter of Intent (LoI) between the Government of the Kingdom of Norway and the Government of the Republic of Indonesia on Cooperation on Reducing Greenhouse Gas Emissions from Deforestation and Forest Degradation	No translation required
2011	*UU Nomor 4 Tahun 2011 tentang Informasi Geospasial*	Law No. 4 of 2011 on Geospatial Information
	UU Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan	Law No. 12 of 2011 on the Formulation of Laws and Regulations
	Putusan Mahkamah Konstitusi (PMK) Nomor 45 Tahun 2011 Pengujian UU No. 41 Tahun 1999 tentang Kehutanan [Pasal 1 Ayat 3] Sebagaimana Telah Diubah dengan UU Nomor 19 Tahun 2004	MK Decision (MKD) No. 45 of 2011 on the Judicial Review of Law No. 41 of 1999 on Forestry, as Revised by Law No. 19 of 2004 [Paragraph 1(3)]

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Year	Original title	Translation
	PP Nomor 1 Tahun 2011 tentang Penetapan dan Alih Fungsi Lahan Pertanian Pangan Berkelanjutan	GR No. 1 of 2011 on the Gazettement and Conversion of Functions of Land for Sustainable Food Crops
	PP Nomor 28 Tahun 2011 tentang Pengelolaan Kawasan Suaka Alam dan Kawasan Pelestarian Alam	GR No. 28 of 2011 on the Management of Game and Nature Reserves
	Perpres Nomor 10 Tahun 2011 tentang Badan Koordinasi Nasional Penyuluhan Pertanian, Perikanan, dan Kehutanan	PR No. 10 of 2011 on the National Coordination Board for Agriculture, Fishery and Forestry Extension Services
	Perpres Nomor 12 Tahun 2011 tentang Perubahan atas Perpres Nomor 42 Tahun 2005 tentang Komite Kebijakan Percepatan Penyediaan Infrastruktur	PR No. 12 of 2011 on the Revision of PR No. 42 of 2005 on the Committee on Policy for the Acceleration of Infrastructure Provision
	Perpres Nomor 28 Tahun 2011 tentang Penggunaan Kawasan Hutan Lindung untuk Penambangan Bawah Tanah	PR No. 28 of 2011 on the Use of Protection Forests for Underground Mining Activities
	Perpres Nomor 32 Tahun 2011 tentang Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia 2011-2025	PR No. 32 of 2011 on the Master Plan for the Acceleration and Expansion of Indonesia's Economy 2011-2025
	Perpres Nomor 61 Tahun 2011 tentang Rencana Aksi Nasional Penurunan Emisi Gas Rumah Kaca	PR No. 61 of 2011 on the National Action Plan for the Reduction of Greenhouse Gas Emissions
	Perpres Nomor 71 Tahun 2011 tentang Penyelenggaraan Inventarisasi Gas Rumah Kaca Nasional	PR No. 71 of 2011 on the Implementation of the National Greenhouse Gas Inventory
	Perpres Nomor 80 Tahun 2011 tentang Dana Perwalian	PR No. 80 of 2011 on Trust Funds
	Perpres Nomor 92 Tahun 2011 tentang Perubahan Kedua atas Perpres Nomor 24 Tahun 2010 tentang Kedudukan, Tugas, dan Fungsi Kementerian Negara serta Susunan Organisasi, Tugas, dan Fungsi Eselon I Kementerian Negara	PR No. 92 of 2011 on the Second Revision of PR No. 24 of 2010 on the Hierarchy, Duties and Functions of State Ministries
	Inpres Nomor 5 Tahun 2011 tentang Pengamanan Produksi Beras Nasional dalam Menghadapi Kondisi Iklim Ekstrim	PI No. 5 of 2011 on Safeguarding National Rice Security in Extreme Climate Conditions
	Inpres Nomor 10 Tahun 2011 tentang Penundaan Pemberian Izin Baru dan Penyempurnaan Tata Kelola Hutan Alam Primer dan Lahan Gambut	PI No. 10 of 2011 on Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands
	Keppres Nomor 25 Tahun 2011 tentang Satuan Tugas Persiapan Kelembagaan Reducing Emissions from Deforestation and Forest Degradation (REDD+)	PD No. 25 of 2011 on the Task Force for Preparation of the REDD+ Agency
	Permenhut Nomor 47 Tahun 2011 tentang Penugasan Sebagian Urusan Pemerintahan Bidang Kehutanan Tahun 2011 kepada Bupati Berau, Bupati Malinau dan Bupati Kapuas Hulu dalam rangka Demonstration Activities REDD	MoFR No. 47 of 2011 on a Partial Transfer of Authority on Forestry Governance from the MoF to the Bupatis of Berau, Malinau and Kapuas Hulu under the Framework of REDD+ Demonstration Activities
	Permentan Nomor 19 Tahun 2011 tentang Pedoman Perkebunan Kelapa Sawit Berkelanjutan (Indonesian Sustainable Palm Oil/ISPO)	MoAR No. 19 of 2011 on Guidance for Indonesian Sustainable Palm Oil (ISPO)

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Year	Original title	Translation
	Nota Kesepahaman (MoU) Nomor 7662 Tahun 2011 tentang Koordinasi dan Percepatan Perizinan Pengusahaan Panas Bumi pada Kawasan Hutan Produksi, Kawasan Hutan Lindung dan Kawasan Konservasi	Memorandum of Understanding (MoU) between the Ministry of Energy and Mineral Resources and the Ministry of Forestry No. 7662 of 2011 on the Coordination and Acceleration of Permit Issuance for Geothermal Energy Development in Production Forests and Protection Forests, and Preparation for Geothermal Utilization in Forest Conservation Areas
2012	*UU Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum*	Law No. 2 of 2012 on Land Procurement for the Public Interest (Land Acquisition Law)
	UU Nomor 7 Tahun 2012 tentang Penanganan Konflik Sosial	Law No. 7 of 2012 on the Resolution of Social Conflicts
	UU Nomor 18 Tahun 2012 tentang Pangan	Law No. 18 of 2012 on Food
	PMK Nomor 35 Tahun 2012 tentang Pengujian UU Nomor 41 Tahun 1999 tentang Kehutanan [Pasal 1 Ayat 6, Pasal 4 Ayat 3, Pasal 5 Ayat 1, 2, 3 dan 4, serta Pasal 67]	MKD No. 35 of 2012 on the Judicial Review of Law No. 41 of 1999 on Forestry (Paragraphs 1(6), 4(3), 5(1)-(4), and Article 67)
	PP Nomor 24 Tahun 2012 tentang Perubahan atas PP Nomor 23 Tahun 2010 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral Dan Batubara	GR No. 24 of 2012 on the Revision of GR No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities
	PP Nomor 25 Tahun 2012 tentang Sistem Informasi Lahan Pertanian Pangan Berkelanjutan	GR No. 25 of 2012 on the Information System on Land for Sustainable Food Crops
	PP Nomor 27 Tahun 2012 tentang Izin Lingkungan	GR No. 27 of 2012 on Environmental Licenses
	PP Nomor 30 Tahun 2012 tentang Pembiayaan Perlindungan Lahan Pertanian Pangan Berkelanjutan	GR No. 30 of 2012 on Financing the Protection of Land for Sustainable Food Crops
	PP Nomor 37 Tahun 2012 Pengelolaan Daerah Aliran Sungai	GR No. 37 of 2012 on River Basin (Watershed Area) Management
	PP Nomor 60 Tahun 2012 tentang Perubahan atas PP Nomor 10 Tahun 2010 tentang Tata Cara Perubahan Peruntukan dan Fungsi Kawasan Hutan	GR No. 60 of 2012 on the Revision of GR No. 10 of 2010 on the Procedure for Changing the Status and Functions of Forest Areas
	PP Nomor 61 Tahun 2012 tentang Perubahan atas PP Nomor 24 Tahun 2010 tentang Penggunaan Kawasan Hutan	GR No. 61 of 2012 on the Revision of GR No. 24 of 2010 on the Utilization of Forest Areas
	PP Nomor 103 Tahun 2012 tentang Perubahan atas PP Nomor 63 Tahun 2005 tentang Sistem Manajemen Sumber Daya Manusia Komisi Pemberantasan Korupsi	GR No. 103 of 2012 on the Revision of GR No. 63 of 2005 on the Human Resource Management System in the Corruption Eradication Commission
	Perpres Nomor 3 Tahun 2012 tentang Rencana Tata Ruang Pulau Kalimantan	PR No. 3 of 2012 on Kalimantan Spatial Planning
	Perpres Nomor 13 Tahun 2012 tentang Rencana Tata Ruang Pulau Sumatera	PR No. 13 of 2012 on Sumatra Spatial Planning
	Perpres Nomor 71 Tahun 2012 tentang Penyelenggaraan Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum	PR No. 71 of 2012 on Land Procurement for the Implementation of Development for the Public Interest
	Perpres Nomor 73 Tahun 2012 tentang Strategi Nasional Pengelolaan Ekosistem Mangrove	PR No. 73 of 2012 on the National Strategy on Mangrove Ecosystem Management
	Perpres Nomor 121 Tahun 2012 tentang Rehabilitasi Wilayah Pesisir dan Pulau-Pulau Kecil	PR No. 121 of 2012 on the Rehabilitation of Coastal Zones and Small Islands

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Year	Original title	Translation
	Perpres Nomor 122 Tahun 2012 tentang Reklamasi Wilayah Pesisir dan Pulau-Pulau Kecil	PR No. 122 of 2012 on the Reclamation of Coastal Zones and Small Islands
	Permenhut Nomor 20 Tahun 2012 tentang Penyelenggaraan Karbon Hutan	MoFR No. 20 of 2012 on Forest Carbon Implementation
	Permenhut Nomor 22 Tahun 2012 tentang Pedoman Kegiatan Usaha Pemanfaatan Jasa Lingkungan Wisata Alam pada Hutan Lindung	MoFR No. 22 of 2012 on Guidance on Environmental Service Tourism Activities in Protection Forests
	Permenhut Nomor 31 Tahun 2012 tentang Lembaga Konservasi	MoFR No. 31 of 2012 on Conservation Organizations
	Perda Provinsi Jambi Nomor 6 Tahun 2012 tentang Pengelolaan Lingkungan Hidup di Provinsi Jambi	Jambi Provincial Regulation No. 6 of 2012 on Environmental Management in Jambi
2013	*UU Nomor 11 Tahun 2013 tentang Pengesahan Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (Protokol Nagoya tentang Akses pada Sumber Daya Genetik dan Pembagian Keuntungan Yang Adil dan Seimbang yang Timbul dari Pemanfaatannya atas Konvensi Keanekaragaman Hayati)*	Law No. 11 of 2013 on Ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity
	UU Nomor 18 Tahun 2013 tentang Pencegahan dan Pemberantasan Perusakan Hutan	Law No. 18 of 2013 on the Prevention and Eradication of Forest Degradation
	UU Nomor 19 Tahun 2013 tentang Perlindungan dan Pemberdayaan Petani	Law No. 19 of 2013 on the Protection and Empowerment of Farmers
	PP Nomor 73 Tahun 2013 tentang Rawa	GR No. 73 of 2013 on Swamps
	PP Nomor 79 Tahun 2013 tentang Jaringan Lalu Lintas dan Angkutan Jalan	GR No. 79 of 2013 on Traffic, Roads and Transportation Networks
	Perpres Nomor 62 Tahun 2013 tentang Badan Pengelola Penurunan Emisi Gas Rumah Kaca dari Deforestasi, Degradasi Hutan dan Lahan Gambut	PR No. 62 of 2013 on the REDD+ Agency
	Perpres Nomor 63 Tahun 2013 tentang Badan Pertanahan Nasional	PR No. 63 of 2013 on the National Land Agency
	Inpres Nomor 6 Tahun 2013 tentang Penundaan Pemberian Izin Baru dan Penyempurnaan Tata Kelola Hutan Alam Primer dan Lahan Gambut	PI No. 6 of 2013 on the Suspension of New Licenses and Improving the Forest Governance of Primary Forests and Peatlands
	Permentan Nomor 98 Tahun 2013 tentang Pedoman Perizinan Perusahaan Perkebunan	MoAR No. 98 of 2013 on Guidance on Permit Issuance for Plantation Companies
	Kepmenhut Nomor 2796 Tahun 2013 tentang Peta Indikatif Penundaan Pemberian Izin Baru	MoFD No. 2796 of 2013 on the Indonesia Moratorium Map
2014	*UU Nomor 1 Tahun 2014 tentang Perubahan atas UU Nomor 27 Tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil*	Law No. 1 of 2014 on the Revision of Law No. 27 of 2007 on Coastal and Small Island Management
	UU Nomor 6 Tahun 2014 tentang Desa	Law No. 6 of 2014 on Villages
	UU Nomor 22 Tahun 2014 tentang Pemilihan Gubernur, Bupati and Walikota	Law No. 22 of 2014 on the Election of Governors, Bupatis and Mayors
	UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah	Law No. 23 of 2014 on Regional Governance

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Appendix. Continued

Year	Original title	Translation
	Perpu Nomor 1 Tahun 2014 tentang Pemilihan Gubernur, Bupati and Walikota	GR in Lieu of Law No. 1 of 2014 on the Election of Governors, Bupatis and Mayors
	PP Nomor 1 Tahun 2014 tentang Perubahan Kedua atas PP Nomor 23 Tahun 2010 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral Dan Batubara	GR No. 1 of 2014 on the Second Revision of GR No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities
	PP Nomor 12 Tahun 2014 tentang Jenis dan Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berlaku pada Kementerian Kehutanan	GR No. 12 of 2014 on the Service Tariff for Non-Tax State Revenue Valid at the Ministry of Forestry
	Perpres Nomor 135 Tahun 2014 tentang Perubahan Ketujuh atas Perpres Nomor 24 Tahun 2010 tentang Kedudukan, Tugas, dan Fungsi Kementerian Negara serta Susunan Organisasi, Tugas, dan Fungsi Eselon I Kementerian Negara	PR No. 135 of 2014 on the Seventh Revision of PR No. 24 of 2010 on the Hierarchy, Duties and Functions of State Ministries; and the Hierarchy, Duties and Functions of 1st-Echelon State Ministries
	Perpres Nomor 165 Tahun 2014 tentang Penataan Tugas dan Fungsi Kabinet Kerja	PR No. 165 of 2014 on the Arrangement of Duties and Functions of the Presidential Cabinet
2015	*Perpres Nomor 16 Tahun 2015 tentang Kementerian Lingkungan Hidup dan Kehutanan*	PR No. 16 of 2015 on the Ministry of the Environment and Forestry
	Perpres Nomor 17 Tahun 2015 tentang Kementerian Agraria dan Tata Ruang	PR No. 17 of 2015 on the Ministry of Agrarian and Spatial Planning
	Perpres Nomor 20 Tahun 2015 tentang Badan Pertanahan Nasional	PR No. 20 of 2015 on the National Land Agency
	Perpres Nomor 26 Tahun 2015 tentang Kantor Staf Presiden	PR No. 26 of 2015 on the Office of Presidential Staff
	Keppres Nomor 38 Tahun 2015 tentang Pengangkatan Utusan Khusus Presien untuk Pengendalian Perubahan Iklim	PD No. 38 of 2015 on the Appointment of the Presidential Special Envoy on Climate Change Mitigation
	Inpres Nomor 8 Tahun 2015 tentang Penundaan Pemberian Izin Baru dan Penyempurnaan Tata Kelola Hutan Alam Primer dan Lahan Gambut	PI No. 8 of 2015 on Suspension of the Granting of New Licenses and Improvement of the Governance of Natural Primary Forests and Peatlands
	Permentan Nomor 11 Tahun 2015 tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan (Indonesian Sustainable Palm Oil/ISPO)	MoAR No. 11 of 2015 on the Certification System for Indonesian Sustainable Palm Oil (ISPO)

ISBN 978-602-387-010-3
DOI: 10.17528/cifor/005695

CIFOR Occasional Papers contain research results that are significant to tropical forest issues. This content has been peer reviewed internally and externally.

Which levels of government hold powers over forests and land use in Indonesia? Which powers and responsibilities are centralized, and which are decentralized? What role can citizens play?

This report reviews the statutory distribution of powers and responsibilities across levels and sectors. It outlines the legal mandates held by national, regional and local governments with regard to land and forests, including titling, forest concessions, oil and minerals investments, oil palm plantations, conservation, land use planning, and more. The review considers national legislation as of 2014 and incorporates important reforms in early 2015.

After a short introduction, the second section describes the decentralization process, including mechanisms for public participation. The third section outlines sources of revenue available to different government levels from forest fees and payments for environmental services. The fourth section details the specific distribution of powers and arenas of responsibility related to multiple land use sectors across levels and among offices within levels, and the fifth and final section refers specifically to *adat* law. Summary tables are included for each different policy arena to facilitate analysis across government levels and functions: policy making, administration, control and monitoring, auditing and sanction.

The study was commissioned under CIFOR's Global Comparative Study on REDD+, as part of a research project on multilevel governance and carbon management at the landscape scale. It is intended as a reference for researchers and policy makers working on land use issues in Indonesia.

CGIAR RESEARCH PROGRAM ON Forests, Trees and Agroforestry

This research was carried out by CIFOR as part of the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA). This collaborative program aims to enhance the management and use of forests, agroforestry and tree genetic resources across the landscape from forests to farms. CIFOR leads CRP-FTA in partnership with Bioversity International, CATIE, CIRAD, the International Center for Tropical Agriculture and the World Agroforestry Centre.

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