

4-30-2016

ENHANCEMENT OF FOREST AND PEATLAND GOVERNANCE IN INDONESIA

Mas Achmad Santosa

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>

Recommended Citation

Santosa, Mas Achmad (2016) "ENHANCEMENT OF FOREST AND PEATLAND GOVERNANCE IN INDONESIA," *Indonesian Journal of International Law*. Vol. 13: No. 3, Article 1.

DOI: 10.17304/ijil.vol13.3.654

Available at: <https://scholarhub.ui.ac.id/ijil/vol13/iss3/1>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

Enhancement of Forest and Peatland Governance in Indonesia

Mas Achmad Santosa and Januar Dwi Putra

Abstract

Indonesia's forest is decreasing rapidly, and it is affecting the country's commitment to curb carbon emission by 29 percent by 2030. Per a report published by GermanWatch in 2016, our country's Climate Change Performance Index (CCPI) fell three places from 19 to 22 due to inadequate forest protection policy. This research will look into the urgency for the government of Indonesia to draw an agenda to push forward forest and peatland reform to stop deforestation. Through a comparative analysis, this paper will compare two government regimes: the second term of President Susilo Bambang Yudhoyono (2010-2014), where REDD+ was used as the catalyst for forest and peatland governance reform; and the first two years of President Joko Widodo (2014-2016), where promising actions to restore and to protect Indonesia's forest and peatland still need stronger political will and leadership to meet the 29 per cent commitment to curb greenhouse gas emission in 2030.

Keyword: forest, peatland, forest and peatland governance, governance reform, government of indonesia

Indonesia's forest areas are approximately 124 million hectares¹, making Indonesia one of the countries with widest rainforest area. Forest in Indonesia is a home to variety species of flora and fauna, including endangered species such as Sumatra Tigers, Elephants, Rhinoceros, Orangutans, and variety species of birds. It is also home to many *Masyarakat Hukum Adat* custom-based society inhabited Indonesia's forests. Thus, forest serves not only for the source of economic, but also environmental and social purposes.

Indonesia is also blessed with 21 million hectares of peatlands, which is around 83% of Southeast Asia's peatlands and 42% of the country's peatlands are more than 2 meters deep.² This means, in terms

*Environmental law specialist, founder of Indonesia Center for Environmental Law (ICEL) and is currently active as the Coordinator for Special Advisors for the Minister of Marine Affairs and Fisheries as Commander of the Indonesia Task Force to Combat Illegal Fishing.

**Environmental legal counsel. Currently active as a legal assistant for the Special Advisors of the Indonesia Presidential Task Force to Combat Illegal Fishing.

¹ Statistics Indonesia, January 2015.

² Hooijer et al., *Peat-CO₂: Assessment of CO₂ Emissions from Drained Peatlands in SE Asia*, 2006.

of carbon storage, peatlands' role is as important as forest as it contains more carbon than forest, albeit its lesser size. According to *Wetlands International*(2007), peatlands all over the world have the ability to store at least 550 Gigatons of carbon in their organic soil.³ Many of it are located in forest areas, or known as swamp forests. Consequently, protecting the forests also means protecting peatland.

Within the period of 2003 to 2006, the rate of deforestation was around 1,17 million hectares per year⁴, and on 2013, Indonesia's Ministry of Forestry claimed that in 2009 to 2011, this deforestation rate has been reduced to 0,45 million hectares per year⁵. Despite the decreased rate, deforestation in Indonesia is still alarmingly high. During 1990s, both Indonesia and Brazil has the highest net loss of forest due to El Nino in 1997-1998 and severe fires that burnt 9,7 million hectares of Indonesia's forests and peatlands. The World Bank stated more than 2,6 million hectares of forest and peatlands were burnt in 2015.⁶

According to a research conducted by Center for International Forest Research (CIFOR) in 2012, there are at least three drivers of deforestation in Indonesia that must be addressed. *First* is the absence of clarity over land tenure that is manifested in numerous land conflicts. *Secondly*, conflicting laws and regulations at the national level has created real difficulties to implement principles of sustainable forest management. *Thirdly*, introduction of wide decentralization⁷ in 1999, without real capacities at local and national level and comprehensive understanding of good governance principles to implement it, has created more problems than fulfilling promise of a better governance. This is obvious from many reports that highlight numerous overlapping licenses issued by local governments. In addition to these drivers, dualism of forest area references created major problem to map Indonesia's forest area integratedly.

To response to the drivers of deforestation, a systematic governance

³ Wetlands International, *Peatlands*, 2007.

⁴ Ministry of Forest and UNREDD, 2009

⁵ Ministry of Forestry, 2013.

⁶ World Bank, *Indonesia's Fire and Haze Crisis*, 2015

⁷ Under Art. 13 of Law No. 32 of 2004 on Local Government, provincial and local governments are given the authority to conduct, among others, their own development planning, spatial planning, and environmental management.

reform in forest and peatland managements is imperative. Without it, any strategy to reduce emissions from deforestation and forest degradation will not be effective to address Indonesia's underlying challenges. This paper will discuss how this reform initiative is being pursued in two different timeframes. First is during the President Susilo Bambang Yudhoyono's (or famously known as SBY) second term (2010 – 2014) and afterwards is the first two years of President Joko Widodo's administration (2014 – present).

From 2010 to 2014, Indonesia employed REDD+ as the trigger to develop extensive forest and peatland governance reform program to address deforestation and forest degradation.

Indonesia perceived REDD+ as the catalyst for governance reform in natural resources management including more effective enforcement. REDD+ was a means to enhance equality to access to natural resources, thereby to enhance the rights of disadvantaged people including *Masyarakat Hukum Adat* or custom-based society. This is in line with REDD+ slogan at the time: *Beyond Carbon, More Than Just Forest*. In 2011, Indonesia received 1 billion USD grant from Norway Government through a Letter of Intent to help REDD+ implementation.

The REDD+ era was initiated with two policies: establishment of National/Presidential Task Force for the Preparation of REDD+ Agency in 2010⁸ and the issuance of Presidential Instruction to suspend all new license issuances on primary forest and peatland – or the moratorium policy – in 2011.⁹ The moratorium policy instructed all relevant ministries/institutions and local government leaders to improve forest and peatland management while reducing emissions from deforestation and forest degradation. This policy was important because it stopped permit issuance during the moratorium period which provided space for policy makers to design strategies to improve forest and peatland governance while making sure forest and peat land areas remain protected, as well as protecting the operations of businesses with legitimate

⁸ Presidential Decree No. 19 of 2010 on Task Force for the Preparation of REDD+ Agency, which was extended through Presidential Decree No. 25 of 2011.

⁹ Presidential Order No. 10 of 2011 regarding Suspension of License Issuance on Primary Forest and Peatlands, which was extended twice through Presidential Order 6 of 2013 and Presidential Order No. 8 of 2015 during President Joko Widodo's administration.

licenses. The moratorium policy was further elaborated into a measurable and specific action plans carried out by the Task Force and other relevant institutions, including (1) expediting forest gazettal; (2) mapping areas occupied by *Masyarakat Hukum Adat*; (3) harmonizing laws and regulations; (4) audited land-based licenses; and (5) improving the effectiveness and integrity of enforcement. The Presidential Task Force was hosted by the Presidential Delivery Unit for Development Monitoring and Oversight (or widely known as UKP4¹⁰), and led by a person with integrity namely Minister Kuntoro Mangkusubroto.¹¹

On 2013, National REDD+ Agency¹², which was headed by a Chairperson equal to a minister's level, was established. The establishment of REDD+ Agency was becoming one of the most pivotal milestones in the progress of REDD+. This agency was mandated to formulate national strategy on REDD+, coordinate and execute REDD+ policies, formulate REDD+ funding mechanism, coordinate enforcement actions, and facilitate conflict settlement related to REDD+ including conflicts between *Masyarakat Hukum Adat* and concession holders. Just as UKP4, REDD+ Agency held an important role to identify the root problems of peatland and forest governance, and to provide comprehensive solutions to push forward governance reform agenda.

Inadequate laws and regulations has been hindering efforts to reform forest and peatland governance. To address this, REDD+ Agency, in cooperation with the Ministry of Law and Human Rights, pushed for legal reforms, including the amendment of Minister of Agriculture Regulation on Guidelines for Plantation Licenses that ensures the participation of forest-dependent communities in decision-making process; and the enactment of the first ever Government Regulation that protects peatland. A Memorandum of Understanding (MoU) on Strengthening Law Enforcement Synergy to Support Sustainable Natural Resources Man-

¹⁰ Abbreviated from *Unit Kerja Presiden Bidang Pengendalian dan Pengawasan Pembangunan*.

¹¹ Prof. Dr. Ir. Kuntoro Mangkusubroto, MSIE., MSCE. is a prominent figure in Indonesia's movement for governance reform. He was appointed as the Head of Rehabilitation and Reconstruction Agency for the Province of Aceh post-tsunami (2005) and Head of Presidential Delivery Unit for Development Monitoring and Oversight (2010) during SBY's administration.

¹² Translated from *Badan Pengelola REDD+ or BP REDD+*.

agement in the Context of REDD+ have also been signed on December 2012. This MoU was signed by three (3) heads of agencies and three (3) ministers to ensure the use of multidoor enforcement approach or full force of law in natural resources-related crimes. Multidoor approach is a means towards deterrent effect and pursuing justice, through better coordination between enforcement officers and the use of broader range of laws and regulations to be utilized during enforcement. The Constitutional Court also made a landmark decision in 2012 by recognizing the rights of *Masyarakat Hukum Adat* over customary forests. These actions were in the view of providing environmental and social justice for forest-dependent communities, including custom-based societies.

There are two factors that incentivized REDD+ Agency's successes: (1) the use of REDD+ as an entry point to consistently push forward total and comprehensive reform of the forest and peatland governance; (2) the Agency's flexibility to recruit 60 professional experts that were not only from civil servant background. This breakthrough recruitment method by a government agency had enabled REDD+ Agency to hire committed people who bring work-ethic and working culture of private companies.

Another key factor for the success of REDD+ progress in Indonesia from 2010 to 2014 was strong political support from the highest authority (e.g. President) and the presence of a leader with strong character and high integrity to lead REDD+ implementation (e.g. Minister Kuntoro Mangkusubroto). With these factors, Indonesia was able to capitalize REDD+ more than it was expected: to work beyond carbon and improve forest and peatland governance.

REDD+ programs hit a rock when the then-elected President Joko Widodo, or known as Jokowi, called for changes in the bureaucratic structures of environmental and forestry governance. President Jokowi merged two ministries that hold authorities over environment and forestry to become Ministry of Environment and Forestry (MoEF). On the other hand, on January 2015, the new government administration dissolved two agencies tasked for matters related to climate change and REDD+ implementation, the National REDD+ Agency (or BP REDD+) and the National Council

on Climate Change which was led by a former senior Minister, Mr. RachmatWitoelar.¹³ With this policy, REDD+ is now undertaken by theMoEF which is put as a portfolio of one Sub-Directorate and its implementation is now returned to business as usual. UKP4 was replaced by the Executive Office of the President or widely known as KSP¹⁴ to carry out the monitoring and oversight the implementation of President Jokowi's vision and mission in general. However, it is unclear if KSP is assigned to monitor and ensure the continuation of REDD+ implementation, and to use REDD+ as an entry point to reform forest and peatland governance.

Nonetheless, there are some promising signs for forest and land governance under the current regime. Under the Nine Priority Agendas or *NawaCita*, Jokowi called out for fights against illegal logging, environmental enforcement, land conflict settlement, fight against criminalization of small land owners, and expedited the implementation of land reform. President Jokowi also continues several initiatives promoted during the previous government regime, such as moratorium of primary forest and peatlands policy which was extended for another two years from 2015 to 2017, and the One Map Policy through a Presidential Regulation issued in 2016 for integrated reference, one of which, to designate forest areas.

President Jokowi also instructed MoEF to realize the social forestry policy. There are around 25 thousand villages existed inside and around the forests, 10,2 million poor communities living inside the forests with 71% of them depend on the forest resources.¹⁵ The Government has targeted 2,5 million hectares of social forests, including customary forests.¹⁶ However, until 2016, only 610 hectares or 24,4% have been realized.¹⁷ During a cabinet meeting in Septem-

¹³ Translated from *Dewan Nasional Perubahan Iklim* or DNPI.

¹⁴ Abbreviated from *Kantor Staf Presiden*.

¹⁵ Presiden Joko Widodo's instruction on Social Forestry during Cabinet Meeting on 21 September 2016, Public Relations of the Cabinet Secretariat <<http://setkab.go.id/pengantar-presiden-joko-widodo-pada-rapat-terbatas-tentang-perhutanan-sosial- Rabu-21-september-2016-pukul-14-30-wib-di-kantor-presiden-jakarta/>>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

ber 2016, the President called for deregulation and simplification of license procedures to expedite the legal certainty for social forests.

In addressing peatlands losses due to forest fires, the Government established National Peatland Restoration Agency (BRG¹⁸) in January 2016. This agency is tasked to protect, manage, and restore peatlands in Indonesia. It targets to restore up to 2 million hectares of peatlands by 2020.¹⁹ In executing its mandate, four restoration priorities have been set. The *first* priority is to restore peatlands that have been burnt on 2015. *Second* priority is to restore peatlands that have canals inside the protected areas. *Third* are the peatlands that do not have canals inside the protected areas. And the *fourth* priority is to restore peatlands with canals inside areas that have been opened for various purposes including plantation. However, unlike REDD+ Agency, BRG's authority is only limited to the 2 million hectares of peatland that must be restored. It does not have a direct mandate to make improvements in the policies related to peatland or to conduct any actions to facilitate enforcement in the peatland.

Still related to response to peatland losses, President Joko Widodo's government recently called for closure of peatland areas for new licenses to avoid more peat losses. The government called for prohibition to open new canals in peatland areas. These actions are taken through the amendment of Government Regulation on Peatland Ecosystem Management and Protection enacted on December 2016. This move has drawn compliments from United Nations Environment Program and the World Resource Institute (WRI). WRI claimed that this move could save up to 7,8 gigatons of carbon emissions stored inside Indonesia's peatland. This moratorium on peatland areas must be followed with comprehensive review on the legality of existing concessions, including the compliance level of concession holders.

On the enforcement side, the Supreme Court recently favored Ministry of Environment and Forestry and ordered PT Merbau-Pelalawan Lestari to pay Rp 16 trillion (USD 1 billion) for damages

¹⁸ Abbreviated from *Badan Restorasi Gambut*.

¹⁹ Article 4 of the Presidential Regulation No. 1 of 2016 on Peatland Restoration Agency.

caused by illegal logging in Riau.²⁰ The Judges stated that the forest has ecological functions as a source of medicine, habitat, source of water, and clean air regulator; and therefore, activities in the forest area must uphold the *precautionary principle*.²¹ This case is a new landmark case, after PT KallistaAlam was ordered by the Supreme Court in 2015 to pay damages amounting Rp 366 billion (USD 27 million) after it was found guilty of slash and burn activities.²² However, these cases are yet to be executed. In the case of PT Merbau, the Government plaintiff did not put collateral seizure/foreclosure that is necessary to ensure the payment of damages, making the defendant's obedience towards the court order in doubt.

Even though the new government administration shows glimpse of promises from social justice perspective, these actions are still not enough to achieve comprehensive reform in the forest and peatland governance. The impression is that the current government lacks the will to achieve that.

Moratorium policy on primary forests and peatland will only be effective if it is followed with thorough review on the legality of existing concessions. Post-moratorium review on the legality was implemented in the capture fishery business by the current Minister of Marine Affairs and Fisheries, Minister Susi Pudjiastuti. Such review enabled the government to identify legal compliance status, root of the governance problems, policies and regulatory flaws, modus operandi (types of violations), and pattern of concession's and companies' ownership. Findings from this legality review was later became basis of consideration to impose administrative sanctions by the Minister of Marine Affairs and Fisheries, and/or criminal prosecutions for the serious crimes perpetrators. These findings are important to develop evidence-based policies to rectify governance problems.

²⁰ Supreme Court of the Republic of Indonesia Decision No. 460K/Pdt/2016, August 2016.

²¹ *Ibid.*

²² Supreme Court of the Republic of Indonesia Decision No. 651K/Pdt/2015, August 2015.

Absence of an umbrella law on climate change has made it easy to make changes on strategic climate change policies that can push forward comprehensive governance reform. This weakness could be the cause of Indonesia's position dropping in the Climate Change Performance Index (CCPI). According to report published by GermanWatch, our countries' fell from rank 19 to 22 due to inadequate forest protection policy.²³ It means that Indonesia should have a consistent and comprehensive policy to protect against climate change impacts. It also means that Indonesia is internationally being watched for its moves on climate change.

These actions can only be realized through leaders who have integrity and the courage to make radical changes to achieve comprehensive governance reform. Political support is essential for these leaders to execute their roadmap for comprehensive reform. Without strong backing from the higher hierarchy, any effort to do some reform shall be futile.

For Indonesia to meet the 29 per cent commitment to curb greenhouse gas (GHG) emission in 2030, comprehensive forest and peatland governance reform is vital. Without adequate actions to reform the governance in these two sectors, Indonesia will face difficulties to fulfill its global commitment to cut CO₂ emission, and to eliminate forest fires that have been major contributors for GHG emission.

²³ Jan Burck, Franziska Marten, and Christoph Balls, *Climate Change Performance Index Results 2017*, GermanWatch: 2016, page 5.