

regulates the public's rights to access information of court decisions and fees, as stated in Article 51A.

#### Law No. 7/2012 on Handling of Social Conflict

- This law regulates the social conflict resolutions, one of which is conflicts over natural resources among the community themselves or between the community and corporates.
- This regulation could potentially overcome conflicts in a repressive manner, with the mechanism of using TNI's aid during Conflict Emergency situations, but without providing a conflict resolution mechanism to the roots of the problem (such as conflicts surrounding land ownership status, and status of forest/land/plantation management rights).

#### Joint Regulation of Minister of Home Affairs, Minister of Forestry, Minister of Public Works, and Head of National Land Agency No. 79/2014, PB.3/Menhut-II/2014, 17/PRT/M/2014, 8/SKB/X/2014 on Settlement Procedures for Tenure of Land Located in Forest Areas

- This regulation sets the procedures to settle the 'ulayat' rights and tenure of land which is located in forest areas; its objective is also to accommodate the rights of adat people who have been using the

land for decades.

- This regulation already provides a mechanism acknowledging 'ulayat' rights and adat land through the IP4T team (Inventory of Tenure, Ownership, Usage, and Utilization of Land). In addition, it accommodates a more informal approach, which acknowledges the testimony of the local community that testifies that one is the true landowner in a Statement Letter of Physical Tenure of Land Area, in Article 7 letter b.
- It does not yet regulate the mechanism of public feedback regarding dissatisfaction when the people's rights of a land are violated or unaccommodated through the mechanism of the IP4T team.
- This regulation potentially results in dualism since The Regulation of Head of National Land Agency No.3/2011 is still in effect.

#### Head of National Land Agency Regulation No.3/2011 on Management of Assessment and Handling of Land Cases

- The existing mechanism of handling land cases is limited to using a formalistic approach, which only acknowledges formal proofs of land ownership (i.e. certificate), as stated in Article 26 paragraph (3) and Article 29.



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## Forest Concession Policies: A Critical Note

### Introduction

The expansion of palm oil companies' land concessions in Riau has limited the local people's residential areas and their access to forest natural resources. This impacted communities living around the corporates' area who have managed the forest collectively generation after generation. Their lands are taken away without adequate compensation or communication from the corporates. The grant of concessions to palm oil companies has also limited the people's rights to use and benefit from the forest as a source of food and job opportunities.

Several regulations at the local and national levels have mandated that community/local participation rights should be guaranteed in the granting process of forest concessions. However, from 27 regulations that are reviewed, WRI found that the supposedly guaranteed local participation rights still have gaps that could potentially be violated or regarded as unbinding by some parties. In addition, most of the regulations that guarantee people's participation rights have yet to include a particular guarantee on women's rights for participation, access, and control. In several regulations regarding the management of natural resources, forests, plantations, and space, there are still gaps and weak points regarding to the transparency of natural resource management; transparency of the issuance of environment and business permits; mechanism of forest management supervision; including supervision of the fulfillment of companies' obligations.

The absence of guarantee and mechanism for people's participation rights and involvement in the allocating process of forest concessions resulted in prolonged bloody conflicts, victimizing many civilians in various places. This occurred because the existing regulations are far from adequate in terms of solving the root of problems related to land conflicts. The existing regulations are limited to the managing mechanisms once the conflict has occurred, without facilitating a more just and transparent mechanism for conflict resolution related to land ownership.

### A. A Critical Note on Policies on Forestry

#### Law No. 41/1999 on Forestry

- The scope of the laws includes a general regulation on various aspects of forest and forestry, including the regulation of society's participation in forestry.
- This regulation does not specifically grant women the right to participate.
- Article 38 paragraph (4) emphatically declares that mining using an open pit. Does not describe the regular mechanism of traditional communities' involvement in each stage of the forest control, which includes forest planning; forest management; as

stated in Article 4 paragraph (3).

- Does not provide a mechanism to enable the local community cooperative to access the collaborative program (community economic empowerment program), as stated in Article 30.

#### Government Regulation in lieu of Law No. 1/2004 on Amendments to Law No.41/1999 on Forestry

- In Article 83A, the control on mining activities in protected forest areas is more lenient, with the re-introduction of all permits/agreements issued prior to the previous Forestry Law (Law No.41/1999, Article 38 paragraph (4)).



- It is not explicitly expressed that open pit mining is restricted in protected forest areas. On the other hand, a regulation in the previous Forestry Law had expressly prohibited this practice.

#### **Government Regulation No. 76/2008 on Forest Rehabilitation and Reclamation**

- This Government Regulation is intended as a legal basis in the arrangements of fair and participative forest rehabilitations and reclamations.
- This regulation does not regulate the detail mechanism for people's involvement in forest rehabilitation and reclamation. It is only stated through public consultation, partnership, and information conveyance (Article 52 paragraph (1) and (2)). There is no technical regulation on the mechanism of people's involvement in forest rehabilitation and reclamation.
- This regulation has yet to regulate people's participation (particularly women) in the controlling process of forest rehabilitation and reclamation, as stated in Article 55.

#### **Government Regulation No. 3/2008 on changes of Government Regulation No. 6/2007 on Forest System, Forest Management and Utilisation Planning**

- This government regulation is a legal basis which regulates forest planning, forest management plans and utilisation of forest and forest area.
- This regulation does not regulate the mechanism for the public to convey their aspiration towards the planning of forest management as stated in Article 13 paragraph (1), and no technical rule is mandated to regulate the issue.
- It also does not regulate the mechanism for the public's feedback regarding any disappointment related to forest management.
- Adequate articles in the previous regulation, which regulates 5% of the land shall be allocated to build partnerships with the local community, have been nullified in the new regulation (Article 75 paragraph (1) letter i). This regulation no longer sets the area of land which is obliged to be allocated for partnerships.

#### **Government Regulation No. 4/2001 on Control over Environmental Degradation and/ or**

#### **Pollution Incurred by Forest and/ or Land Fire**

- This regulation arranges the mechanism for damage control and environmental pollution related to forest and land fires.
- Article 16 does not regulate the institutional mechanism/public feedback procedures and feedback for public dissatisfaction in the granting process of business permits.
- This regulation does not mention the mechanism/procedure for the public to gain information in order to collaborate in damage control efforts and/or environmental pollution related to forest/land fires, as stated in Article 45 paragraph (1).
- In addition, it does not provide a feedback mechanism for public dissatisfaction (including for women) if their rights to access information in the efforts to control environmental damages and/or pollution (as stated in Article 45 paragraph 1) are not fulfilled by the governor/regent/mayor.
- It also fails to regulate a strict sanction mechanism if the business permit holder does not carry out an environmental damage/pollution control, as stated in Article 38.
- This regulation does not provide a feedback mechanism for public dissatisfaction (or lawsuit) if in the future scientific proofs are found to prove the reversed condition (that the environmental damage is not caused by natural disasters or other factors stated in Article 51 Paragraph 2). If so, holders of the Business Permit are obliged to compensate the loss.

#### **Government Regulation No. 10/2010 on the Procedure of Changing Allocation and Function of Forest Area**

- This governmental regulation regulates the stages and mechanism for changes to the functions of forest areas.
- This regulation does not specifically grant participation rights for women.
- It does not regulate the procedures (institutional mechanism) for the public to convey their aspiration regarding decision-making for changes to the allotments and functions of forest areas.
- It does not mandate a technical regulation for public participation in the decision-making process for changes to the allotments and functions of forest areas.

#### **Regulation of the Minister of Forestry P.55/ Menhut-II/2011 on the Mechanism for Business License Application for the Utilisation of Timber Forest Products from Community Plantation Forests**

- The subordinate legislation from Article 40 paragraph (7) Government Regulation No. 6/2007, which was updated with Government Regulation No. 3/2008
- Its objective is to provide a greater certainty and ease in business as well as evaluation results
- There is no mechanism to guarantee that the dissemination to villages regarding regulations of the area allocation for Community Plantation Forest is not only carried out as a formality.
- Women's access (both as an individual and as a co-operative/Plantation Forest Group) has not been firmly guaranteed in accessing the application to receive Business License for the Utilisation of Timber Forest Products from Community Plantation Forests. The development of Community Plantation Forest (CPF) includes the organizational development of CPF permit holders, transfer of forestry-related knowledge and skills, planning and execution of CPF, work and business opportunities, participation and attitude in CPF development and execution.

#### **Minister of Forestry Regulation No. P.16/Menhut-II/2014 on Guidelines of Borrow-to-Use Forest Areas**

- This regulation does not regulate the importance of public participation in the permit grant of borrow-to-use forest areas, but the Holder of this borrow-to-use forest area permit is under the obligation of empowering the people.
- This regulation does not specifically grant the participation for women.
- No mechanism for public involvement in determining/defining the social and economic condition of the local people which are included in the technical considerations in agreeing to the exploitation of forest areas.

#### **Regulation of the Directorate General of Forest Protection and Natural Conservation P. 2/ IV-SET/2014 on the Founding and Mentoring of Masyarakat Peduli Api (Fire Care Community)**

- This regulation regulates the establishment of Masyarakat Peduli Api (Fire Care Community or MPA) as part of the fire/land fire control program, including the arrangements of the organising, infrastructure and facilities, as well as the evaluation monitoring and funding of MPA.
- The process of determining the target villages established by MPA does not involve the public's aspiration (and women in particular), particularly for the local people whose villages are vulnerable to land/forest fires but are not accommodated as target villages by the local Head of Forest Management Unit.
- It does not explicitly mention that women can also be nominated as MPA members (by the village or district officials) as stated in Article 6 paragraph (1).
- Note: The Fire Care Community (MPA) is a voluntary-based group for people who are concerned about fire/land fire control. The member will have been trained/equipped for such situations and can be relied on to assist in forest fire control activities.

#### **B. A Critical Note on Policies on Plantation**

##### **Law No. 39/2014 on Plantations (in lieu of Law No. 18/2004 on Plantations)**

- This regulation is yet a subordinate legislation which regulates the partnership of plantation business, therefore the local government does not feel obliged to regulate local regulations on plantation building partnerships, particularly on the companies' obligations to carry out community empowerment programs.
- There is yet a regular mechanism for public participation (and women in particular) in every stage of plantation activities. This regulation does not mandate a subordinate regulation on people's participation in every stage.

##### **Minister of Agriculture Regulation No.98/Permentan/OT.140/9/13 on Guidelines for Plantation Business Permits**

- This regulation is a legal basis in the issuance of permits and implementation of plantation business activities.
- It does not regulate the obligation of a more representative public participation in decision-making forums related to the transfer of lands and its compensations between plantation businessmen and local landowners, as stated in Article 24.



- It does not regulate a stricter supervision mechanism alternative for the issuance of plantation business permits, the reporting of permit issuance to the Minister, the control of plantation businessmen who fail to fulfill their obligations.

#### **Government Regulation No.27/2012 on Environmental Permit**

- This regulation regulates the obligation for every Business/Activity which is subjected to EIA or Environmental Management Effort and Environmental Monitoring Effort (UKL-UPL) to obtain an Environmental Permit.
- In Article 10 paragraph (2), there is no mechanism which guarantees the impartiality of the EIA Consulting companies hired by the initiators. It only regulates that the consulting company shall provide documents proving it is a registered company and possesses a certificate of competency in drafting EIA. However, it still lacks the point that such companies should be able to be publicly audited.
- This regulation also does not regulate a transparent

and participative mechanism in appointing members of the Evaluation Commission (KPA). It also does not regulate the people's rights (particularly women) to access information such as names of the KPA members upon the establishment of the Commission, as stated in Article 54 paragraph (1).

#### **Minister of Forestry and Agriculture Decree No.728/Kpts/II/1998 on the Maximum Size for Forest Concessions and Forest Clearing for Plantation Cultivation**

- This decree regulates the maximum size of forest concessions and forest clearing for plantation cultivations, with the objective of enhancing people's participation, increasing efficiency and productivity in maximizing natural resources, as well as realizing sustainable principles of fairness and development, in order to reap maximum benefit for the people's prosperity.
- It does not regulate a strict sanction mechanism if rules regarding the maximum size of forest concession and clearing is violated.



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#### **Regional Regulation of Pelalawan Regency No.12/2004 on Retribution for Plantation Permit**

- This regulation does not regulate the mechanism/procedures for farmers, planters, and the local community in general to be involved in development of plantation business (which is licensed by the Head of Region or authorized Official), as stated in Article 3 paragraph (6).
- This regulation does not specifically grant women participation to enable them to access the plantation development program in collaboration with companies.
- It does not regulate the mechanism/procedure of empowering the locals which the plantation companies are subjected to (both individually and institutionally), making it difficult for the community to access. The locals' rights to be empowered are stipulated in Article 34 paragraph (1).

#### **C. A Critical note on Policies on Spatial Planning**

##### **Law No. 26/2007 on Spatial Planning**

- The legal basis for the national government, regional government, and the community in the implementation of spatial planning which includes the regulation, training, implementation and monitoring of spatial planning.
- This law does not specifically grant the participation of women.
- It does not describe the procedures/mechanisms provided for public participation, as stipulated in Article 65 paragraph (1).
- It does not describe in detail the lawsuit mechanisms (to which court level), in the case of infringements of rights or deprivations which occur to the public due to the implementation of spatial planning, as stated in Article 66 paragraph (1).

##### **Government Regulation No. 15/2010 on Spatial Management Implementation**

- This government regulation regulates the mechanism for spatial planning, from planning to monitoring the implementation of spatial planning.
- This regulation does not specifically grant the participation of women.

- It also does not include a mechanism for complaints or a process for feedback in the case of disappointments or dissatisfaction about the plantation planning process.
- It does not describe a detailed procedure (regular mechanism) on involving the public in the conceptualisation.
- There is no Ministerial Regulation on the mechanism for the arrangement process of spatial planning, as stipulated in Article 21 paragraph (3), which includes a more detailed procedure of public involvement.

#### **Government Regulations No. 68/2010 on Forms and Procedure of the Public's Role in Spatial Management**

- This Government Regulation regulates the form and procedure of public roles in spatial management in stages such as spatial planning, spatial utilisation, and control of spatial utilisation at the national, provincial, and/or city levels.
- This law does not specifically grant women participation.
- This law does not emphatically give a mandate to the government and/or regional government to oblige an active public role in spatial planning, as stipulated in Article 7 paragraph (1).
- It does not provide a regular mechanism for public involvement in spatial management in spatial planning, spatial utilisation, and control of spatial utilisation so that it still fails to guarantee people's rights (particularly women) to be involved.
- It does not regulate the public's control mechanism in detail (the mechanism of filing a lawsuit at Court) as stipulated in Article 66 paragraph (1) No. 26/2007.
- It does not have a subordinate regulation up to the Head of National Land Agency/Ministry of Agriculture and Spatial Planning level.

#### **D. A Critical Note on Policies on Environmental Management/ Environmental Impact Assessment**

##### **Law No. 32/2009 on Environmental Protection and Management**

- This law regulates the management and control of environment at the national and regional levels.



- There is no mechanism for sanctions or public feedback is the government and initiator of business/activity does not announce the plans and carry out a public consultation prior to the business/activity implementation, particularly to the people most affected.

#### **The Decree of State Minister of the Environment No. 40//2000 on the Work Guidelines of the Assessment Committee of the Environmental Impact Analysis**

- The objective of this regulation is to be a guideline for the EIA Commission in carrying out their analysis on the environmental impacts.
- This regulation does not specifically grant women participation.
- It does not regulate the feedback mechanism for the public in the case of unaccommodated recommendations, opinions, and responses from the affected community members in the determining process of the environmental impact assessment scope, the public's rights as referred to in Article 12 paragraph (8).

#### **The Decree of the State Minister of the Environment No. 41/ 2000 on the Guidelines of Forming the Assessment Committee of the Environmental Impact Analysis in A Regency/City**

- This regulation is intended as a reference in the establishment of EIA Commission at the regency/city level.
- This regulation does not specifically grant the participation of women.
- There is no democratic mechanism (for instance through election) to members of the National and Regional EIA Commission which represents affected community members, making it difficult to control their opinions if they are deemed not representative enough.
- There is no accountability mechanism of the EIA Commission's decision-making process (for instance, EIA Commission's meetings must be open and accessible to the public).

#### **State Minister of Environment Regulation No. 17/ 2012 on Public Involvement in the EIA Process and Environmental Licenses**

- This regulation controls the procedures of public participation in the analysis process on environmental impacts; requests and issuances of Environmental Permits in the effort to protect environmental management.
- This regulation does not specifically grant the participation of women.
- There is no sanction mechanism if the agency or initiator responsible does not announce the business/activity plans to affected community members.
- There is no sanction mechanism if the agency or initiator responsible does not carry out a public consultation (which is carried out prior to the drafting of the EIA Terms of Reference document).
- In Chapter II of the regulation's Annex, there is no mechanism for a forum intended to encourage public participation in the EIA process in order to make it more representative. The requirement of public participation representation based on the Environmental Impact Management Board (Bapedal) Head Decision No.56/1990 is supposed to be 30% of the total population in the area of study, as stated in the Social Economic Cultural Study Method of EIA drafting.

#### **Minister of Domestic Affairs Regulation No. 67/ 2012 on Guidelines in Implementing Strategic Environmental Assessment in Drafting or Evaluating Regional Development Plan**

- It has yet to be regulated in a Government Regulation (PP).
- This regulation regulates that the implementation of Strategic Environmental Assessment (KLHS) should be integrated with the implementation of regional development planning (RPJPD, RPJMD and Renstra SKPD).
- It has yet to regulate the rights of people (and women in particular) who are potentially impacted to be involved in discussions surrounding KLHS.

#### **Minister of Environment Regulation No.8/2013 on Procedures of Evaluation and Monitoring of Environmental Documents and Permits Issuance**

- This regulation intends to provide guidelines on the implementation of the EIA Evaluation Commission (KPA); procedures of EIA evaluation and Environmental Permit issuance; procedures of Environmen-



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tal Management Effort and Environmental Monitoring Effort (UKL-UPL) evaluation and issuance of Environmental Permit.

- It does not regulate that stages of the evaluation of EIA documents in EIA Evaluation Commissions (KPA) Meetings and CPA Technical Team Meetings should be transparent. Documents considered in determining KPA's recommendations of environmental feasibility/unfeasibility and Environmental permit issuance are not obliged to be accessible by the public, including women, as stated in Article 12 paragraph (2), and in Annex 4 of this Minister Regulation.

#### **Regional Regulation of Siak Regency No.1/2013 on the Corporate Social and Environmental Responsibilities**

- This regulation regulates the forms and mechanism of corporate social and environmental responsibilities in Siak Regent. In addition, its objective is to provide a direction to corporates in synergising their social and environmental responsibilities in the social, environmental, health, education, economy, and infrastructure at the village and city levels in order to optimise regional development programs.
- This regulation does not specifically grant the participation of women to access CSR programs.
- There is no feedback mechanism for the public in

the case of intransparent Corporate Social and Environmental Responsibility (CSR) programs, or transparent yet disregards public aspirations as referred to in Article 15 paragraph (3).

#### **E. A Critical Note on Policies on Conflict Resolution for Social, Environment, Agriculture, and natural Resources**

#### **Law No. 51/2009 on the Second Ammendment of Law No. 5/1986 on the State Administrative Court**

- This law regulates the mechanism of state administration judicature in Indonesia, procedures of filing lawsuit to State Administration Official (or its statute), in this context, on the issuance of Plantation/Permit/Forestry/Environment Business Permit which has a legal impact on the complainant (impacted community).
- It does not regulate the guarantee of people's access rights to information on complaint procedures upon the indications of violation of ethical codes and judge conducts (particularly judges who handle forest/environmental/plantation conflicts in state administrative courts), so that the public can access procedures more transparently, without having to be subjected to illegal charges. It only