

Local Community Dimension of Indonesian Forest Policy and Customary Land Tenure in East Kalimantan¹

By

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Abstract

This paper briefly describes the local community dimension of Indonesian Forest Policy focusing particularly on the three main Indonesian community forestry policies : the HKm (Hutan Kemasyarakatan / Community Forest), HTR (Hutan Tanaman Rakyat / Community Based Tree Plantation) and HD (Hutan Desa / Village Forest) schemes which are not precisely in line with the principles of collaborative forest governance proposed by Inoue (2009). The authors assert that the main critical factor neglected in Indonesian related Forest Policies is the Customary Land Tenure of the local communities which reflects various subjects holding different rights over particular types of forest lands, as in the case of forests in East Kalimantan.

The authors suggest that for the success of the Collaborative Forest Governance, it is imperative to precisely know the characteristics of different types of local forest lands as the objects of the local Customary Land Tenure rights and to identify various subjects holding different rights on different types of the local forest lands. As those variables are prominent in shaping the success of Collaborative Forest Management programs, they need to be sufficiently taken into account in forest governance policies.

Keywords

Local community, Indonesian forest policy, customary land tenure, Community Forestry, principles of collaborative forest governance, prototype design guidelines.

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1. Introduction

As commonly found in many tropical countries, human being (forming the local communities – See Kaufman, 1953 and also Sardjono, 2004^a), accompanying with their cultures have become an integral part of the Indonesian forest ecosystem. Their existence had even been long (decades or even thousands of years) before the establishment of the Indonesian country in 1945. Until now many local community groups still live traditionally inside the forest areas, either in the production forests or in the protection forests and conservation forests. Their lives depend on supplies of the forest products for variety of consumptions and uses. Therefore, many local communities have developed and tried to maintain their local wisdoms in order to conserve the forest resources for their lives and livelihood (Moniaga, 1994; Ukur, 1994; Zakaria, 1994; Widjono, 1998^{a,b}; Colfer, et al., 1999; Sardjono and Samsedin, 2001; Sardjono, 2010).

The data of Indonesian Ministry of Forestry (Dephut, 2005), disclosed explicitly that at least 48.8 of about 220 million people of Indonesia live surrounding the forests, 10.2 millions of them were poor and 9.4 millions depended on forest and timber industries. Sardjono (2007; see also Perhutani, 2006), even estimated much higher than the above mentioned data, since in Java alone : 5,617 villages settled surrounding forest areas and more or less 21.0 millions poor people still needed access to the forests for their livelihood. Local communities, especially those in outer Java islands up to now also depend on the forests for varieties of land uses and production activities, such as shifting cultivation, collecting non-timber forest products, hunting and river fishery. Initially the activities were oriented more for subsistence economic and socio-cultural orientations, but recently also done for their cash income (DeBeer and McDermott, 1989; Sardjono et al., 2001; Sheil, et al., 2002; Sardjono and Inoue, 2007). The later case emerges when the communities have higher market accessibility and some of their daily needs have to be fulfilled from outside markets, partly because of limited remaining local natural resources to use. In such situation, cash money in hands becomes more important for the communities, resulting to a certain extent more intensive use of the marketable forest resources as a consequence.

Realizing such situation and dynamics, in order to improve the well-being of the local communities, parallel to the efforts to optimize the use of available forest resources, Ministry of Forestry (MoF) has strived to take social aspects into account in Indonesian forest policies. The widely well-known forest policies which have been promoted by the Ministry of Forestry (MoF) related to the community-based forest management schemes are *Hutan Kemasyarakatan / HKm* (Community Forest), *Hutan Tanaman Rakyat / HTR* (Community based Tree Plantation) and *Hutan Desa / HD* (Village Forest).

This article aims to describe the position of local people in the government policies related to those three community-based forest management schemes, in light of community-based forest management concepts and implementation of collaborative forest governance. For the basis of discussion, a case study on the Bahau Dayak, a native community group in East Kalimantan is taken as an example. The critical reviews done based on prototype guidelines or in Japanese called as *kyouchi* principles of collaborative forest governance proposed by Inoue (2009; 2011), which are derived from and evolve out of the previously design principles for common property rights/CPRs (e.g. Ostrom, 1999).

2. Local Community in the Early Course of Indonesian Forest Policies

Since intensive forests industrialization in the outer islands of Indonesia in the beginning of the 1970s there was already state political will to take local community welfare into the large scale natural forest exploitation policies. In every forestry agreement with the forest enterprises, life and living of the local communities which are mostly forest dependent, have to be ensured by the forest enterprises during the concessionaire operational works. Prioritizing local man-power recruitments for instance was even required when industrial tree plantation as well as timber industries were introduced one decade later. It is a shame however, that most of the efforts gave practically no optimum impacts, not only because there was no serious operational implementation by the companies, due to weak government control, but also because the policies are not well compatible with the local condition characters (Sardjono, 2004^{a,b}; 2007), as described in the following table :

Table 1. Factors Causing Limited Positive Impacts of Large Scale Forestry Policies to Local Communities during the Industrial Timber Era (1970-1990)

| No. | Forest Industrialization Era |
|-----------|--|
| (1) | (2) |
| 1. | Natural Forest Exploitation (Starting the beginning of 1970s) |
| | <ul style="list-style-type: none"> • Most of the sub-activities of forest exploitation (tree felling using chainsaws and bulldozers) were beyond the local communities' habitual activities (shifting cultivation); • A lot of companies' regulations limit activities of local communities inside the concession areas e.g. prohibition to collect forest products and to do shifting cultivation; • Not all social obligations concerning local communities' social economy are implemented by timber companies (e.g. the recruitment of local workers). |
| 2. | Timber/Wood Industries (Starting mid 1980s) |
| | <ul style="list-style-type: none"> • Almost all industries were located near big cities or far away from the local communities; • Modern technologies used in timber industries offered limited opportunities only to those who had better education (especially young generation) to participate; • Compared to its demand, the availability of working opportunities was too low, and therefore lead to hard competition amongst the local communities as well as between local communities and migrants; • The situation created increasing urbanization (in order to look for jobs in towns) leaving children, women, and old people in villages. |
| 3. | Industrial Timber Estate (Starting end of 1980s) |
| | <ul style="list-style-type: none"> • Outsiders' negative perception on local communities' performance and characters (such as low education, lazy, and strongly tighten to traditional culture) caused local communities' youths felt inferior to compete with migrant workers in getting job in local tree plantations; • The establishment of industrial timber estates in respective appointed areas were merely based on formal legal aspects (permit obtained from the central government) and rarely supported by prior social consent from the local communities; • The activities of the industrial timber estates did not involved local institutions and so |

| Forest Industrialization Era | |
|------------------------------|---|
| (1) | (2) |
| | <p>frequently overlapped (or in contrary) with the local communities' interests;</p> <ul style="list-style-type: none"> The companies' bad social assimilation with the local communities had created misperception amongst most local communities that the industrial timber estates' operations merely caused destruction on local natural forests and forest resources without proper benefits for the local communities. |

Source: Sardjono (2004^{a,b};2007)

With such background in the beginning of 1990s the government tried to obligate timber concessionaires to share small percentage of their profits to implement community development programs (popularly known as *Bina Desa Hutan / BDH* or *Pembinaan Masyarakat Desa Hutan / PMDH*). The programs were not only intended to increase the community welfare, but also to create positive image of the communities about the companies, and generate mutual cooperation. However, as proved in Wentzel observation (1997) the success of the programs was doubtful. It was not only related to unserious efforts of the companies in the implementation of the program, but also because such charity programs were far beyond the substantial needs of the communities such as local land tenure recognition and communities' safety access to forest resources. Therefore, many groups of the local communities even had negative impressions of the BDH / PMDH programs, because their traditional dependencies on the forests had been broken off by the introduction of different non-forestry based economic activities and their local traditional values were gradually modernized under the umbrella of the term "community empowerment". A BDH /PMDH progress monitoring conducted by Sardjono, et al. (1999) showed that from indicators of the three principles used for the evaluation of the program performances only administrative responsibilities were perfectly fulfilled by most of the timber concession holders. While most parts of implementation process and targeted achievements of the programs were failed to fulfill. Many parties blamed forestry administration, as sources of corruption, collusion and nepotism, based on evidences, was responsible for the failures (LATIN, 1998; Ascher, 1999; Dauvergne, 2001).

Those situations made the relationship between the concession holders and the surrounding communities in general in a state of disharmony and full of distrusts. At that time such conditions according to Sardjono (2004^a), under the strong (and repressive) government of the New Order Regime, could be under-covered and suppressed at the level of contraventions (Soekanto, 1990). However, after the break of the people movement in the beginning of 1998 (known as 'reformasi' or reformation), social conflicts loosely broke in almost all management units of forest concessions. As in Wulan, et al. (2004) observation, during 1997-2003 there were totally about 359 cases of forest related conflicts in Indonesia appeared in public media, comprising not only conflicts in the production forest areas but also in protection forests and even also in the conservation forest areas.

3. Introduction of the Community Forestry Schemes

Learning from the facts of minimum positive impacts of the previous timber companies' community development programs on the local communities and also because of strong drive

from non-governmental organizations and university academicians, Indonesian government started to introduce a couple of community forestry schemes, beginning in 1995, with three main schemes : the Community Forest (or in Indonesian called as *Hutan Kemasyarakatan / HKm*), the Community-based Tree Plantation (or *Hutan Tanaman Rakyat / HTR*) and the Village Forests (or *Hutan Desa / HD*). The three schemes complement Private Forests (*Hutan Rakyat / HR*) scheme, which administration is beyond the authority of the Ministry of Forestry. The Private Forests (*Hutan Rakyat / HR*) had been earlier acknowledged by the Government, since they are developed outside the forest areas (on private lands in the non-forest areas / *Kawasan Budidaya Non Kehutanan / KBNK*).

From the observation after more than fifteen years of implementation, only in the legal aspects the three main schemes are considered very dynamic, but in the field implementations they still show a very slow progress. The following table tries to depict the information and data of those three community forestry schemes (HKm, HD, and HTR).

Table 2. Legal Dynamics and Progress of Community Forests (HKm), Village Forests (HD) and Community-based Tree Plantation (HTR) Schemes Implementation in Indonesia

| Issues | Community Forests (HKm) | Community -Based Forest Plantation (HTR) | Village Forests (HD) |
|---------------------------------------|---|--|---|
| (1) | (2) | (3) | (4) |
| 1. Program Start | 1995 | 2007 | 2008 |
| 2. Responsible Institution | Directorate General of Watershed Management and Social Forestry, Ministry of Forestry | Directorate General of Forestry Business Management, Ministry of Forestry | Directorate General of Watershed Management and Social Forestry, Ministry of Forestry |
| 3. Legal Basis | | | |
| a. Act | <ul style="list-style-type: none"> No. 41/1999 (on Forestry) | - | <ul style="list-style-type: none"> FA No. 41/1999 (on Forestry) |
| b. Government Regulation | <ul style="list-style-type: none"> No. 6/2007 jo. No. 3/2008 | <ul style="list-style-type: none"> No. 6/2007 jo. No. 3/2008 | <ul style="list-style-type: none"> No. 6/2007 jo. No. 3/ 2008 |
| c. Minister Decree/ Regulation | <ul style="list-style-type: none"> No. 622/1995 (on Guideline of HKm) No.677/1998 jo. No. 865/1999 (on HKm) No. 31/2001 (on Implementation of HKm) No. P. 37/2007 jo. P. 18/2009 jo. P. 13/ 2010 jo P. 52/2011 (on HKm) | <ul style="list-style-type: none"> No P. 23/2007 (on HTR) No. P. 5/2008 (Procedure of Timber Utilization in HTR within plantation forests) No. P. 9/2008 (on Requirements to get Revolved Fund for HTR Establishment) | <ul style="list-style-type: none"> No. P 49/2008 jo. P14/2010 jo. P 53/ 2011 (on HD) |
| d. Director | <ul style="list-style-type: none"> P 07/2009 jo P 10/ | <ul style="list-style-type: none"> P. 05/2010 (on Tech- | <ul style="list-style-type: none"> P. 01/2010 (on Guide- |

| Issues | Community Forests (HKm) | Community -Based Forest Plantation (HTR) | Village Forests (HD) |
|---|--|--|---|
| (1) | (2) | (3) | (4) |
| General Regulation | 2010 (on Procedure for HKm Implementation) <ul style="list-style-type: none"> • P 01/2010 (on Guideline for Identification and inventory of HKm/HD areas) • P 05/2010 (on Technical Guidance of Forest Area Allocation for HKm/HTR/HD) | nical Guidance of Forest Area Allocation for HKm/HTR/HD) | line for Identification and inventory of HKm/HD areas) <ul style="list-style-type: none"> • P. 05/2010 (on Technical Guidance of Forest Area Allocation for HKm/HTR/HD) • P. 11/2010 (on Procedure for HD Implementation) |
| 4. Target Areas | <ul style="list-style-type: none"> • Production Forests (no legal concession) • Protection Forests | Production Forest (no legal concession) | <ul style="list-style-type: none"> • Production Forests (no legal concession) • Protection Forests |
| 5. Duration | 35 years and can be extended in every 5 years | 60 years and can be extended max 35 years | 35 years and can be extended in every 5 years |
| 6. Institution | Farmer Groups | (a) Individuals; (b) Groups; or (c) Cooperation | Village Institution |
| 7. Community Rights | | | |
| a. Production Forest | <ul style="list-style-type: none"> • Timber (only from reforestation/replanting) • Non-Timber Forest Products • Ecological Services • Area Utilization | <ul style="list-style-type: none"> • Timber | <ul style="list-style-type: none"> • Timber • Non-Timber Forest Products • Ecological Services • Area Utilization |
| b. Protection Forests | <ul style="list-style-type: none"> • Non-Timber Forest Products • Ecological Services • Area Utilization | - | <ul style="list-style-type: none"> • Non-Timber Forest Products • Ecological Services • Area Utilization |
| 8. Achievements (until September 2011) | | | |
| a. Official Target (until 2014) | • 2,000,000.00 HA | • 5,400,000.00 HA | • 500,000.00 HA |
| b. Verified Areas | • 402,596.00 HA | - | • 181,541.00 HA |
| c. Established Areas | • 170,820.00 HA | - | • 65,234.00 HA |
| d. Permitted Areas | • 41,330.00 HA | • 90,414.00 HA | • 10,310.00 HA |

| Issues | Community Forests (HKm) | Community -Based Forest Plantation (HTR) | Village Forests (HD) |
|-------------|----------------------------|---|-------------------------|
| (1) | (2) | (3) | (4) |
| e. Location | • 24 Provinces | NA | • 13 Provinces |

Sources : Silalahi and Santosa (2011); (Sardjono, 2012)

Notes : FMD/FMR = Forestry Minister Decision/Forestry Minister Regulation
(*Permenhut*); DGR = Directorate General Regulation; jo. (juncto = added); HAs
= Hectares; NA = Data Not Available; Has = Hectares

From the above table it can be seen that although there is probably `political will` of the government to involve people and / or to give an access to local communities in forest management, `political commitments` for seriously implementing social or community forestry schemes can be concluded as still far beyond the expectation. Sardjono (2004^a) observed that most government initiatives, especially related to forestry conflict resolution, are still only in `appearance` rather than at real `substance` level.

From analysis of the legal basis used for the implementation of social / community forestry in Indonesia, it can be concluded that one factor which may contribute to the unattractiveness of the schemes amongst the local communities is its business orientation. There is clear impression that all regulations related to community forestry (especially in the initial stage of their development, and it remains also until now) are directed to utilize local human resources to optimum used of forest resources for economic interests and therefore it cannot optimally meet the real variety needs of the local communities.

It is clearly understood that cash income is seen as the most important element of forest benefits, but money is not the only need of the people. In general the local communities' interests to maintain and manage the forests are also covering social equity (i.e. land and resource tenure) as well as cultural identity (i.e. local wisdoms and traditional knowledge). Those interacted interests have been reflected e.g. through hundreds of forest based local traditional resource management practices (incl. varieties of forest-gardens – cum - agroforestry systems) that can be found in almost all local community groups in Indonesia (see Zakaria, 2004; Suharjito, et al., 2001; Arifin, et al., 2003). Unfortunately, in fact almost no local practices and their traditional values (including resource and land tenure arrangements) are fittedly accommodated by the government regulations and different official schemes as have been discussed above.

Considering such facts, many parties are still questioning the assertions of giving proper attention to and of sufficiently involving local communities, in for instance, in the Indonesian Ministry of Forestry (MoF) decrees related to the REDD+. Thus far, the Indonesian Ministry of Forestry (MoF) has issued three successive decrees concerning the REDD+ program implementation, namely (a) the Ministry of Forestry Regulation (in Indonesian *Permenhut*) No. P.68/Menhut-II/2008 (*on the Implementation of Demonstration Activities for the Reduction of Carbon Emission from Deforestation and Forest Degradation*) : (b) *Permenhut* No. P.30/Menhut-II/2009 (*on the Procedure for Reduction of Emission from Deforestation and*

Forest Degradation/REDD); and (c) Permenhut No. P.36/Menhut-II/2009 (*on the Procedure of Utilization Permit for Carbon Sink and Absorption in Production and Protection Forests*). All regulations include the position and roles of local communities, be they are primary or supplementary and direct or indirect.

Questions and worries about the local communities' position and roles are quite logic, since the implementation of REDD+ without substantial reforms in the existing forestry governance system in Indonesia could give negative implications to local communities or forest dependents, i.e. loss of access to the forests, suppression of traditional activities, settlement displacement and horizontal social conflicts (see e.g. Cortez and Stephen, 2009). In addition, Silalahi and Santosa (2011) based on their study on the local readiness for the implementation of REDD+ with the Community Forestry schemes, concluded that : besides numerous chances and opportunities available to the local communities, local communities are not fully ready to participate with the schemes due to a number of reasons e.g. : Community Forestry is in general small-scale (which means may not be profitable), local communities usually have low financial, human resources, institutional and technological capitals, the schemes will have long term yields, the activities usually run naturally with no guarantee for leakages, and also still unclear distribution arrangements of the REDD+ compensation amongst the community members.

Those worries have been the reasons for asserting the need to develop for examples the Free, Prior and Informed Consent (FPIC) as well as the Social (and Ecological) Safeguards Instruments, for ensuring among others the recognition of local community rights and position, and all at once guaranteeing the sustainability of the implemented REDD+ programs, including those through the Community Forestry schemes. However, FPIC as well as Social (and Ecological) Safeguards Instruments will be of no use unless there are substantial reforms in the existing forestry governance system and its related forest policies.

4. Prospectives for Forest Governance and Policy Improvements

Realizing the local communities' fragile conditions as posed by Silalahi and Santoso (2011) mentioned in the previous paragraph, and considering the roles that might be played by external stakeholders, we are in the position of supporting the ideas of promoting the collaborative forest governance. This type of governance is organized through collaboration amongst various stakeholders who have a range of interests in local resource use and management (Inoue, 2011). The collaboration should be developed through a consensual "principle of involvement" (Inoue 2009).

The success of the design and development of Collaborative Forest Governance will depend very much on how well the above mentioned principles are appropriately used both at the policy and field implementation levels. A number of experts have strived to develop and introduce design principles of Common Property Resources such as the Community Forests, supporting the application of the principles (Ostrom, 1990 : McKean,1999 ; Stern et al.,2002 ; and Ostrom, 2005). Evolved out of the design principles, Inoue (2011a) proposed prototype design guidelines for the Collaborative Forest Governance comprising nine design guidelines i.e. : (1) degree of local autonomy ; (2) clearly defined resource boundary ; (3) graduated membership ; (4) commitment principle ; (5) fair benefit distribution ; (6) two-storied

monitoring system ; (7) two-storied sanctions ; (8) nested conflict management mechanism ; and (9) trust building.

For forest governance and policy improvement, those prototype design guidelines would be of course of worth to use, taking account of the notes given by Inoue (2011^b) for the implementation of the design guidelines :

- Design guideline 1 (**Degree of local autonomy**) : there is always room for designing Collaborative Forest Governance in accordance with the degree of local autonomy, unless the local community have no autonomous function.
- Design guideline 2 (**Clearly defined resource boundary**) : demarcation of resource boundary is often difficult task because of obscure ownership.
- Design guideline 3 (**Graduated membership**) : **based on** 'open-minded localism', some of the local people act as 'core members' (first class members), who have the strongest authority, co-operating with other graduated members who have relatively weaker authority (second class and third class members).
- Design guideline 4 (**Commitment principle**) : this principle recognises the authority to make decisions in a capacity that corresponds to their degree of commitment to forest use and management. Decision-making is not equal, but should be fair and just.
- Design guideline 5 (**Fair benefit distribution**) : **benefit distribution is not necessarily** equal, but is fair in accordance with cost bearing.
- Design guideline 6 (**Two-storied monitoring system**) : the core members of Collaborative Forest Governance monitor whether other members obey the rule. Then local government monitor whether the rule itself is appropriate for sustainable forest management by scientific way.
- Design guideline 7 (**Two-storied sanctions**) : The core members have responsibility, which is supported by the local government.
- Design guideline 8 (**Nested conflict management mechanism**): Informal conflict resolution in the community with informal intercession by the local government supported by formal mechanism at local and national level.
- Design guideline 9 (**Trust building**) : for cooperation with outsiders, forming, maintaining, and strengthening social capital is essential.

Following the design principles, at the policy level appropriate arrangements should be assigned to allow sufficient degree of local autonomy in the use and management of local forest lands and the resources there in. While at the field implementation level it is imperative to identify relevant stakeholders who must involve in the collaboration (Purnomo et al., 2008 ; Colfer, 1995) particularly the local communities whose livelihood depends on the forests and in most cases also have traditional rights over the lands (Tribowo and Haryanto, 2001 ; Isozaki, 2003; Carter and Gronow, 2005 ; Purnomo et al., 2008). For appropriate Collaborative Forest Governance arrangements, clarity and understanding of customary land tenure and the local communities' rights over the forest lands would be helpful and decisive.

5. Customary Land Tenure and Forest Land Rights in East Kalimantan

From the theoretical perspectives, the so called “land” including the “forest land” has a quite broad sense. FAO and UNEP experts for example asserted that : “land is not regarded simply in terms of soils and surface topography, but encompasses such features as underlying superficial deposits, climate and water resources, and also the plant and animal communities which have developed as a result of the interaction of these physical conditions (Kutter and Neely, 1999). Therefore rights over the forest lands and their resources should be eticly and emicly seen for each Forest Management Unit, because the subjects bearing the rights over the forest lands and their resources might be distinctively different from one another (Devung, 2011).

Some experts have noticed that the rights over the forest lands and forest resources are in fact “bundles of rights” depicting “multiple rights” over the lands and their resources which are borne by some individuals or groups of different people (Schlager and Ostrom, 1992 ; Munro-Faure et al., 2002 ; Ostrom, 2003; Coleman, 2010). The synthesis of the multiple rights generally encountered in East Kalimantan context comprises 8 types of rights (Devung, 2011) :

1. Access rights
2. Withdrawal rights
3. Use rights
4. Control rights
5. Management rights
6. Transfer rights
7. Residuary rights, and
8. Ownership rights.

While from the perspective of the subjects bearing the rights (Platteau, 1995 ; Myers et al., 2007 ; Crewett et al., 2008 ; Tenaw et al., 2008 ; Devung, 2011), the rights over the forest lands and resources might be identified as :

1. Individual rights
2. Collective rights
3. Communal rights
4. Corporate rights
5. State rights, and
6. Open access.

To analyze what is in the “bundles of rights”, it is of worth to discern the main elements embedded in a right, i.e : the objects of the rights, the subject holding the rights, the nature of the rights, the types of the rights and the authority regulating the rights (Fauzi, 1998 ; Dietz, 2005). The following discussion will revolve around these entities relating the customary land

tenure and forest land rights in East Kalimantan context, taking the case from the Bahau Huang Tring community, in West Kutai District as our analytical focus.

5.1. Classification of Forest Lands

In principle, the classification of forest lands by the local communities in East Kalimantan is closely related to their shifting cultivation system with its fallow cycle, vegetation succession and forest regeneration (Abdoellah et al., 1993 ; Sindju, 2003). The general classifications of forests as : “primary / virgin forest” (*hutan primer / hutan perawan*) and “secondary forest” (*hutan sekunder / bekas garapan*) are identified by the local communities in a bit distinctive different ways, with a variety of local vernacular terms (Abdoellah et al., 1993 ; Gunawan et al., 1999 ; Nanang and Inoue, 2000 ; Sindju, 2003 ; Sardjono, 2004 ; Devung, 2011). In the Bahau Huang Tring community in West Kutai District the sequence of the vegetation succession and forest regeneration from the “young secondary forest (*tarah du’uk*)” to the “old growth forest” (*tu’an aya’*) and “primary forest” (*tu’an megan*) and their comparisons in forestry terminologies are as in the following Table 3 :

Table 3. Vegetation Succession and Forest Regeneration According to the Bahau Huang Tring Community in West Kutai District, East Kalimantan

| No | Regeneration Stage | | Tree Size in Local Name | Tree Diameter In Cm (DBH) | Regeneration Age Range |
|-----|--------------------------------------|--|-------------------------|---------------------------|------------------------|
| | Succession Stage in Local Vernacular | Succession Stage in Forestry Terminology | | | |
| (1) | (2) | (3) | (4) | (5) | (6) |
| 1 | <i>Tarah Du’uk</i> | Young Secondary Forest | <i>Dekayan Kung</i> | 20 – 30 cm | 10 – 20 years |
| 2 | <i>Tarah Aya’</i> | Young Secondary Forest | <i>Dekayan Lu’ung</i> | 30 – 40 cm | 20 – 30 years |
| 3 | <i>Tu’an Bekan</i> | Old Secondary Forest | <i>Dekayan Keliham</i> | 40 – 50 cm | 30 – 70 years |
| 4 | <i>Tu’an Aya’</i> | Old Growth Forest | <i>Tapah Keliham</i> | 50 – 60 cm | 70 – 100 years |
| 5 | <i>Tu’an Megan</i> | Primary / Virgin Forest | <i>Lekang Keliham</i> | 60 cm up | ≥ 100 years |

Source : Devung, 2011

In the forest land classification by the local people, as shown in Table 3 the “Young Secondary Forest” (*Hutan Sekunder Muda*) in Forestry Terminology is identified as the “*Tarah*”, consisting

of “*Tarah Du’uk*” (Young *Tarah*) and “*Tarah Aya’*” (Old *Tarah*). The “Old Secondary Forest” (*Hutan Sekunder Tua*) is identified as “*Tu’gn Bekan*” denoting that the forest land used to be farmed by someone who is still recognized and has been old enough so that the vegetation structures and species have been very similar to those of the “Old Growth Forest” and “Primary Forest”. The “Old Growth Forest” (*Hutan Klimaks*) is identified as “*Tu’gn Aya’*” denoting a mature forest and used to be farmed by someone who is already unknown, the vegetation structures and species have been very similar to those of the “Primary Forest”. The “Primary Forest” (*Hutan Primer/Hutan Perawan*) is identified as “*Tu’gn Megan*” which means “virgin forest with ample resources”.

5.2. Rights over Primary and Old Growth Forest Lands

In most indigenous local communities in East Kalimantan, as in our example here, in the Bahau Huang Trjng community, the prime rights over Primary and Old Growth Forest Lands are communal in nature. The rights are embedded in the rights of the local people as a community (*huang ji’ ukung*) to manage and to use their customary territory which they have occupied and controlled from generation to generation, inclusive the primary forest and the old growth forest lands therein. The Primary Forest Lands as above mentioned are identified as “*Tu’gn Megan*” which mean “virgin forests and having abundant resources” as above mentioned, because they have not ever been farmed or cultivated by someone and therefore have not yet been under exclusive rights of an individual, a household or a kinship group within the community. Old Growth Forest Lands are identified as “*Tu’gn Aya’*” denoting mature forests that used to be farmed by someone in the past which is already unknown, and therefore have not been anymore under exclusive rights of an individual, a household or a kinship group within the community. The prime rights over the Primary and Old Growth Forest Lands are therefore communal (Devung, 2011).

An exception is observed, however, within the Benua’ and Bentian Dayak communities in West Kutai District, where certain Primary and Old Growth Forest Lands are sometimes controlled collectively by kinship groups, whose ancestors had the privilege rights in the past as the guardians of the area (Devung, 2008). Amongst other communities in East Kalimantan, there is also a tradition of allocating a specific area of Primary and Old Growth Forest Lands within their customary / village territory as a reserved forest area, which is used only in occasions of need for the whole community common interests. For example, the *Tana’ Ulen* among the Kenyah Dayak communities and the *Tang’ Mawq’* among the Bahau Dayak (Eghenter, 2000 ; Nanang and Inoue, 2000).

Besides the rights of the local people as a community to manage and use the Primary and Old Growth Forest Lands within their customary territory, there are also individual rights of every community member to use certain resources or forest products in the Primary and Old Growth Forest Lands. For example, every community member can go hunting, taking woods for building materials, gathering forest fruits and vegetables, collecting marketable forest products and other life necessities in the Primary and Old Growth Forest Lands within their customary territory (Devung, 2011) except in the Primary and Old Growth Forest Lands belonging to the above mentioned reserved forest area (*Tana’ Ulen* or *Tang’ Mawq’*).

Since the rights over the Primary and Old Growth Forest Lands are embedded in the rights of the local people as a community to manage, control and to use their customary territory, according to the customary law the local people as a community and also as individuals have the right to prohibit other parties outside the local community members to use resources or forest products in the Primary and Old Growth Forest Lands within the customary territory, if there is no permit from the customary authority. Other parties outside the local community members therefore only have access rights with limited withdrawal and use rights (Devung, 2011).

Table 4 elaborates as the example the bundle of rights over the Primary and Old Forest Lands in the Bahau Huang Trjng community seen from the objects of the rights, the subject holding the rights, the nature of the rights, the types of the rights and the authority regulating the rights.

Table 4. Bundle of Rights over Primary and Old Growth Forest Lands

| No | Objects of the Rights | Subjects Holding the Rights | Nature of the Rights | Types of the Rights | The Authority Regulating the Rights |
|-----|-------------------------------------|---|----------------------|--|---|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 1 | Primary and Old Growth Forest Lands | Local People as a Community | Communal | <ul style="list-style-type: none"> • Access rights • Withdrawal rights • Use rights • Control rights • Management rights • Transfer rights • Residuary rights • Ownership rights | <ul style="list-style-type: none"> • Customary and Village Authority |
| | | Local Community Members as Individuals | Individual | <ul style="list-style-type: none"> • Access rights • Withdrawal rights • Use rights | <ul style="list-style-type: none"> • Customary and Village Authority |
| | | Other Parties outside the Community Members | Individual | <ul style="list-style-type: none"> • Access rights • Limited withdrawal rights • Limited use rights | <ul style="list-style-type: none"> • Customary and Village Authority |

(Source : Devung, 2011)

5.3. Rights over Old Secondary Forest Lands

The rights over Old Secondary Forests (*Tu'an Bekan*) are collective, and controlled by kinship groups originating from the same stem house (*huang ji' amin pu'un*). The "Old Secondary Forests" (*Tu'an Bekan*) have usually reached vegetation succession of 30 – 70 years which is equivalent to the age of 2 – 3 descent generations. Normally, some of the kinsmen have moved from the stem house to their own houses and still share the rights over the Old Secondary Forest lands which are owned collectively by all the kinsmen of the stem house (*huang ji' amin pu'un*) (Devung, 2011).

Trees and other forest products in the Old Secondary Forests can be taken and used by any households belonging to the stem house provided that other kinsmen are notified. Other parties outside the stem house can also take and use a limited number of trees or other forest products in the Old Secondary Forest lands provided that they have the permit from the stem house elders (Devung, 2011). Table 5 describes the details of the bundle of rights over Old Secondary Forests in the Bahau Huang Trjng community.

Table 5. Bundle of Rights over Old Secondary Forest Lands

| No | Objects of the Rights | Subjects Holding the Rights | Nature of the Rights | Types of the Rights | The Authority Regulating the Rights |
|-----|----------------------------|---|----------------------|--|---|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 2 | Old Secondary Forest Lands | Kinsmen of the Stem House | Collective | <ul style="list-style-type: none"> • Use rights • Control rights • Management rights • Transfer rights • Residuary rights • Ownership rights | <ul style="list-style-type: none"> • Stem House Elders |
| | | Families Living in the Stem House | Collective | <ul style="list-style-type: none"> • Access rights • Withdrawal rights • Use rights • Control rights • Management rights | <ul style="list-style-type: none"> • Stem House Elders |
| | | Families Living Outside the Stem House | Collective | <ul style="list-style-type: none"> • Access rights • Withdrawal rights • Use rights | <ul style="list-style-type: none"> • Stem House Elders |
| | | Other Parties Outside the Kinsmen of Stem | Individual | <ul style="list-style-type: none"> • Access rights • Limited withdrawal | <ul style="list-style-type: none"> • Stem House Elders |

| No | Objects of the Rights | Subjects Holding the Rights | Nature of the Rights | Types of the Rights | The Authority Regulating the Rights |
|-----|-----------------------|-----------------------------|----------------------|---|-------------------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) |
| | | House | | rights <ul style="list-style-type: none"> • Limited use rights | |

(Source : Devung, 2011)

5.4. Rights over Young Secondary Forest Lands

The rights over Young Secondary Forests are also collective, and normally controlled by households (*luvang amin*) that may consist of a single family or several families living in the same house (*amin*). The Young Secondary Forests (*Tarah*) comprise the “*Tarah Du’uk*” and “*Tarah Aya*”, the fallow forest lands of 10 – 30 years of age, farmed or cultivated by the household members who normally still live in the same house (*huang ji’ luvang amin*) (Devung, 2011).

The Young Secondary Forests are the household land reserves to open for rice fields (*uma’*), orchards (*lepu’un*) or gardens (*lidq’*), and are also used for gathering or collecting a variety of minor forest products needed by the household members. Other parties outside the household members can also take and use a limited number of the forest products in the Young Secondary Forest lands provided that they have the permit from the household elders (Devung, 2011).

Table 6. Bundle of Rights over Young Secondary Forest Lands

| No | Objects of the Rights | Subjects Holding the Rights | Nature of the Rights | Types of the Rights | The Authority Regulating the Rights |
|-----|------------------------------|---|----------------------|--|--|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 3 | Young Secondary Forest Lands | Household Members | Collective | <ul style="list-style-type: none"> • Access rights • Withdrawal rights • Use rights • Control rights • Management rights • Transfer rights • Residuary rights • Ownership rights | <ul style="list-style-type: none"> • Household Elders |
| | | Other Parties Outside the Household Members | Individual | <ul style="list-style-type: none"> • Access rights • Limited withdrawal rights | <ul style="list-style-type: none"> • Household Elders |

| No | Objects of the Rights | Subjects Holding the Rights | Nature of the Rights | Types of the Rights | The Authority Regulating the Rights |
|-----|-----------------------|-----------------------------|----------------------|--|-------------------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) |
| | | | | <ul style="list-style-type: none"> Limited use rights | |

(Source : Devung, 2011)

The above description of the customary land tenure and forest land rights amongst the community groups in East Kalimantan is an example of field realities clearly showing that the forest areas which are used either for the Community Forest (*Hutan Kemasyarakatan / HKm*) scheme, the Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) or the Village Forests (*Hutan Desa / HD*) scheme, are not simply “forest areas which have been designated by the government law to be used as per the purposes”. They might have been de facto objects of “bundles of rights” with complicated subject holding the rights, with varieties nature of the rights, types of rights and authorities regulating the rights (Fauzi, 1998 ; Dietz, 2005). For the success of Collaborative Forest Management programs, such field realities need to be sufficiently taken into account in the forest governance policies.

6. Reviewing Indonesian Forestry Policies based on the Theoretical Perspective of Design Guidelines and Field Realities

Looking deeply at the nine prototype design guidelines for the Collaborative Forest Governance (Inoue, 2009 dan Inoue 2011) as cited in the previous part, and reduced them to their essentials, we have the opinion that the first three design principles are the main substances of the overall guidelines, i.e. : (1) degree of local autonomy ; (2) clearly defined resource boundary ; and (3) graduated membership. The other six design guidelines i.e. : (4) commitment principle ; (5) fair benefit distribution ; (6) two-storied monitoring system ; (7) two-storied sanctions ; (8) nested conflict management mechanism ; and (9) trust building, are all related to design guideline (3), graduated membership.

Design guideline (1) signalizes that at the policy level appropriate arrangements should be assigned to allow sufficient degree of local autonomy in the use and management of local forest lands and the resources there in. In the existing policy concerning the Community Forest (*Hutan Kemasyarakatan / HKm*), the Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) and the Village Forests (*Hutan Desa / HD*) the degree of local autonomy is very limited. As seen in Table 2, the three schemes are all principally located in the Forest Area (*Kawasan Budidaya Kehutanan / KBK*) which are in the jurisdiction of the Ministry of Forestry at the national level. The local government at the provincial and district levels do not have much authority in the programs designed for the Forest Area (*Kawasan Budidaya Kehutanan / KBK*) let alone those at the village government level. In current policy arrangements, the unit management of Community Forest (*Hutan Kemasyarakatan / HKm*), Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) and Village Forests (*Hutan Desa / HD*) do not have prescribed responsibilities to the village authorities and / or villagers. Under such condition, we could not

expect much for the implementation of the “commitment principle” as asserted in design guideline (4).

It is also understandable why after more than fifteen years of implementation of Community Forest (*Hutan Kemasyarakatan / HKm*), Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) and Village Forests (*Hutan Desa / HD*) schemes, many parties find the fact that only in the legal aspects the three main schemes are considered very dynamic, but in the field implementations they showed a very slow progress, as mentioned in the previous part. The implementation of Design guideline (2) needs clarity of the resource boundary, in this case : the forest lands which are used for the Collaborative Forest Governance schemes, be it Community Forest (*Hutan Kemasyarakatan / HKm*), Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) or Village Forests (*Hutan Desa / HD*). Prime legal basis for the schemes is Act No.41/1999 on Forestry. The target areas for the Community Forest (*Hutan Kemasyarakatan / HKm*) Village Forests (*Hutan Desa / HD*) are the Production Forests and Protection Forests. While for Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*), the target areas are only in the Production Forests. In field realities, however, the physical boundaries of the forest areas are not at all clear, because they are unilaterally classified and drawn on the Forest Land Use Plan (Tata Guna Hutan / TGHK) or Regional Spatial Plan (Rencana Tata Ruang Wilayah / RTRW) maps by government officials in charge, using the Satellite Image (*Citra Satelit*) maps, frequently without proper field ground check. By doing so, the forest land use and management by the local community are practically neglected and do not appear in the maps. It is understandable why people gripe that government initiatives, especially those related to forestry conflict resolution, are still only in `appearance` rather than at the real `substance` level (Sardjono, 2004^a). As we could apprehend from the aforementioned mechanism, the negligence of the use, management and related rights of the local communities over the forest lands is the apparent source of the conflicts, and is unawarely ignored by the government policies.

Principle of Design guideline (3) which is also related to the principles of Design guideline (4) to Design guideline (9), requires appropriate involvement of local people who act as ‘core members’ (first class members) and other graduated members who function as the second class and third class members. In the Community Forest (*Hutan Kemasyarakatan / HKm*) scheme, the executing institutions according to the regulations are the Farmer Groups as seen in Table 2. For the Community-based Tree Plantation (*Hutan Tanaman Rakyat / HTR*) the executing institutions are either Individual Farmers, Groups of Farmers, or Cooperations. While for the Village Forests (*Hutan Desa / HD*) the executing institutions are the Village Institutions. The stipulation of the executing institutions for those three schemes are not fully compatible with the principle of the “graduated membership”, which requires involvement of local people who act as ‘core members’ (first class members) and other graduated members who function as the second class and third class members as aforementioned. This may happen because of insufficient knowledge or may be also ignorance concerning the “bundles of rights” attached to the forest lands hold by various subjects at the community level.

As we could see, all schemes have political spirits to acknowledge `core memberships` of local communities as the main target of the forestry development programs. However, especially for the Community Forest (*Hutan Kemasyarakatan / HKm*), and Community-based Tree Plantation

(*Hutan Tanaman Rakyat / HTR*) , which are organizationally separated from the existing village structure, the real core-members are those who are directly involved or those who have position in the unit management, be they are of local community members or outsiders appointed by the investors / program operators. Practically, the unit managers become first-class members with the strongest authority in steering the management, and other groups in the village (including the village elites) would be only as the second class and third class members.

In case of the Village Forests (*Hutan Desa / HD*) scheme, though it is implemented amongst the traditional village communities, if the local structures or traditional institutions have not been purposely designed to affirm their positions and authorities in the Village Forests (*Hutan Desa / HD*) organization structures, they will be legally powerless in every aspects of the local forest resource management (in the planning, organizing, actuating and controlling functions). As a consequence, although the Village Forests (*Hutan Desa / HD*) scheme is accepted by the village communities, it is often implemented without proper supports from the local structures or traditional institutions and therefore tend to ignore existing valuable local wisdoms and local institutional roles related to resources use and management.

From this brief review we see that in Indonesian Forest Policies, inclusively in the three main community forestry policies : the HKm (*Hutan Kemasyarakatan / Community Forest*), HTR (*Hutan Tanaman Rakyat / Community Based Tree Plantation*) and HD (*Hutan Desa / Village Forest*) schemes, the local community dimensions have not been precisely in line with the principles of collaborative forest governance as proposed by Inoue (2009). One of the main critical factors neglected in the policies is the Customary Land Tenure of the local communities over the different types of local forests and the variety of subjects holding different rights on different types of the local forest lands, which need to be considered in the formulation of the collaborative forest governance policies and in the implementation of the collaborative forest management schemes.

7. Conclusion and Recommendation

Considering the existence of local communities living in and around the forest area and their dependency on the local forest resources, Indonesian Ministry of Forestry (MoF) has strived to include the community matters in Indonesian forest policies. In the early course, the measures began with the requirements to the forest enterprises in the 1970s to secure life and living of the local communities who were still dependent on the forest resources during the concessionaire operational works. Followed by the responsibility to prioritize local man-power recruitments when the industrial tree plantation and the timber industries were introduced a decade later. Then in 1990s there was obligation of the timber concessionaires to share part of their profits to implement community development programs (*Bina Desa Hutan / BDH* or *Pembinaan Masyarakat Desa Hutan / PMDH*). All the measures were considered insufficient, as they had very little impacts on welfare of the local communities.

For a change, three community-based forest management schemes were promoted by the Ministry of Forestry (MoF) beginning 1995, comprising *Hutan Kemasyarakatan / HKm* (Community Forest), *Hutan Tanaman Rakyat / HTR* (Community-based Tree Plantation) and *Hutan Desa / HD* (Village Forest). However, after more than fifteen years of implementation

they still show a very slow progress as well. The welfare of the local communities has not much increased, the roles and position of the local communities in the schemes are still floating and fragile. Although there is `political will` of the government to involve people and / or to give access to local communities in forest management, the accompanying policies are not sufficiently based on sound concepts of integrated forest governance, and are not appropriately compatible with the field realities of forest use and management by the local communities. As a result, we see that in the existing Indonesian Forest Policy the local community dimension is still quite weak and therefore needs further improvements.

Being aware of the local communities' limitation in market-oriented aspects of local forest management, we support the idea of collaborative forest governance considering necessary roles of external stakeholders. The collaborative forest governance is in principle organized through collaboration amongst various stakeholders who have a range of interests in local resource use and management, using ideally the nine prototype Design guidelines as proposed by Inoue (2011). For the implementation of the Design guidelines, sufficient knowledge of the types of the forest lands and the local customary land tenure is compulsory, requiring among others : identification the existing forest lands, their legal designation / land use status, the local communities settling in or nearby, their tenure rights over the forest lands, and the uses of the forest lands by the local communities and or by other parties. Sufficient knowledge about the forest resources characteristics, as well as the community use and rights over the forest lands will help in developing a proper strategy and policy for the Collaborative Forest Governance, within the facts that most of the forest lands are not formally registered. A number of legislation products and incompatible government policies need to be revisited, adjusted or improved accordingly.

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