

# **The Influence of Civil Society Organizations on Forest Tenure Policies in Indonesia**

## **Networks, strategies and outcomes**

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## Introduction

Art. 33 of the Indonesian constitution asserts that “the land, the waters and the natural riches contained [in the country] shall be controlled by the State and exploited to the greatest benefit of the people.”<sup>1</sup>

Since the Suharto era the Ministry of Forest and Estate Crops<sup>2</sup> asserts control rights to more than two-third of the countries’ territory. Outside Jawa most farmers do not hold recognized rights to their landholdings and often timber, plantations and mining concessions have been granted on areas that people farm or use to make a living. It is estimated that 60 million people rely on forest resources for part of their income, many of which are poor. The question of property rights to forest is a topic that policymakers have tried to avoid for a long time. Discussion of timber production, management efficiencies and inefficiencies, and illegality are in the forefront and sometimes deflect attention from the discussion of property rights to forest (McCarthy 2000)(McCarthy, 2000). All this despite various forms of resistance at the local level have existed for a long time in Indonesia.

But since the fall of the Suharto regime people feel they can speak out more and organize to assert their rights. Among the many changes the number of non-governmental organizations that work for the recognition of customary rights and community-based management has multiplied. Many of the new organizations would have not been permitted to operate during the Suharto years. While some have broad-based support others have very specialized objectives. They have developed networks and continuously search for new opportunities to influence the policy process, through advocacy and lobbying, advising policymakers, and contentious collective action.

32 years of an authoritarian regime that survived thanks to an economic development strategy based on exploitation of natural resources for the benefit of the few, has left an institutional structure of centralized bureaucratic control on forests. Despite considerable decentralization has been taking place, real devolution of rights to forest for the benefit of local populations still finds considerable resistance.

This paper investigates the role of conservation and rights-based non-governmental organizations (NGOs) since the end of the Suharto regime in influencing the policy process in an uphill battle for recognition of *de facto* property rights to forest and participation of people in management of forest areas. I first list the main problems related to forest tenure in Indonesia today. Then I provide some background information on NGO activities during the Suharto era, and introduce the main civil society actors that have come to influence policies related to forest tenure today<sup>3</sup>. I then present the dynamics of some of the main events that have played out since the start of *Reformasi* within the policy arena, and highlight the major

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<sup>1</sup> (GOI, 1945). The annotations to the 1945 constitution specify that: “The economy is based on economic democracy which envisages prosperity for everybody. Therefore, economic sectors which are essential for the country and which affect the life of the people, must be controlled by the state. Otherwise the control of production might fall in the hands of powerful individuals who could exploit the people. Hence, only enterprises which do not affect the life of the general population may be left to private individuals. The land, the waters and the natural resources therein are basic assets for the people's prosperity and should, therefore, be controlled by the state and exploited to the greatest benefit of the people.”

<sup>2</sup> The authority was given through a 1970 government regulation<sup>2</sup> to the at the time directorate of forest within the Agricultural Department (Fay and Sirait 2004)

<sup>3</sup> For this study I focus on main civil society actors and their role in policy formulation. State actors are mentioned in their interactions with civil society, but not investigated in detail here. The role of the private sector is not investigated in this paper.

policy channels and strategies that civil society organization have used to influence policy. I conclude with a discussion of the outcomes to date.

The fieldwork for this study has been undertaken between July to September 2005. It was a preparatory assessment for a more in-depth study on networking of civil society organizations in relation to forest tenure issues. Data and information are derived from existing literature, local documentation and key informant interviews primarily with civil society activists and government officials.

### **Some of the Problems related to Forest Tenure**

In Indonesia since colonial times<sup>4</sup> all land not under intensive agricultural management has been under state domain. The Basic Agrarian Law of 1960 (BAL, UU5/1960) still in force today states that all land left fallow, and thus all forests<sup>5</sup>, reverts to the state. So-called 'state forest areas' (*kawasan hutan negara*)<sup>6</sup> include forested as well as non-forested areas and are therefore not only ecologically but also politically determined (Peluso and Vandergeest 2001).

Since the Basic Forestry Law of 1967 the management of state forest areas is devolved to the Department of Forestry (DoF)<sup>7</sup>. More importantly the DoF is also responsible for identifying forest areas, so that in fact it exercises much stronger control over forest areas than management rights alone. This resulted in a *de facto* loss of jurisdiction of the National Land Agency - the agency officially responsible for land tenure administration in the country - over 75% of the territory<sup>8</sup>. Although the Basic Agrarian Law recognizes customary (*adat*) rights and local community rights arrangements (*hak ulayat*), conditional propositions within the law<sup>9</sup>, contradictions between agrarian and forestry laws, and vagueness of specific terms leave state and regulatory authorities almost complete discretion over the application of this principle. As an example the 'national interest'<sup>10</sup> can anytime invalidate customary rights. Another example is that customary community rights arrangements (*hak ulayat*) cannot be assigned to communities because 'customary community' (*masyarakat adat*) are not legal entities in Indonesia. Finally, lack of implementation regulations further limits recognition of customary rights.

The above developments have first of all created an artificial and politically determined separation of land into forest and agricultural land. Secondly, they have *de facto* transformed millions of forest villagers all over Indonesia into illegal squatters. Third, they have brought uncertainty about the rule of law regarding land matters.

However, the problems within the legal system are just a reflection of the lack of political will to recognize and protect customary rights. Since the Suharto era state agencies have clearly favoured land uses by the corporate sector for development goals, and have seen customary uses of land as retrograde and inefficient. But, this 'development' paradigm in fact

<sup>4</sup> 1870 Agrarian Law indicates that all land which did not have individual or communal proof of ownership and all land left fallow for more than 3 years, was property of the state, which includes all forested lands (Peluso 1992: 64).

<sup>5</sup> including land under private ownership (*hak milik*), where *hak milik* is the strongest form of individual control right, backed by a certificate.

<sup>6</sup> The terms 'state forest areas' (*kawasan hutan negara*) first used on the 1927 Forestry Law.

<sup>7</sup> At the time the Directorate of Forest, which was under to Ministry of Agriculture.

<sup>8</sup> From a legal point of view the case can be made that the BPN has jurisdiction over forest areas, since the MoF officially only has management rights (Contreras-Hermosilla and Fay 2005).

<sup>9</sup> With respect to BAL Santoso (2005) identifies 5 conditionalities to the exercise of *adat* law: absence of conflict with national interests, absence of conflict with Indonesian socialism, absence of conflict with other provisions within BAL, absence of conflict with other regulations on agriculture, and respect for religious law.

<sup>10</sup> There is no definition of what reasons might represent 'nation interest'.

hides another reality: the ongoing appropriation of customary lands by the state as well as private interests. The lack of recognition of customary rights has thus increased landlessness, land conflicts, and has reduced tenure security for millions of rural villagers. These conditions have resulted in increased disenfranchisement, marginalization, impoverishment and vulnerability of people living in the forest margins, as well as massive deforestation and environmental degradation.

While during the Suharto era, talk about property rights to land was taboo, with *Reformasi* the issue of land rights has been brought back in the policy arena by a stronger and more vocal civil society. In the rest of the paper, I first present a historical account of NGOs in Indonesia and then I investigate the role of NGOs in tackling land tenure issues during *Reformasi*.

### **The Dual Relationship Between the Suharto Regime and Indonesian NGOs**

Like any other authoritarian regime, the New Order curbed most forms of political participation during its years of consolidation. It achieved this aim quite effectively through strict control and banning of political parties<sup>11</sup> and student activism<sup>12</sup>, and the use of ideology based on a 'corporatist' apolitical view of society<sup>13</sup> and on a distortion of Pancasila ideology<sup>14</sup>. The final aim was to depoliticize society, avoid mobilization across different categories of people through separation into functional groups, and strict control of activities, banning of any form of association aimed at mobilizing people across broad-based issues. The Suharto government tried to incorporate grassroots organizations into government sponsored initiatives at the national level, as the 'All Indonesian Workers' Union' (SPSI), the 'Indonesian Farmers Association' (HKTI), down to the village level through 'Village Consultative Associations' (LMD), the 'Village Defense Councils' (LKMD), 'Youth Groups' (Karang Taruna) and 'Family Welfare Guidance Groups' (PKK) (Hadiwinata 2003).

However, the Suharto regime did not eliminate civil society groups altogether. While independent political parties, unions and mass-based organizations were banned or severely restricted, non-governmental organizations (NGOs) were allowed to form. They were required to abstain from engagement in the political arena, to stay under the control of the government, and their activities were monitored and could be restricted if they were perceived to challenge government authorities. In fact, the New Order fostered apolitical civil society organizations that would work on developmental issues. As long as they focused on development issues, did not engage in politics, and would help attract foreign funds for programs for which the Indonesian government did not have resources, they were welcomed by the political establishment. In reality, many former student activists after the crackdown on student movements at the end of the 70s, founded many non-governmental organizations, known as community development institutions (*Lembaga Pengembangan Swadaya*

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<sup>11</sup> The concept of 'floating mass' politics introduced by General Ali Moertopo's New Order political document: Accelerated Modernization of 25 years development (Lane 2004), was translated into law in 1973, effectively banning any political party

<sup>12</sup> Through the enactment of the 1978 the Campus Normalization Act, which forbid student activism in universities and eliminated university student councils which was introduced in reaction to two major campus protest movements, in 1973-74 and 1977-78 (Robison 1986; Schwarz 1995).

<sup>13</sup> The idea that society was to be structured along 'functional groups', as women groups, civil servants groups etc., aimed at portraying a social structure where everybody had his/her place according to the role they fulfill in society, and social groupings along functionalist lines were complementary and never in conflict.

<sup>14</sup> through the establishment in 1974 of a commission to turn Pancasila in a tool for political control.

*Masyarakat-LSPM* and *Lembaga Swadaya Masyarakat - LSM*)<sup>15</sup>, and foundations (*Yayasan*).

Supervision of the government was asserted through a number of laws and regulations, and became stricter over time. In 1967<sup>16</sup> the government introduced a monitoring system for foreign non-governmental organizations and those domestic ones receiving foreign funds, which was extended in 1973<sup>17</sup> through a regulation requiring affiliation and signing of agreement with government department on part of foreign NGOs. In 1985 a presidential instruction<sup>18</sup> put all projects funded by foreign agencies under the supervisions of the Cabinet Secretariat (Hadiwinata 2003). These regulations impacted predominantly foreign NGOs, although given the high dependency of domestic NGOs on foreign funding these were partly affected. However, much stricter controls on domestic NGOs were introduced in 1985, when the law on social organizations (also known as ORMAS)<sup>19</sup> came into effect, clearly indicating the dual relationship between the New Order regime and NGOs. The law restricted activities of all NGOs and mass-based organizations through the requirements to adherence to Pancasila (Art.1) and avoidance of disruption of public order of security (Art. 13), and gave full discretionary power to the government to suspend and dissolve organizations. In order to retain independence NGOs had to avoid cooption within government networks, which fostered the formation of their own networks. To avoid the restrictive regulation of ORMAS some NGOs (LSPM) changed their status into foundations (*Yayasan*), which are not membership based and are exempt from this law (Hadiwinata 2003).

Because of the restrictions on political participation and on other civil society organizations, NGOs which were allowed to operate within the limited area of development and outside the political sphere, represented one of the few avenues for a considerably weakened civil society to engage with the state (Uhlin 1997). During these years Indonesian non-governmental organizations became a synonym for civil society in Indonesia, especially as foreign donors increasingly channeled funds through them to ‘strengthen Indonesian civil society’. This however, put an additional responsibility on NGOs in defining their relationship with the state. The 80s also saw the appearance of the first NGOs networks, which served a number of purposes. First, by joining networks NGOs were able to improve communication exchange among themselves and ally into bigger entities. Second, being part of a network made single NGOs stronger and less likely to be co-opted by the state. Third, a network was better able to negotiate as well as collaborate with state actors, and as representative of a larger NGOs community provided increased legitimacy. Finally, networks also allowed smaller NGOs to participate in more risky activities that were challenging state interests, as they could ‘hide’ behind the network without the need to expose themselves directly to possible state retaliation. The most influential network of both Indonesian and foreign NGOs at both national and international levels was INGI (International NGO Groups on Indonesia) established in 1985 with the aim to advice IGGI (Inter-Governmental Groups for Indonesia), which was established and lead by the Dutch government and coordinated official aid to Indonesia at the time. Its annual meetings produced criticism of government projects funded by foreign aid and served as a watchdog organization informing foreign

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<sup>15</sup> the name non-government organization (Organisasi non-pemerintah - ORNOP) was not used to reduce the perception of these might be anti-government (Eldridge 1995). The name was chosen by NGOs but had to be approved by the government. They opted for a name that stresses self-reliance, instead of juxtaposition to government. For ease of presentation I will refer to these as ‘NGOs’ throughout the paper.

<sup>16</sup> Special Government Decree no.81/1967.

<sup>17</sup> Regulation on Overseas Technical Cooperation and Assistance by Ministry of Home Affairs, 7 September 1973.

<sup>18</sup> InPres n.32/1985.

<sup>19</sup> UU8/1985.

governments about human rights, land rights and environmental abuses linked to foreign funded project (Antlöv 1995; Hadiwinata 2003).

Despite the restrictions on activities of NGOs, two important networks that will later become very active on forest tenure issues were established between the 70s and early 80s<sup>20</sup>. They both enjoyed strong backing from some government institution at inception, as there was the need of official sponsorship to be able to operate. In 1980 WALHI (*Wahana Lingkungan Hidup Indonesia* - Indonesian Forum on Environment) was established by a group of environmental NGOs with the support of the then two-year-old Ministry for the Supervisions of Development and Environment<sup>21</sup>. For the first 10 years WALHI mainly focused on environmental conservation issues. The second network that will become an important player on tenure issues is YLBHI (*Yayasan Lembaga Bantuan Hukum Indonesia* – The Indonesian Legal Aid Foundation) a network of legal aid NGOs founded in 1971 with the support of the Jakarta’s regional government focusing on providing legal aid for victims of abuses and human rights violations. YLBHI’s more political orientation, made it often a target of intimidation and harassment from central government authorities (Eldridge 1995).

The work of these two networks focusing on apparently diverse issues will start to converge over the first 10 years of WALHI existence, as on the one hand conservation and environmental organizations took on more political challenging issues of human rights abuses related to the environment, and on the other hand, legal aid organizations became increasingly involved in human rights abuses related to control over land.

In the late 80s, there was also increasing criticism by activists themselves about the cooperation of NGOs with government (Antlöv et al. 2005), the fear being that the state was trying to coop the only residue of civil society in Indonesia. More radical organizations emerged and in the early 90s some of the long established NGOs, and their networks, became bolder in openly challenging the political establishment. Moreover, government controls on political participation became less invasive, and in an international environment that was experiencing both an upsurge of civil society organizations and a new wave of democratization<sup>22</sup> Indonesian NGOs became more vocal. Uhlin (1997) describes the mid 90s as period in Indonesia when new and more radical civil society organizations were born. Both WALHI and YLBHI started to take on more controversial issues, and confront government more directly. They also found that there was scope for collaboration through advocacy work, publicizing of displacement cases in the media, and joint litigation cases (Eldridge 1995). It is during this period that the link between environmental damage, land tenure issues, and human rights violations starts to be exposed, and environmental and human rights networks start to cooperate more closely. They collaborate on issues like evictions with use of force by police and military, lack of compensation for land acquisitions, and violation of environmental laws by private business.

However, in reaction to these developments there were several attempts by the government to again curb the autonomy of non-governmental organizations<sup>23</sup>. A more oppositional stance of the government toward NGOs is evident in the relationship with INGI. As the government realized that European donors were withdrawing aid to Indonesia as a

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<sup>20</sup> for a brief description of the main organizations active on forest tenure policy issues see appendix 1 and 2.

<sup>21</sup> Today’s State Ministry of the Environment.

<sup>22</sup> The developments in Eastern Europe and the 1989 Tiananmen incident seem to have had regional repercussions on civil society organizations.

<sup>23</sup> 1990 regulation to monitor NGO activities at provincial and district level (Instruction of Ministry of Home Affairs (Inmendagri) n.8/1990) and 1995 decree requiring stricter government supervision (joint decree ‘SKB/Surat Keputusan Nersama’ of Ministry of Home Affairs and Department of Social Affair) (Kusumohadi et al. 1997:48 in Hadiwinata 2003).

consequence of INGI's 1989 statement<sup>24</sup> condemning World Bank supported project causing environmental damage and displacement, the government issued warnings to NGOs<sup>25</sup> not to criticize the Indonesian government abroad and sending a clear signal by banning travel for some activists (Hadiwinata 2003). This open confrontation culminated in 1992, after the 8<sup>th</sup> INGI conference, when the Suharto government refused Dutch aid altogether, rejected to collaborate with IGGI and requested the establishment of new aid consortium (CGI - The Consultative Group on Indonesia), which excluded the Netherlands and considerably reduced the ability of INGI to affect donor decisions.

The 1990s saw a resumption of student protests in protection of the rights of weaker groups in society and demanding an end of state repression. In 1993 two further organizations that will later become active on forest tenure issues, a human rights foundation called ELSAM (*Lembaga Studi dan Advokasi Masyarakat* - Institute for Policy Research and Advocacy) and an environmental law advocacy organization called ICEL (Indonesian Center for Environmental Law) were established in Jakarta. These are very specialized organizations staffed by expert researchers and professionals in the relevant fields. Their advocacy efforts on environmental and human rights violations are aimed at bringing about structural changes through awareness building, capacity building efforts and research dissemination. Their organizational structure as foundations and the fact that they were not membership-based organizations provided some protection from government repression.

Since the end of the 80s some branches of the military antagonistic to Suharto seemed to be willing to exploit a relaxation of authoritarian controls over society and allow people to protest and speak out more to put pressure on the President (Aspinall 1995). However, growing boldness of civil society organizations was met with growing suspicion of NGO clandestine activities by state officials and the military, and growing popular resistance through radicalization of student movements brought a number of government counter-reactions to reduce dissent through repressive measures. In 1994 the banning of 3 main newspapers<sup>26</sup>, trials of student activists and several arrests of human rights activists triggered an escalation of state-civil society juxtaposition (Human Rights Watch 1995). However, new NGOs kept emerging and challenging the state through organization of protests and legal actions<sup>27</sup>.

In 1994 student activists in Bandung founded KPA (*Yayasan Konsorsium Pembaruan Agraria* – Konsortium for Agrarian Reform) that will become one of the strongest national voices in the agrarian reform movement advocating land reclamation. One year later, given the growing cases of environmental abuses by mining corporations, WALHI set up JATAM (*Jaringan Advokasi Tambang* - Mining Advocacy Network), a watchdog network organization specialised in mining issues. Still, state sponsored intimidation continued and culminated in 1996 (Antlöv et al. 2005) when the government detained, interrogated and threatened several activists from more radical NGOs (YLBHI 1997 cited in Hadiwinata 2003).

<sup>24</sup> 5<sup>th</sup> INGI conference in Belgium 24-26 April 1989.

<sup>25</sup> Public statements were made by the Commander of the Armed Forces and the Ministry of Environment (the latter otherwise a long time supporter of NGOs) (Hadiwinata 2003).

<sup>26</sup> DeTik, Tempo and Editor mid 1994.

<sup>27</sup> In September 1994 NGOs led by WALHI brought President Suharto to court for allowing the Indonesian Aircraft Industry to divert 200 million \$ from reforestation funds (Keppres n.42/1994). In December NGO activists protested in the DPR against reduction of political rights. On May 3 1995, activists petitioned demanding cancellation of government regulations controlling social gatherings and on 12 Jan 1996, NGOs demonstrated outside parliament demanding just and fair election and the formation of an independent committee to supervise the electoral process (Hadiwinata 2003).

## The Rise of NGOs in the Post-Suharto Years

The resignations of Suharto, on the 21<sup>st</sup> of March 1998, followed 3 months of student led public protests (Eklöf, 1999). Economic hardship of the Asian crisis had brought a more profound political crisis into the open in Indonesia. The national protests together with regional independence movements forced Suharto, who wanted to delay reforms (Suryadinata, 2002: 47-48), to resign. The main requests of *Reformasi* were the end of corruption within the political system, democratization of the political structure and regional autonomy (Bach, 2003).

There is little doubt that political changes associated with the fall of Suharto and consequent move toward democracy have had a tremendous effect of civil society organizations in Indonesia. In Antlöv's words, it is "no exaggeration to describe the recent development as the rising era of civil society" (2005)<sup>28</sup>. The number of civil society organizations has multiplied quickly after 1998 to tens of thousand, although exact figures are difficult to provide (Antlöv et al. 2005; Eldridge 2005; Hadiwinata 2003).

Positions on the role of NGOs during democratization vary, there are those that assert a more decisive role of NGOs in the democratization process (Clark 1998; Diamond et al. 1995; Fisher 1998). Some other researchers assert that it is democratization that affects NGOs and not the other way around (Weller 2005). Still others indicate that the role of NGOs in democratization is dependent on the specific historical context (Mercer 2002)<sup>29</sup>.

During the early reform period the role of NGOs in Indonesia has certainly been substantial on a number of grounds, but it should be seen more as NGOs taking advantage of the opening of new opportunities provided by the changes in the political arena, than as NGOs having substantially contributed to the process of democratization itself. NGOs in Indonesia did simply not have the means to mobilize mass-based support to demand political changes, given the restricted political framework in which they were operating for much of the New Order regime, nor were many of them interested in mobilizing direct action to start with. Still, most NGOs supported democratic values and their agenda included as objective democratization in Indonesia, but their role during *Reformasi* should be seen as supportive of popular mobilization that originated elsewhere within changing political conditions.

Democratization and expansion of civil and political freedom in Indonesia has affected domestic NGOs in a number of ways, contributing also to the observed surge in their numbers. Constitutional amendments expanded the concept of freedoms to include human rights, new laws on freedom of association<sup>30</sup>, the restoration of the freedom of the press<sup>31</sup>, the dismantling of the Ministry of Information (Jakarta Post 1999a) are some examples of changes in policies which affected the range and space of NGO work. In a more indirect way the redistribution of power from an almost omnipotent executive (in particular the

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<sup>28</sup> This is a common feature of countries undergoing transitions from authoritarian rule, a phenomenon called "resurrection of civil society" (O'Donnell and Schmitter 1986:55 cited in Hipsher 1998). Many similar experience are portrayed in the literature include examples from Latin America and Southeast Asia (see Clarke 1988b, Sullivan and Noble 1988, and Garrison 2000 cited in Mercer 2002).

<sup>29</sup> Although this depends also on which organizations we include in the definition of NGOs.

<sup>30</sup> It ratified ILO Convention No. 87 on freedom of association in June 1998 allowing workers to unionize, and introduced Law No. 20/2000 on the freedom of association (Sijabat 2005).

<sup>31</sup> Law no. 40 of 1999, which also includes the explicit indication that journalists are free to choose the journalists' association they prefer (Art. 7).



Presidential figure<sup>32</sup>) and the military<sup>33</sup> toward legislative<sup>34</sup> and judicial bodies<sup>35</sup> further strengthened the basis for a democratic foundation in Indonesia.

Most NGOs report that since 1999, the restrictions on activities, including harassment, controls, threats, sense of suspicion by government officials have substantially subsided<sup>36</sup>. In particular, the reduction of the political involvement of the military has diminished controls on activities of NGO. Thus, the substantial change in the political climate has given considerable space for action to NGOs, as well as to other civil society organizations. Many of the NGOs that were established after the fall of Suharto, would probably have faced considerable resistance from the previous government. As a consequence NGOs have expanded their activities on more controversial issues as human rights. A number of NGOs converted into political parties<sup>37</sup> after the lifting of restriction on the formation of political parties<sup>38</sup>.

With the abolition of the constraint on the establishment of unions in 1998, independent unions proliferated in Indonesia. The Federation of Indonesian Peasant Unions (FSPI - *Federasi Serikat Petani Indonesia*) was founded the same year. This federation of grassroots mass-based farmers organizations advocating land redistribution and agrarian reforms would become one of the leading grassroots mobilizing forces of the agrarian movement in the years to come.

With regard to demands for recognition of customary (*adat*) institutions, including territorial rights, the first national indigenous movement was born in Indonesia 1999. The first Congress of the Indigenous Peoples Alliance of the Archipelago (AMAN) took place in Jakarta and gathered more than 200 representatives of indigenous communities. This was the first time that indigenous claims for the respect of cultural, human, and territorial rights were expressed with such force at the national level. With its focus on the rights of self-determination and self-governance, and on the protection of indigenous human rights AMAN would bring a new perspective to forest and land tenure issues. The concept of fostering and bringing together indigenous organizations from throughout the country was initiated by KPA, the farmers' consortium for agrarian reforms established in Bandung 4 years earlier<sup>39</sup>. Both FSPI and AMAN would not have been allowed to form under the New Order regime.

Despite democratization, increased freedom of action, and proliferation of NGOs, from a legal point of view, strikingly, major legal restrictions on NGOs from the New Order

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<sup>32</sup> 1<sup>st</sup> amendment to the Constitution of the Republic of Indonesia Art.7. MPR decree, 12<sup>th</sup> plenary meeting of the MPR, Oct 19,1999; 2<sup>nd</sup> amendment of the Constitution of the Republic of Indonesia Art.20. MPR decree, 18 August 2000, 3<sup>rd</sup> amendment of the Constitution of the Republic of Indonesia. Art.6A, and Art 3, MPR decree, 9 November 2001.

<sup>33</sup> The elimination of the double function of the military (*dua fungsi*) which today retains only the responsibility for national defense, and separates military and police (MPR Decree VI Art. 1, 2000), and the prohibition for military personnel in active duty to vote in elections and to run for public office (MPR Decree VII Art. 5, 2000) (since 2004 no active military personnel is included in national representative bodies).

<sup>34</sup> See laws on general elections (UU 3/1999) and on composition of the legislative bodies (UU 4 /1999).

<sup>35</sup> The new Constitutional Court was established in 2003 as an independent body which have the power of judicial review before exercised by the MPR (3<sup>rd</sup> amendment of the Constitution of the Republic of Indonesia Art. 24c).

<sup>36</sup> Personal communication from interviews of various NGO during June-September 2005.

<sup>37</sup> The People's Democratic Party (PRD) - originally a movement organization set up by student activists and engaged with both workers' and peasants' movements - and PUDI (United Democratic Party) formed by senior politicians both became political parties in 1998 (Hadiwinata 2003: 72-73)

<sup>38</sup> Law (UU 2/1999).

<sup>39</sup> Personal communication from the Executive Director of AMAN, September 2005.

era are still in place<sup>40</sup>. A new law on foundations (UU16/2001) has been introduced, but the changes are mainly geared to reduce the possibility to use foundations for illegal activities (as Suharto and his entourage used them to funnel funds to their personal accounts) and do not affect much freedom of expression and choice of activities. Despite the relatively slow changes within the legal framework affecting NGOs activities, freedom of action has increased substantially for NGOs in Indonesia. However, this condition highlights also a danger: acting within the same legal framework as under the New Order with respect to mass-organizations, with laws that still leave considerable opportunity for government to interfere with their work, there remains a latent threat in the air. The ability of the government to curb NGO initiatives is still in place, only the threshold of tolerated dissent is somewhat higher. This means that further legal reforms safe-guarding freedom of association and elimination of discretionary powers to dissolve organizations by the state, especially with regard to both advocacy and mobilization activities are needed to further expand the reach of NGOs, especially as the period of strong popular mobilization of *Reformasi* has ended.

A very important role during democratization was played by a number of NGOs networks that monitored state institutions<sup>41</sup>. One of the important activities of national environmental and human rights NGO network organizations is in fact to bring local and regional cases of misconduct and abuse to the attention of the national public, by publicizing them through the media. The second sector of NGOs that contributed to the democratization process are NGOs of legal orientation, which stepped up their legal literacy campaigns contributing to dissemination of important information that could improve the ability of citizens to make informed decisions. They also tried to affect legislative decisions through lending their expertise to policymakers and drafting bill proposals. Finally, human rights NGOs, which started to grow in importance in the late 90s, also thanks to foreign pressure on the Suharto government to address human rights abuses in Indonesia, had considerable impact on policy changes<sup>42</sup>.

With the introduction of decentralization policies (Law UU22/1999) and the devolution of government authorities within the Indonesian territory national level NGOs and networks have been torn between two choices: concentrating efforts at the centre, trying to keep pressure of state institutions to affect further structural changes, or concentrating on local efforts. Strategic choices of NGO in this respect are also in part linked to their major activities (e.g. advocacy compared to development at the local level), but also to the exploitation of new opportunities given by the redistribution in state power. One reason for NGOs to focus on efforts aimed at policy changes at local level, is that many find less resistance at the local level than at the national level, sometimes even becoming partners of local governments in opposing central government directives.

The best positioned NGOs to adapt to these changes were existing national NGO networks with strong regional presence. In the first years of decentralization we observe and increase in national networks of NGOs, that mimic the dispersion of state authority throughout the country (Eldridge 2005; Yulianto 2003).

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<sup>40</sup> The so-called ORMAS law on social organizations (UU Keormasan No. 8/1985), Government Regulation PP18/1986, and Ministerial instruction of the Ministry of Home affaire (MoHA) (Instruksi Mendagri No. 8/1990) (Hikam 1999).

<sup>41</sup> Examples include the Indonesian Corruption Watch (ICW), the Parliament Watch (DRP-Watch), Government Watch (GOWA), Police Watch (PolWatch), and Budget Watch (FITRA) (Antlöv et al. 2005).

<sup>42</sup> The 2<sup>nd</sup> amendment to the Constitution (Art. 28J. MPR decree II, 18 August 2000), introduces a whole new section about the protection of human rights. This is quite unusual for most constitutions, and seems to indicate the clout of human rights pressure groups during *Reformasi* on legislators.

## Civil Society Organizations try to Affect Policies on Forest Tenure

The law on regional autonomy<sup>43</sup>, which was drafted and passed very hastily and without much popular participation (Rasyid, 2003), and the fiscal autonomy law<sup>44</sup> passed in May 1999 affected all sectors of the Indonesian economy including the forestry sector. Both laws strengthened the authority of district governments, vis-a-vis central and provincial governments. However, the regional autonomy law was ambiguous on the assignment of authority over management of natural resources. Art 7 retained control over natural resources under the central government, while Art 10 stated that regions have the authority to manage national resources located in their territory and shall be responsible to maintain the environment conservation in accordance with laws and regulations. Nonetheless, the law legitimized increased control over management and revenue from natural resources by the part of the districts. In view of 2001, when the regional autonomy law would come into effect, districts started to assert control on local resources, and much of the administrative staff, that used to respond to the centre, now responded to regional and district authority.

### *The New Forestry Law*

After the fall of the Suharto the new Ministry of Forestry called for revisions of forestry regulations. In June 1998 he set up the 'Forestry and Estate Crops Reform Committee' composed of reformists within the DoF, academics, NGOs and business sector to provide recommendations through an extensive consultation process (Fay and Sirait 2002). Particularly involved in this effort was the multistakeholder forum FKKM (Forum Komunikasi Kehutanan Masyarakat - *Communication Forum on Community Forestry*) established in 1997 with support of the Ford Foundation (Afiff et al. 2005). FKKM, formed by officials of the MoF, academics, private sector and NGOs, after months of work and broad consultations with local civil society organizations and local governments produced recommendations suggesting a shift in forest tenure arrangements from state controlled to community-based. The committee also produced a draft for a new forestry law. As expected resistance to this approach from conservative groups within the MoF was very strong. In fact within the MoF they were also working on policy revisions including on a different draft of the bill. This bill explicitly defined all forests under state authority not unlike BFL of 1967. Prepared by the former director general of forest utilization Titus Sarijanto the bill was submitted to the House of Representatives (*Dewan Perwakilan Rakyat - DPR*) first in April 1999. Protests by the wide coalition of civil society organizations called KUDETA (see next section) asked for the withdrawal of the draft. In June the former Minister of Forestry and the former Minister of Environment issued a similar statement (Fay and Sirait 2002). However, the bill was resubmitted on July 19, 1999. The move by the MoF to redraft the forestry law, recalls the patterns seen during the establishment of the New Order, when shortly after the regime took power, all laws related to natural resources (except the Basic Agrarian Law) were redrafted by the relevant ministries to put resources under state control with the main aim to support centrally formulated economic development activities. These developments produced disappointment in the Forestry and Estate Crops Reform Committee, and within the NGO community. Environmental and right-based NGOs protested the new bill indicating that it lacked measures to empower local people and was weak in following international conventions on forest. They also requested to delay the bill debate until new members of the House were elected, under the new rules set by the new electoral law, in late September.

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<sup>43</sup> UU22/1999.

<sup>44</sup> UU25/1999.

However, the government refused to delay the debate (Jakarta Post 1999b) and the New Law on Forestry (NFL) (UU41/1999) was approved by the House on September 13<sup>th</sup>. On October 1<sup>st</sup>, the 700 representatives of the new highest legislative body, People's Consultative Assembly (*Majelis Remusyawaratan Rakyat* -MPR) were sworn in<sup>45</sup>.

Despite the inability of the NGO community to change the legal foundations of forest control, the new law makes some minor concessions to community management compared to the earlier law (Colfer and Resosudarmo 2002). It allows for devolution of strong management rights in customary forest areas (*hutan adat*) and in “zones with special purposes”. However, the underlying structure of forest tenure remains largely under the control of the DoF, and all single instances of devolution of management rights to communities require, apart from local government approval, also the approval of the Ministry of Forestry. So far, at almost 7 years from the approval of the new forestry law, although a very limited numbers of ‘*hutan adat*’ have been recognized by a few district governments in Sumatra, and none has yet been approved by the Ministry of Forestry.

### ***MPR Legislates to Revise Agricultural and Natural Resource Management Laws***

In the meantime, in 1998 a group of 66 environmental and legal advocacy NGOs, NGOs networks and student organizations formed a temporary coalition called KUDETA (Coalition for Democratisation of the Natural Resource Management- *Koalisi untuk Demokratisasi Sumber Daya Alam*). The coalition identified as major constraints to a democratic and just management of natural resources, the supremacy of national interest over local rights, the sectoral approach to NRM, unequal legal access to natural resources, development strategies that ignore ecological and human rights considerations, lack of participation and democracy in decision-making and policy formulation (Moniaga 1998). The purpose of the coalition was to undertake policy advocacy for natural resource management conditions, with one precise aim: to persuade policymakers that with *reformasi*, there was a need for a review of all natural resource management laws and land laws that were drafted throughout the New Order. It also organized demonstration against the MoF bill for the NFL

This would also entail engaging into a transition phase to tackle the existing problems of land disputes through *ad hoc* mechanisms for land conflict resolution, and ultimately design a reform of property rights arrangements to land and natural resources established under Suharto. The coalition held discussion groups among NGOs, prepared and disseminated written material on the conditions of natural resource management and land legislation, and on the need to revise these laws. A group of legal NGOs prepared a draft for an MPR. KUDETA was dissolved as soon as the legal proposal was presented in the MPR, although it would take another year before the MPR would ratify these recommendations into a decree which is now known as TAP IX<sup>46</sup>.

In the meantime, a group of NGOs that had been involved in KUDETA organized a conference in May 2000 (*Konferensi Nasional Pengelolaan Sumberdaya Alam - KNPSDA*), to work on recommendations for the implementation of TAP IX. The multi-stakeholder conference brought together around 280 participants from all over Indonesia, from

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<sup>45</sup> Until 2001 (3<sup>rd</sup> amendment of the Constitution of the Republic of Indonesia. Art.6A, MPR decree, 9 November 2001)

the MPR was the highest legislative body, with power to amend the constitution and appoint the President of Indonesia. MPR composition in October 1999: 500 DPR members elected in the June 7 general election plus 200 appointed members (135 representatives from regional legislatures and 65 appointed members from various social groups) (King 2003).

<sup>46</sup> Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor IX/MPR/2001 Tentang Pembaruan Agraria dan Pengelolaan Sumberdaya Alam.

government agencies, to delegates from local government, NGOs, local community representatives, and academics. The high profile of the conference is attested by the presence of the President of Indonesia, Abdurrachman Wahid elected by the MPR on October 20<sup>th</sup>, 1999. Under his presidency, civil society organizations including NGO found considerable support. In particular, he acknowledged the need to better incorporate and recognize *adat* law within the national legal system<sup>47</sup>.

After the KNPSDA conference in May 2000, a number of NGOs that participated in the conference, and part of the NGO networks focusing on natural resource issues, formed the 'Working Group for the Management of Nature Resources' (*Pokja-PSDA*) to translate recommendations of the conference in an operational action plan for the implementation of TAP IX. Pokja-PSDA main activities include dissemination of recommendations for the implementation of the TAP IX proposal, policy advocacy and political lobbying. One of the points of TAP IX was the need to consider legislation on all natural resource in an integrated way. One of the major NGOs and social mobilizers active in the agricultural reform sector, KPA (Consortium for Agricultural Reform, *Konsorsium Pembaruan Agraria*) joined Pokja-PSDA in 2000, which then changed its name to 'Working Group for Agricultural Reform and Management of Nature Resources' (*Kelompok Pembaruan Agraria and Pengelolaan Sumberdaya Alam* or PA-PSDA). This integration represented an important step toward bringing together different perspectives on land policies, and broadening the coalition to both natural resource and agrarian issues, which would also result in broader popular support. It is noticeable though, that another big player in terms of farmers' mobilization and also a strong advocate for agrarian reforms, FSPI, was absent from the coalition. The reason pertains to differ positions with regard to the Basic Agrarian Law. While members of PA-PSDA aimed at the revision of all land and NRM laws including BAL, FSPI does not believe that BAL needs to be revised, but only applied and implemented. This position stems from concerns that the opportunity to revise the law might in fact be used by parties opposed to reforms to reduce the breath of reforms and rights of farmers and indigenous people that is already contained in the current law.

After 2 years of lobbying and popular mobilization, in October 2001 the MPR ratified TAP IX, which calls for a revision of all natural resource management laws, as well as for agrarian reforms in order recognize, amongst others, the rights of local people to natural resources. The contents of TAP IX is groundbreaking. For the first time since 1965 a law instructs that DPR and the President to undertake agrarian reforms and the repeal, change or replace all natural resource management laws that are not in line with a series of stated principles (Art.7), including to bring justice within the property rights arrangements of agricultural land and natural resources, respect and thus recognise *adat* (customary) law, implement decentralization in agriculture and natural resource management, which includes delegation of authority - as opposed to deconcentration - (Art.5). Moreover, TAP IX does not mention the conditionality of superseding national interest on property rights arrangements and recognition of customary rights. Of special importance is the fact that these legal directives were legislated by the, at the time, highest legislative body of Indonesia and thus should supersede all other laws.

### ***A Supportive Institutional Environment for Civil Society***

The period from Suharto's fall to the replacement of President Wahid by Megawati presented important openings of the policy process to inputs from civil society, and found a

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<sup>47</sup> President address to the conference (Pokja PA-PSDA 2004).

number of strong supporters within central government institutions for reforms in the natural resource management area.

Most importantly the strong popular mobilization led by student activists also provided more voice and legitimacy to NGOs wanting to affect policies toward more democratic decision-making, and improvement of rights of the poor and marginalized. The alliance of NGOs with mass-organization of students (e.g. KUDETA) was also crucial in this respect. The NGOs participation in and backing of popular mobilization activities as well as their expertise on a number of debated issues gained them access to policymakers, and some leverage within the policy process.

Apart from this pressure from the grassroot, some policy changes created new political opportunities which allowed reformist elements to gain political space. The liberalization of party formation, for example, brought to alliances between NGOs and new political forces after the 1999 elections. Members of new parties as the National Awakening Party (PKB) the Prosperous Justice Party (PKS), and the Moon and Star Party (PBB), apart from some members from the more established as the Indonesian Democratic Party-Struggle (PDI-P), had been supportive of the NGO efforts to implement TAP IX.<sup>48</sup>

Moreover, within state institutions reformist elements were also emerging, and becoming more vocal in pushing for change. This did not only mean the emergence of new progressive elements within the bureaucracy, but also an increased competition between government agencies to occupy the centre stage in policy formulation.

Major changes were implemented by the President of Indonesia himself. First of all, Abdurrahman Wahid selected a Ministry of the Environment, Sonny Keraf<sup>49</sup>, which was new to the area, but demonstrated to be a precious ally for environmental and right-based NGOs. The new Minister of Forestry Nur Machmudi Ismail changed most senior level officials in an attempt to renew the management of the DoF. The President himself was supportive of participation of civil society organizations in policy-making in general, and demonstrated his support for reform of natural resource management policies also through his participation in the KNPSDA conference in 2000. One further element of support was indicated by the attempt under Wahid to merge the Department of Forestry and the Department of Agriculture. This would have reflected the spirit of TAP IX which stressed the linkages between agricultural and natural resource management land issues, and would have united under one ministry all land issues. The move was supported by NGOs and academics, and was sanctioned by presidential decree<sup>50</sup> in August 2000. However, only two and a half months later the newly formed Department of Agriculture and Forestry separated again into two departments<sup>51</sup> (Kompas 2000). Notably at the split the Directorate of Plantation remained under the Department of Agriculture. This would also chance though as the the Department of Forestry would later reincorporate the plantation directorate into the Department of Forestry and Estate Crops, thus reconsolidating the most extensive income producing activities in forestry under one ministry.

It is interesting to note that the last Minister of Forestry of the Wahid government, Marzuki Usman, declared during an international conference sponsored by the ITTO (International Tropical Timber Organization), that he would request the President to limit his ministry's authority, because he felt that the excessive decision-making authority over forestry issues of his ministry had contributed to forest depletion in the past. He advocated more balance in decision-making authority, requiring consultation with NGOs and foreign

<sup>48</sup> Personal communication, interview with NGO activists August 2005 and (Fay and Sirait 2002).

<sup>49</sup> Sonny Keraf is board member of the NGO BirdLife Indonesia, and today is vice-chairman of the parliamentary commission on the environment.

<sup>50</sup> Presidential Number 234/M/2000.

<sup>51</sup> Presidential Decree Number 289/M of 2000.

parties on decisions of forest exploitation (Jakarta Post 2001a). This statement though was never translated into policy, as only 1 month later Wahid was removed from the Presidency.

### **Efforts to Implement Reforms and Counterreactions of Conservative Forces**

Despite President Wahid's support for civil society organizations during his presidency there had been numerous criticisms, including within the government, about the slowness of the central government in preparing for the implementation of decentralization (Jakarta Post 2001b). The Vice-President had often openly criticized decentralization (Jakarta Post 2001d) and internal differences within the government brought the State Minister for Administrative Reform, Ryaas Rasyid, to resign in early January 2001, just as the law came into effect. When Megawati succeeded Wahid at the Presidency on July 23rd, 2001, a technical, but also quite conservative government took over (Bach 2003), and the internal opposition to decentralization grew even stronger. Megawati herself regarded decentralization as a threat to national unity, to the same extent that Habibie had seen it as a solution to possible disintegration. There certainly were a number of problems with how decentralization was implemented. But these were more related to lack of implementation regulations and lack of oversight by central authorities, which translated into districts making sometimes questionable independent decisions as central guidelines were missing (Rasyid 2003). In particular, deforestation levels peaked at all time highs as districts could issue timber exploitation licences without limits and with no need for environmental assessments (Jakarta Post 2002). Instead of improving implementation regulations, the new government aimed to regain central control over strategic sectors and policy domains (Jakarta Post 2001c). The President and the Internal Ministry of Home Affairs announced various times plans to revise the decentralization law, but continuous opposition, in particular by local governments<sup>52</sup> delayed the actual realization of this intent (Aspinall and Fealy 2003; Sophiaan 2002). Still continued insistence by the government resulted in an amended law coming into effect in 2004 (law 32/2004), which reduced the autonomy of districts and recentralized much of the control over natural resources. This move indicated that central state bureaucracies had been able to partly avoid their loss of control and authority. Similarly, comprehensive agrarian and legal reforms in the area of natural resources threatened the same interests, most notably the MoF and the Ministry of Mines and Energy. With less pressure for reforms from within state institutions, and with the diminishing of popular mobilization characteristic of the first period of *Reformasi*, the government did not push for the implementation of TAP IX.

### ***NGOs' efforts to implement TAP IX***

#### *A committee to resolve agrarian disputes*

During the Megawati's presidency policy openings for NGOs to advocate and lobby for the implementation of TAP IX were reducing despite their growing efforts. Since the MPR had passed the decree, the NGO coalition PA-PSDA concentrated on pressuring the government for its implementation. Amongst other efforts they forged an alliance with the National Commission on Human Rights (*KomNasHAM Komisi Nasional Hak Asasi*). A first legal working group team prepared a proposal for a Presidential Decree for the establishment

<sup>52</sup> In particular from the Association of Indonesian Local Legislative Councils (Adeksi) and the Association of All-Indonesia Regents (Apkasi) (Maryono 2002).

of the National Commission for the Resolution of Agrarian Conflict. The work included an academic paper (*naskah akademik*) on status and resolution of agrarian conflict in Indonesia, which presents a review of the situation of agrarian conflict in Indonesia and proposes the application of concepts of transitional justice, inspired by the South African experience. It asserts that Indonesian court system, as well as the Commission for Human Rights, is ill-equipped to deal with the accumulation of land dispute claims throughout Indonesia. The paper sets the justification for the establishment of the Committee, which should establish conflict resolution procedures, including a special agrarian court to settle land disputes that go back to the start of the New Order Regime (Junaidi 2004; Tim Kerja Mengagas Pembentukan 2004). A member of the Human Rights Commission would head the Committee. The proposal was submitted by the Commission on Human Rights to the President on 26th of July 2004, during the end of her term in office (KomNasHAM 2004). Megawati and her government though did not embrace the proposal. The President suggested the state secretary should review it, but no further action was taken during her presidency<sup>53</sup>.

### *Reforming the Basic Agrarian Law*

While some NGOs were working on legal recommendations, agrarian membership-based movements mobilized farmers to participate in demonstrations in the capital in support of the decree proposal and to demand agrarian reforms. Protests on “farmers’ day” in September 2002 saw tens of thousands of peasants gathering in main towns in Java and Sumatra<sup>54</sup>. Another considerable demonstration gathered thousands of peasants calling for the resolution of land disputes on April 30th 2003. It was organised by AGRA (the Alliance of Agrarian Reform Movement or *Aliansi Gerakan Reforma Agraria*) and aimed in particular at protesting a new plantation bill and asking for implementation of land reforms (Down to Earth May 2003).

Civil society organizations managed to keep the issue of agrarian reforms on the policy agenda and in May, the President instructed the State Land Agency (BPN)<sup>55</sup> to accelerate the revision of the Basic Agrarian Law. The Presidential decree imposed the deadline of August 1<sup>st</sup>, 2004 to implement the instructions which are quite extensive. They include (Art. 1): finalization of the revisions of the bill on BAL, and revisions on all laws related to land, and quite unrealistically, the development on a comprehensive information system that covers land ownership and land utilization rights with digital and spatial data connected to other digital services as e-government. To date a revised bill has yet to be presented to the DPR.

The decree also gives considerable responsibilities to the districts heads and mayors (Art.2) by instructing them to carry out land dispute resolution, identification of land and beneficiaries for land redistribution, and the determination of and resolution of problems regarding community lands (*tanah ulayat*), to mention the most daunting. These instructions are quite surprising as it is strange to leave the determination of redistributive policies about land to local governments without any national level processes setting goals and procedures to undertake redistribution. It is not surprising, if Art. 2 will largely remain unimplemented, as seems to have been the case so far.

In this respect the proposal of the establishment of a committee to resolve agrarian conflict, seems a much more concrete and targeted proposal, and therefore probably more likely to be successful, if implemented, for at least two reasons. First, it advocates the establishment of a new government institution at the national level, which would reflect a

<sup>53</sup> personal communication Ivan Ageung August 22, 2005.

<sup>54</sup> Liputan6.com, electronic reference <http://www.liputan6.com>, accessed March 6, 2006.

<sup>55</sup> Kepres Nomor 34/2000 tentang Kebijakan Nasional di bidang Pertanahan (Presidential Decree No. 34/2003 on National Land Policy), 31 May 2003.



strong political commitment to address the issue of land disputes on part of the state. Second, it is a focused effort to address one specific problem, that of settling existing agrarian conflicts within a specific legal framework based on defined principles of transitional justice.

On the issue of the revision of the agrarian law, the NGO community is split. The majority of the environmental and right-based NGO and many farmers' NGOs support a revision of the law, as instructed in TAP IX. But another section of farmers' civil society organizations including FSPI opposes revisions of the law. On the one hand, BAL is in fact potentially a good law for farmers as it asserts to be based on customary rights, instructs to implement agrarian reforms and seems to be based on principles of justice and equality. On the other hand, the conditionalities in the law pre-empt much of the basic principles aimed at the protection of peasant farmers, and leave considerable discretionary power to the state (Santoso 2005; Slaats 1999). It is in fact surprising that the law survived the New Order, as it is based on populist and socialist principles. Two likely explanations are that, first, it would have been too controversial to repeal this law at that time, as this was (and still is) considered a milestone law of the independent Indonesian state, allegedly rectifying discriminatory aspects of colonial rules regarding land. Second, the conditionalities in the law do confer to the state the ability not to implement its basic principles by invoking reasons of 'national interest'. Under these circumstances the best solution was to retain the law, without implementing its core principles, or most of its prescriptions. And in fact no agrarian reforms have been implemented in Indonesia, and registration of land has proceeded very slowly, especially in the Outer Islands<sup>56</sup>. What the New Order did was to legislate new sectoral laws for forestry, mining etc. what went counter to BAL's basic principles of recognition of customary rights.

NGOs opposed to the revision of the law justify their position by indicating that the comprehensive treatment of land, water and air of BAL is likely not be preserved in the revision, which will likely focus only on technical aspects of land allocation. Concerns, however, regard also the likelihood that the revision would be used to reduce protection of farmers' rights to land, and strengthen those of private enterprises in the name of development. This position has brought this group of NGOs to oppose not only the ongoing revisions of BAL, but to reject TAP IX altogether. They have in fact advocated and lobbied for the repeal of the decree by MPR (Kurniawan and Taufiqurrahman 2003). The possible review and or cancellation of TAP IX was in fact part of the MPR session agenda of August 2003. PA-PSDA lobbied for maintaining TAP IX and implement its recommendations. The coalition also participated in demonstrations outside the MPR building (Nurhayati 2003) during the ten days long session. In the end TAP IX was not repealed and thus officially remains standing until its recommendations will be translated into law.

NGOs that support a revision of BAL (under the umbrella of PA-PSDA) believe that TAP IX is sufficient to realize the goals of an agrarian reform, which includes fair distribution of land. They are aware that a rewriting of BAL could be used by some interest to try and leave out much of the basic spirit of the law, and they are advocating for targeted but substantial revisions.

BPN presented a first draft in May 2004, which was a substantially new law, focused on technical aspects of land, and did not preserve the basic principles of BAL. It had been prepared with very limited public consultation. Both NGOs groups strongly contested the bill (Kompas 2004). In a second stage of consultations, BPN decided to just revise the original law instead of replacing it. The revisions would basically retain the first 15 Articles

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<sup>56</sup> BPN estimates that 30 % of agricultural plots is registered (personal communication BPN government official September 2005), but it is considerably lower if we include all cultivated lands, much of which is actually under state forest areas. Most registered land is on Java, while much less is registered in the Outer Islands.

unchanged<sup>57</sup>. In fact this would retain the basic principles, but also the inherent ambiguities and conditionalities.

### *An Umbrella Law for Natural Resources*

Another effort to affect legislation by NGOs for the implementation TAP IX, refers to the implementation of a comprehensive revision of all legislation related to natural resources.

Events of the last years indicate that on this issue civil society organizations and state actors position themselves on opposing parts of the fence. An umbrella law for natural resources and agriculture would provide fundamental basic principles in the administration of these resources. It would bring together forest and agricultural land issues, eliminating the artificial separation created decades ago. PA-PSDA is working in this direction through the draft of a bill on natural resources. It is not surprising that this movement finds very strong resistance from a number of ministries that see their authorities threatened by an umbrella proposal. The strongest opponents to the proposal are the Department of Energy and Mineral Resources (*Departemen Energi dan Sumber Daya Mineral*) and the Department of Forestry. Both ministries have opposed the bill in inter-ministerial meetings. Because of the strong opposition in government, the NGO coalition has redrafted the bill trying to reduce the impact of autonomy of the ministries, retaining though the fundamental principle that communities and local people should retain control over local natural resources. The Ministry of Mines and Energy in particular is very opposed to any umbrella law<sup>58</sup>.

### *How state interests by-pass TAP IX*

Since October 2001 to date no substantial progress has occurred in the implementation of TAX IX despite the fact that a vocal group of NGOs has contributed to keep NRM and agrarian issues on the government agenda.

In the meantime, we are witnessing a development that resembles partly what occurred at the start of the Suharto period. While the implementing of TAP IX is stalled, new laws regarding natural resources are being ratified. We already discussed the New Forestry Law ratified in 1999. In 2004 a presidential regulation that allows mining in protected areas<sup>59</sup>, a new law on water resources<sup>60</sup> and a new law on plantations<sup>61</sup> were passed. All were contested for favouring large-scale investors and neglecting farmers' interests and land tenure issues. Major protests against the plantation bill in particular were organized by farmers' organizations since 2002, as this law increases protection of corporate control over land for plantation uses, and threatens the right of rural people and communities, *de facto* criminalizing peasants without titles (Down to Earth 2004, August). Finally in May 2005, another Presidential regulation, no. 36/2005 on public land provisions for development was passed. This regulation aims at facilitating state acquisition of land for development purposes.

These laws and regulations all ignore and *de facto* by-pass the recommendations of TAP IX, which require revisions and harmonization of all NRM laws and a serious effort to implement land reforms. Sectoral laws are being implemented that ignore the existing conflicts over land. Many of these laws imply further acquisition of land for development

<sup>57</sup> Interview with the Head of BPN Legal Division in September 2005.

<sup>58</sup> Personal communication PA-PSDA, September 22, 2005.

<sup>59</sup> PPI/2004, ratified on 11 March 2004.

<sup>60</sup> UU7/2004, ratified on 18 March 2004.

<sup>61</sup> Ratified in July 2004

purposes and aim at maintaining ministerial controls on specific sectors, and position of important ministries in the state power structure, which is exercised through control over valuable resources and related income flows (Afiff et al. 2005).

### ***Closing of political opportunities for reforms and recognition of rights to land***

Since Megawati came to power, the openings for civil society to inform and affect policies has diminished. In general, Indonesia has experienced a slowdown of the reform efforts, starting from the revision of the regional autonomy law, which delegates most costly public services, but tries to retain the control over valuable resources within sectoral ministries.

President Megawati herself voiced concerns about a civil society that she found to be too vocal, referring in particular to human rights groups, which have been weary of her government alliance with the military (Imanuddin 2002).

During this period the MoF found many allies within other state institutions to maintain control over forest resources. The paradigm that central control facilitates large-scale investments, which are required to bring growth for the benefit of all, was once again the main economic paradigm within government. Crucial were also changes that occurred within the Ministry of Environment, which became dominated by mining interests during the Megawati presidency. No longer sympathetic to environmental NGO interests, during this period it moved closer to interests concerned with increasing resource exploitation.

### **New Policy Channels for Civil Society Participation**

Generally speaking, the most important political opening for civil society in Indonesia comes from democratization. Increased freedom of association, increased political competition, reduced threat of repressive actions from military and police, have all allowed civil society to expand and have expanded the channels to influence policy. These changes affected all civil society organizations, in particular those working on contentious topics, and I described them in some detail in the section on the rise of NGOs in the post-Suharto years. In this section I highlight only a few specific mechanisms that provided increased access to the policy process to NGOs pushing for changes in forest tenure arrangements during *Reformasi*.

### ***Civil Society Participation in Legislative Processes: Expert Knowledge and Lobbying***

During periods of reform and transition fundamental social rules are put into question. Old laws are invalidated and new laws are introduced, and legal frameworks are transformed. Property rights arrangements to land are part of the fundamental rules of a society. During major reforms the rules on how to assign property and on whom to assign property to might be rewritten as well.

TAP IX for example calls for the revision of a NRM and agricultural laws, and in this period access of civil society organizations to the legislative process is crucial if they want to try and affect the rules governing property rights to land, and forest tenure in particular. If they gain access to this process they then have to convince the legislators that reducing the control over land by state agencies does not pose a threat, but would provide a number of important advantages. Once access is secured lobbying efforts start to convince the legislator of a specific line of argument.

In Indonesia access to legislative process for civil society organizations has increased mainly through two mechanisms. First, the introduction of the regional autonomy in 2001 a decentralized also the legislative system, and today legislative bodies exist at national, provincial, district/municipal as well as at the village level. As a consequence there are more points of entries on the territory for civil society organizations to influence the formulation of legal regulations. Second, in 2004 a new law on the formulation of legislative regulations was introduced<sup>62</sup>. It provides the hierarchy and the directives for formulation, discussion, dissemination of bills, and ratification into laws. One major change of this law is the presence of a mechanism for civil society participation in the legislative processes. Article (art. 53) states that ‘the entitled community gives oral or written input in the provisions or discussions of national and regional bills’<sup>63</sup> at all territorial levels, from national to village levels.

Today civil society organizations are also invited more often to participate in formulation of legal drafts by legislative commissions<sup>64</sup>. Expertise on the issue addressed in the bill, and being an authoritative representative of an important stakeholder that is affected by the bill, are two criteria that generally provide access to this process. Thus, e.g. AMAN, KPA and HuMa have been invited to contribute to a draft of the law on customary community (*masyarakat adat*), which would aim at the recognition of ‘customary community’ as a legal entity: a prerequisite for state recognition of community rights. However, lobbying on the part of civil society organizations is also crucial.

There are obviously also ways to try to reduce possible influence of civil society in the legislative process. First of all, the passing a law “quickly”, might not provide enough time for civil society organizations to prepare and request a hearing. This is what happened for example with the ratification of the DoF bill proposal for the the New Forestry Law. In this respect, the ability to access information about what is in the works in terms of legal proposals is quite important for civil society organizations.

### ***The Constitutional Court and Revisions of Laws: Opposition within Existing Policy***

#### ***Channels***

The Constitutional Court (*Mahkamah Konstitusi*) was established in on August 16, 2003 following the 2000 deliberation of the MPR<sup>65</sup>, and subsequent revision of the constitution. The Supreme Court (*Mahkamah Agung*) passed the ongoing cases of judicial review to the new court that started deliberations in mid October 2003<sup>66</sup>. The new Constitutional Court should guarantee increased independence from political interference. Any legal entity can appeal to the Constitutional Court, and civil society organizations have been very active in presenting cases.

The NGO community has actively field cases with the Constitutions Court to request the invalidation of the New Forestry Law, the New Law on Water, and the Presidential Regulation on Public Land Provision for Development. NGO activists believe that the establishment of a Constitutional Court independent from political interference marks an

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<sup>62</sup> UU10/2004.

<sup>63</sup> (own translation) The explanatory notes indicate that the community's right to participate in these provisions is carried out in accordance with the disciplinary regulation of DPR and DPRD.

<sup>64</sup> Personal communication executive director of HuMa, September 2005.

<sup>65</sup> TAP III, 2001.

<sup>66</sup> In March 2004 the Supreme Court assumed administrative and financial duties for the Indonesia's court system from the Ministry of Justice and Human Rights. Significantly this includes taking over jurisdiction on military courts from the Indonesian Military (TNI) (Saraswati 2005).

important step for democratic decision-making. The appeal mechanism functions well and the judgment by the court has so never taken too much time. Still, the first two appeals on the laws on forestry and on water were rejected by the Court on 7 July and 13 September 2005 respectively.

### **The Role of NGO Coalitions and the Consolidation of a Movement**

The most evident characteristic of the advocacy efforts of NGOs in the events examined in this paper is the tendency to form temporary coalitions. Almost all actions of advocacy NGOs in the forest tenure policy domain have been undertaken collaboratively by a group of NGOs. These coalitions are issue-based, and NGOs might be part of various coalitions on different issues at any one time.

If we look at the sequence of events, we see that one temporary coalition gives way to another as successive goals are attained, or circumstances in the policy domain change, so that the sequence of temporary coalitions translates into sustained cooperation among civil society organizations. An example presented earlier is the sequence of coalitions set up to: lobby and pressure the MPR to request revisions of the NRM laws (KUDETA coalition), plan for the follow up activities (KNPSDA coalition), push for the implementation of TAP IX (first Pokja-PSDA and then PA-PSDA coalitions). This form of collaboration allows NGOs to retain their independence in strategic choices, while collaborating closely with like-minded organizations on specific issues. It allows to forms the best 'team' for any single policy issue to be addressed, e.g. team up with student organizations to organize protests, or team up with legal experts to prepare a bill proposal, and gather expertise of different NGOs to tackle one specific policy issue. It also allows NGOs to retain flexibility and quickly adapt to unforeseen changing policy conditions.

Investigation of the sequences of coalitions over time allows us also to learn about the evolution of networking and social movements formation over time. For example the developments in the forest policy domain indicate the consolidation of a movement, in terms of an increase in the diversity of participating organizations, the broadening of the issues addressed, and the ability to sustain collective action over time. The sequence of consolidation of NGO efforts in the forest tenure policy domain starts with formation of permanent NGO networks gathering various NGOs throughout the country (WALHI), it develops into temporary collaborations on specific issues between environmental, legal aid, and human rights NGOs networks (WALHI and YBLHI), then the integration with student movements (in KUDETA) and with indigenous people movement (AMAN), and finally the joining in of at least part of the agrarian movement (KPA).

In regard to the relationship between civil society organizations and state institutions, collaborative efforts of NGO coalitions are used to both work within the existing policy channels, for example to advise or lobby state institutions, as well as to work outside existing policy channels, through contentious actions opposing state institutions.

### **Working Outside the Political Policy Process: Forms of Contention**

The main forms of contention of civil society organizations with regard to forest tenure policies are in order of increasing challenge toward state authorities: joint press statements (often the product of temporary coalitions), demonstrations and protest activities, support and organization of direct actions as occupation of land.

NGOs used a double strategy to influence tenure policies, employing both collaborative and contentious actions vis-à-vis state institutions. Thus, often protests and

demonstrations were organized for particular events (e.g. MPR special sessions) demanding specific actions by policy-makers. Following the protests, members of the same NGOs would collaborate with state institutions, e.g. advising on policy changes. All main NGOs were involved at least to some degree in contentious actions vis-à-vis the government, at least in its very mild form of discursive opposition.

Depending on the type of NGOs, and its mission and aim, the balance between contention and collaboration will differ. Thus, agricultural movement organizations as KPA and FSPI engaged primarily in contentious collective action. They are the main organizers of land occupations and protest events. Their ability to mobilize people to participate in protest activities stems from the fact that their network members are mass-based community organizations (farmers' unions). However, experts of KPA also advised state agencies on policies on how to address agrarian conflict, and on legal drafting of bills. Similarly, AMAN organizes the participation of indigenous representatives in protest activities, but engages also in policy dialogues with state authorities. In fact, it would be more accurate to talk about 'conflictual cooperation' (Evers 1990) with state authorities instead of 'cooperation'. The absence of full cooperation is explained by the fact that the distribution of power is uneven between state institutions and civil society organizations, and this lack of power inevitably produces a strategy made of a combination of conflict and cooperation (Giugni and Bassy 1998).

Another reason for NGOs to avoid full cooperation with state agencies is the risk of cooption, a risk well-known by those NGOs that were operating during the Suharto era. To civil society organizations the support of their constituencies is of fundamental importance, and the suspicion, let alone the evidence, of cooption by state authorities can have very negative impact on popular support. Cooperation inevitably affects the levels of mobilization and reduces the level of popular participation in membership-based civil society organizations and social movements, which can lead to fragmentation and ultimately demobilization (Karstedt-Henke 1980). Among the main actors of this study mass-based organizations tend to be more radical and mainly engage in contentious actions, while advocacy NGOs formed by professional experts are more moderate and more likely to cooperate with government authorities. Within the movement for forest tenure reform these two types of organizations serve symbiotic purposes: the former put pressure on state authorities, and because of this pressure the latter are able to reach more advantageous agreements and compromises.

Finally, demands for changes in policies on land tenure arrangements (for both forest and agricultural lands) put into question fundamental principles of social relations and threaten powerful interests, and are therefore by their very nature very contentious issues. In these situations popular mobilization is needed to put pressure on entrenched interests to engage in negotiations that will bring about substantive changes<sup>67</sup>. Thus, full cooperation is quite uncommon under these conditions.

## Outcomes and Conclusions

Since *Reformasi* a growing sector of Indonesian civil society has been involved in drawing policy-makers' attention to the problems related to rural land tenure. Although these

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<sup>67</sup> One of the reasons that multistakeholder forums, which focus on cooperative behaviour, are rarely able to tackle controversial issues effectively.

efforts are very much underway today, at 7 years since the start of reforms and we can try to assess some preliminary and intermediate outcomes.

As outcomes, following Sandoval (1998) I refer to a broad range of results as:

- policy legislation outcomes
- structural political changes
- internal outcomes related to civil society mobilization

Before assessing these, let me shortly comment on how civil society organizations have addressed the main problems related to forest tenure that I list at the beginning of the paper.

The long-standing artificial and politically determined separation of land into forest and agricultural land has been the centre of civil society efforts to reform NRM legislation since the start of *Reformasi*, starting with the formation of the KUDETA coalition which criticized the long standing sectoral approaches to NRM management. During the Presidency of Wahid considerable efforts were put in place to address these concerns, although these were antagonized by conservative forces.

The strongest counteraction to the government portrayal of forest villagers as 'forest squatters' has been the rise of an indigenous movement in Indonesia into the national arena. First of all, this movement brought dignity to and demanded respect for traditional knowledge, and customary traditions countering the image of forest dwellers as retrograde. Second, it asserts claims to communal territorial rights by local indigenous communities and advocates administrative autonomy including the freedom to customary legal systems, within the human rights frame supporting the right of self-determination. Support for recognition of local communal rights to land comes also from the human rights and environmental right-based NGOs. This solution would also address the problem of the artificial distinction between agriculture and forest, and the distortion inherent in classifying fallow land as wasteland, as local management systems tend to recognize the reality of the continuum between agricultural, agroforestry, and forest management activities.

With regard to the question of the uncertainty of the rule of law regarding land matters in Indonesia, the sheer growth in NGOs of legal orientation (legal aid NGOs, legal-environmental NGOs) indicates that civil society is trying to address this problem. Environmental watchdog NGOs also contribute to addressing this issue by exposing misconduct and abuses. Experts, academics and other civil society activists that have contributed to revisions of NRM laws have consistently addressed the problem related to contradictions within laws as well as tried to reduce the room for discretionary interpretation. However, with respect to enforcement of the law, this remains a huge problem that Indonesia will have to address in all its economic sectors and includes the need to uphold the fight against corruption.

While we have seen that civil society is trying to address the main problems related to forest tenure, what are the outcomes related to policy legislation so far?

We can certainly highlight the ratification of the TAP IX decree in 2001 as a successful outcome in the direction of legislative changes. However, since TAP IX was ratified in October 2001, numerous policy development indicate that resistance within powerful state agencies to the implementation of the decree is high. Further efforts by civil society coalitions will be needed to maintain pressure on government to follow through with the recommendations. Thus, while encouraging improvement occurred at the beginning of

*Reformasi*, today it is more difficult today to envision changes that entail a substantive shift from state control of forest tenure to community control. In other words, we are still far from seeing the implementation of land reform in Indonesia, especially land reforms on forest lands. Still, if we consider minor shifts in state control over forest land, as increased management rights of communities, increased recognition by state and private sector of compensation for use of community land, as indicators of stepwise improvements, changes are occurring on the ground as well as in legislation and regulation at both national and regional levels.

With regard to structural political changes, these have certainly been occurring in Indonesia. The *Reformasi* movement brought substantial changes especially through decentralization and democratization. However, if we focus on structural changes within the policy arena related to forest tenure, changes have been less evident. For one thing, while devolution of responsibilities has been substantial in most sectors, within natural resources sectors resistance to devolve control and authority has been very strong. If we understand political changes as changes in the power structure of our policy domain, we can say that: civil society has gained strength, but entrenched interests within key state ministries remain in place and have shown so far to be able to resist to major changes, although forced to give in on smaller concessions. But what has not occurred has been a substantial change in the political structure of state interests vis-à-vis forest areas. One thing I would refer to here is the lack of reform within the civil service in general and ministries controlling natural resources in particular, of the missions and mandates of these institutions, and in the role of the figure of civil servants vis-à-vis society.

Finally, in terms of internal outcomes related to civil society mobilization we register substantial growth of civil society in general, and of civil society organizations working on forest and land tenure issues. We also register a broadening of types of civil society organizations and increases in cooperating and networking among these. An encouraging sign is given by the growing cooperation between mass-based organizations with mobilization capacity and advocacy NGOs using lobbying and persuasion to affect policies. Still, it is not clear if the mobilizing capacity, after its peak during the early years of *Reformasi*, is sufficient today to further pressure the conservative part of the establishment of the state. In other words, what remains to be seen is if civil society organizations will identify and will have the needed resources to adopt the right strategic mix of contention and cooperation to affect the lack of political will of some conservative sections of the state controlling natural resources.



## APPENDIX 1:

**Main Civil Society Actors involved in Advocacy on Forest Tenure Policy Issues in Indonesia<sup>68</sup>*****Conservation and Right-based Environmental NGO network:******WALHI***

*(Wahana Lingkungan Hidup Indonesia - Indonesian Forum on Environment)*

Walhi is the biggest and oldest network of conservation NGOs in Indonesia. It was established 1980 with the support of the Ministry for the Supervisions of Development and Environment by a group of 10 NGOs. At inception it counted 79 members organizations from Java and Sumatra (Yulianto 2003).

During the first decade its focus was mainly on environmental conservation. After 1989<sup>69</sup>, it started to increase its policy advocacy and move more and more toward integrating environmental and human rights issues. Since then WALHI has filed 22 environmental lawsuits (Mariani, 2005) mainly against private companies. By now it counts 438 members organization and around 700 volunteers<sup>70</sup>. Forest conservation is one the environmental issues the network is concerned with.

WALHI is also part of international networks, most prominently Friends of the Earth International (71 members and 16 affiliates) -the world's largest grassroots environmental federation – and Infid (International NGO Forum for Indonesian Development a forum of 47 Indonesian and 51 foreign NGOs, which monitor foreign dept policies in terms of compliance with interests of the people of Indonesia (Yulianto 2003).

***Environmental and Rights-based NGO Network Focusing on Mining:******JATAM***

*(Jaringan Advokasi Tambang - Mining Advocacy Network)*

JATAM is “a network of non-governmental organizations and community organizations working on behalf of human rights, gender, the environment, and indigenous people's rights impacted by mining policy and activities”<sup>71</sup>. JATAM was established in 1995, as an output of a mining advocacy workshop organized by WALHI and attended by local and international NGOs, as they felt that to tackle the numerous incidents and the often negative consequences of mining companies on local communities there was the need for a specialized network. The work relates to both environmental impacts, as well as human rights violations. Main activities are campaigns, newsletters and press releases, facilitating discussions and transferring skills to those communities impacted by the multinational investors and lobbying for policy change<sup>72</sup>. Considerable mining activities in Indonesia occur in forest areas. One recent contentious issue has been about the opening of protected forest area to mining concessions which was introduced with the New Forestry Law in 1999.

***Indigenous People Network Organization:******AMAN***

*(Aliansi Masyarakat Adat Nusantara - Indigenous Peoples Alliance of the Archipelago)*

AMAN is an independent social organization composed of indigenous peoples communities from the whole of the country. It was founded on March 17, 1999, during the first Indonesian one week-long congress of indigenous people, which was organized by 13 local organizations in Jakarta. 231 indigenous representatives were present at the first Congress. The Congress requested the recognition of the rights of self-determination of indigenous communities in Indonesia, including the respect of *adat* laws, diversity of *adat* systems, and women rights within *adat* systems. In addition it urged the government to respect the Universal Declaration of Human

<sup>68</sup> The organizations presented here are the ones most often mentioned as important players in the forestry policy sub-domain related to forest tenure issues, according to news reports and policy actors themselves.

<sup>69</sup> when WALHI initiated a lawsuit against PT Inti Indorayon Utama in North Sumatra. WALHI lost the lawsuit, but established an important precedent that an environmental NGO can represent the public interest in a court. In March 1999 the company was closed down by the Habibie government, but resumed mill operations in 2002 under a new name of PT Toba Pulp Lestari (PT TPL) ([www.walhi.or.id](http://www.walhi.or.id) accessed Aug.15, 2005).

<sup>70</sup> membership number by 2004, volunteers are part of the individual members called Friends of Walhi (Sahabat Walhi or Sawa) (Mariani 2005).

<sup>71</sup> <http://www.jatam.org/english/index.html>

<sup>72</sup> Mining Policy Institute ([http://users.nlc.net.au/mpj/indon/eng\\_indon\\_profile.html](http://users.nlc.net.au/mpj/indon/eng_indon_profile.html), accessed Dec 6, 2005).

Rights with respect to all, especially customary communities. AMAN is demanding land tenure and forestry reforms to achieve restitutions of customary lands and rights over forest areas.

The main programs of AMAN in these years revolve around: the establishment and strengthening of indigenous organizations on the territory and facilitation of information flow and communication among members, efforts to affect policy changes at the national level for the protection of indigenous people's rights; strengthening of customary-based economic systems through empowerment of communities; strengthening the position of women within the indigenous systems, and maintaining indigenous cultural identities with indigenous youth.

***Legal and Human Rights NGO Network:***

***YLBHI***

*(Yayasan Lembaga Bantuan Hukum Indonesia –The Indonesian Legal Aid Foundation)*

YLBHI is the oldest national networks legal aid NGOs and was founded in 1971. Today it includes 13 regional legal aid organizations (LBH - *Lembaga Bantuan Hukum*) scattered through the whole of Indonesia each employing a number of affiliated members. YLBHI functions as an umbrella organization facilitating networking and providing resources, training, and facilities.

Activities and programmes are undertaken independently by the regional organizations. The main programs are litigational of cases and case advocacy, capacity building, policy research on legal reforms, campaigns and information dissemination. All organizations are active in case litigations as well as structural legal aid aimed at policy changes. Main policy focus is on conflicts over land, arbitrary police and military repression, labour issues, environmental destruction in violation of legal requirements causing loss of livelihoods, and political prisoners.

***Human Rights Organizations of Legal/Environmental Orientation***

***ELSAM***

*(Lembaga Studi dan Advokasi Masyarakat - Institute for Policy Research and Advocacy)*

ELSAM is an advocacy policy organization founded in 1993 in Jakarta. Its main goal is to participate in efforts to enhancing and protect human rights in Indonesia, and civil and political rights in particular. It seeks to instill the values of justice and democracy in Indonesian society through the formulation of law and its implementation. ELSAM undertakes research, human rights advocacy, lobbying on policies and legal aspects, and education and training in human rights issues.

***ICEL***

*(Indonesian Center for Environmental Law)*

ICEL was established in 1993. Its main aim is to protect the environment through improvement and implementation of environmental law. It works for the protection of people's right to environmental and natural resources. It is active on issues related to legal and policy reform, undertakes research on environmental law issues, capacity building, and provides legal expertise advice for drafting of legal documents. Moreover, it sustains its advocacy and community empowerment objectives through case advocacy, lobbying, networking, and production of documentation for dissemination.

***HuMa***

*(Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis – Ecology and Community-based Legal Reform Association)*

HuMa is an association of individuals that promotes values of human rights, justice, freedom of religion, culture and conservation of the ecosystem in Indonesia. It was founded in 2001 by a number of experts and activists that had been involved in a task force group during a program on Law and Community (*Hukum dan Masyarakat*) of ELSAM<sup>73</sup>.

Its mission includes supporting partners that facilitate the struggle for the traditional and local community to seize, regain and maintain their rights to land and the other natural resources, and built and maintain a network of supporters. Apart from networking HuMa's main activities are the development of capacity and new discourse, and the intervention in legal and policy matters at the national level.

***Agrarian movements:***

***KPA***

*(Yayasan Konsorsium Pembaruan Agraria – Konsortium for Agrarian Reform)*

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<sup>73</sup> Personal communication executive director of HuMA, October 2005.

KPA is an NGO network organization that was founded in 1994 by a number of NGOs with the aim to fight for the implementation of agricultural reforms as the primary condition for the realization of agriculture justice in Indonesia. The headquarters are in Bandung, a city with a long history of student activism. This NGO network is open to groups and individuals that want to affect change in agricultural policies and fight for the realization of agricultural reform in Indonesia.

KPA is one of the main actors undertaking people's mobilization for agricultural reform in Indonesia. Although its major concern is small-scale farmers it also contributes to the fight for protection and recognition of indigenous peoples' customary land rights, which is an interrelated aspect of agrarian reforms. KPA was actually the driving force for the establishment of AMAN 1999<sup>74</sup>. KPA spends considerable effort collecting and providing information about land conflict, and resolution mechanism, produces scholarly documents on agrarian reforms and land rights, and is probably the major mobilizing force of farmers in Java.

#### *FSPI*

*(Federasi Serikat Petani Indonesia-Federation of Indonesian Peasant Unions)*

FSPI was founded in July 1998. At the first Congress held in 1999 it counted members of Java and Sumatra. It advocates immediate implementation of agrarian reform according to the prescription of BAL, in order to achieve agricultural justice in Indonesia. The federation is active in networking with other organizations that foster agrarian reforms, pressuring government to implement agrarian reforms. It stressed that of peasant farmers and indigenous peoples in Indonesia have common aims and priorities with respect to land issues and advocates the development of mass-based farmer's organizations. At the international level FSPI is member of La Via Campesina (International Peasant Movement) the Land Research Action Network and the Foodfirst Information Action Network.

KPA and FSPI work in a synergetic way, and have concentrated of different levels of activism: KPA works primarily on advocacy for policy reform, thus concentrating its efforts on higher while FSPI main work relates to strengthening grassroot peasant's organizations (Afiff et al. 2005).

#### *Multistakeholder Forum*

Multistakeholder forum initiatives on forest issue in Indonesia show a strong division between government and civil society organization in relation to the understanding of tenure issues, the appropriateness and effectiveness of existing legal and regulatory approaches, and their implementation. There are fundamental differences that make it more difficult to communicate, and find common ground, let alone devise effective future agendas and actions. In these situations frustration can ensue in some stakeholders, which can include withdrawal from the forum, despite the intrinsic interest of the organization in a discussion topic. A risk of all multistakeholder forum is capture of the process by some interests, which use to forum to further their own narrow agenda to the detriment of other stakeholders. On the other hand, the existence of considerably differing interests shows that there is the need to further explore ways to inform each other, in order to look for some common ground to try and build a base for trust for future action.

#### *FKKM*

*(Forum Komunikasi Kehutanan Masyarakat -Communication Forum on Community Forestry)*

FKKM was established in 1997, after a workshop on community forestry, which included a number of Indonesian participants from diverse institutions<sup>75</sup>. The aim was to increase dialogue, increase mutual learning, and build trust among stakeholders involved in community forestry in Indonesia. Stakeholders include researchers from universities and research institutes, forest companies' representatives, MoF officials NGOs, indigenous peoples, and local communities. The forum has 15 regional working groups throughout Indonesia. As the name indicates it is a platform for discussion and membership is open, thus stakeholders do not become members of any organization, but participate if interested or invited to a number of events, meetings, working groups etc. The forum has undertaken a number of activities that go from engaging stakeholders in policy dialogues, increasing exchange of information, facilitating research on community forestry, providing experts opinions on ways to improve community forestry in Indonesia. FKKM participated in drafting the revised forestry law in 1999, before the relevant DPR commission decided instead to assign the task to prepare the bill to the DoFEC (Afiff et al. 2005). It has been very active in dissemination of the principles of social forestry in Indonesia, engaging with government officials and expanding social forestry curriculum in universities.

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<sup>74</sup> Personal communication AMAN executive director, September 2005.

<sup>75</sup> organized by RECOFTC with funding of the Ford Foundation, "Community Forestry at a Crossroads: Reflections and future Directions in the Development of Community Forestry" held in Bangkok, Thailand, 17-19 July 1997.

As an open forum it serves mainly the purpose of fostering dialogue and increasing information flows on issues related to social forestry among a variety of stakeholders from the NGO, business and government communities. Given the different positions represented it has been difficult sometimes to reach collective decisions that are shared by all members, and tackle controversial aspects of forest policy.

*Working Group on Forest Land Tenure*

The Working Group on Forest Land Tenure was established in 2001. It is headed and hosted by the MoF, but foreign funded by DFID and USAID. It is a multistakeholder forum that develops into roundtable discussions. Membership is open, and/or by invitation for single events. Government officials and representatives, private sectors, research institutions, donors, NGOs have participated in sponsored activities. Discussion topics addressed so far have mainly related to land tenure conflict, and have included presentation of land conflict cases from the perspective of various stakeholders, information exchange and sharing of different views of the topic and discussions on possible conflict resolution initiatives.

## APPENDIX 2:

## Characteristics of main civil society organizations involved in forest tenure advocacy

	Established	Type	Member organizations (for networks)
YLBHI	1971	Foundation and network organizations	13 organizations and individual members
WALHI	1980	Foundation, environmental and rights-based NGO network organization,	438 <sup>76</sup>
ELSAM	1993	Foundation until 2002, then association	-
ICEL	1993	Foundation	-
KPA	1994	Community Organization, network organization	77 community organizations, 118 organisations, and 37 individual members <sup>77</sup>
JaTam	1995	environment and rights-based NGO network	12 regional networks from through Indonesia
FKKM	1997	Multistakeholder forum	Varies, open membership
FSPI	1998 (July)	Farmers' federation, network organization	Composed of 12 regional networks
AMAN	1999	Independent social (community membership) organization and network organization (foundation)	23 network NGOs, 925 communities <sup>78</sup>
Working Group on Forest Tenure	2001	Multistakeholder forum	Varies, open membership
HuMa	2001	Legal, environmental right-based association	-

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<sup>76</sup> by 2004 ([www.walhi.or.id](http://www.walhi.or.id) accessed Aug 12, 2005)

<sup>77</sup> by July 2005.

<sup>78</sup> in 2003.

## REFERENCES

- Afiff, S., N. Fauzi, G. Hart, L. Ntsebeza, and N. Peluso. 2005. *Redefining agrarian power: resurgent agrarian movements in West Java, Indonesia, CSEAS Working Paper 2-05*. Berkeley, CA: Centre for Southeast Asia Studies, University of Berkeley.
- Antlöv, H. 1995. *Exemplary centre, administrative periphery: rural leadership and the new order in Java*. Richmond, UK: Curzon Press.
- Antlöv, H., R. Ibrahim, and P. Van Tuijl. 2005. NGO governance and accountability in Indonesia: challenges in a newly democratizing country. Unpublished.
- Aspinall, E. 1995. Students and the military: Regime friction and civilian dissent in the late Suharto period. *Indonesia* 59:21-44.
- Aspinall, E., and G. Fealy. 2003. *Local power and politics in Indonesia: decentralisation and democratisation*. Singapore: Institute of South East Asian Studies.
- Bach, J.-M. 2003. *Die Dezentralisierung und Lokalregierungen in Indonesien seit 1998: Der Fall Riau*. Muenster: Lit Verlag.
- Clark, G. 1998. Non-governmental organizations (NGOs) and politics in the developing world. *Political Studies* XLVI:36-52.
- Colfer, C. J. P., and I. A. P. Resosudarmo, eds. 2002. *Which way forward? People, forests, and policymaking in Indonesia*. Washington DC: Resources for the Future.
- Contreras-Hermosilla, A., and C. Fay. 2005. *Strengthening forest management in Indonesia through land tenure reform: issues and framework for action*. Washington DC: Forest Trends and ICRAF.
- Diamond, L., J. J. Linz, and S. M. Lipset. 1995. Introduction: what makes for democracy. In *Politics in developing countries: comparing experiences with democracy*, edited by L. Diamond, J. J. Linz and S. M. Lipset. London: Lynne Rienner.
- Down to Earth. 2004, August. *New plantation law: new conflicts predicted*. DTE No. 62.
- Down to Earth. May 2003. *MPR's natural resources decree under threat*. Available from <http://dte.gn.apc.org/57MPR.htm>.
- Eldridge, P. J. 1995. *Non-government organization and democratic participation in Indonesia*. Oxford, Kuala Lumpur, Singapore, New York: Oxford University Press.
- Eldridge, P. J. 2005. Nongovernmental organizations and democratic transition in Indonesia. In *Civil life, globalization, and political change in Asia: organizing family and state*, edited by R. Weller, P. London and New York: Routledge.
- Evers, A. 1990. Shifts in the welfare mix. In *Shifts in the welfare mix: Their Impact on work, social services and welfare policies*, edited by A. Evers and H. Winterberg. Frankfurt am Main: Campus Verlag.
- Fay, C., and M. Sirait. 2002. Reforming the reformists in post-Soeharto Indonesia. In *Which way forward? People, forests, and policymaking in Indonesia*, edited by C. J. P. Colfer and I. A. P. Resosudarmo. Washington DC: Resources for the Future.
- Fisher, J. 1998. *Non governments: NGOs and the political development of the Third World*. West Hartford: Kumarian Press.
- Giugni, M. G., and F. Bassy. 1998. Contentious politics in complex societies: new social movements between conflict and cooperation. In *From contention to democracy*, edited by M. G. Giugni, D. McAdam and C. Tilly. Cumnor Hill, Oxford, UK: Rowman and Littlefield Publishers, Inc.
- Hadiwinata, B. S. 2003. *The politics of NGOs in Indonesia: developing democracy and managing a movement*. New York: Routledge Curzon.
- Hikam, M. A. S. 1999. The role of NGOs in the empowerment of Indonesian civil society: A political perspective. Paper presented at Paper prepared for the 12th INFID Conference, 14-17 September, Bali.

- Hipsher, P. L. 1998. Democratic transitions and social movements outcomes: the Chilean shatytown dwellers' movement in comparative perspective. In *From contention to democracy*, edited by M. G. Giugni, D. McAdam and C. Tilly. Cumnor Hill, Oxford, UK: Rowman and Littlefield Publishers, Inc.
- Human Rights Watch. 1995. *Human Rights Watch World Report 1995*. New York.
- Imanuddin. 2002. Megawati and the military. *The Jakarta Post*, Jakarta, May 22.
- Jakarta Post. 1999a. End of an era. *Jakarta Post*, Friday, October 29.
- Jakarta Post. 1999b. House deliberates new bill on forestry. *Jakarta Post*, 13, September.
- Jakarta Post. 2001a. Government asked to limit forestry minister's powers. *The Jakarta Post*, June 12.
- Jakarta Post. 2001b. Pessimism greets regional autonomy on day one. *The Jakarta Post*, 2 January.
- Jakarta Post. 2001c. Regional autonomy revisited. 16 February.
- Jakarta Post. 2001d. VP criticizes regional autonomy law. *The Jakarta Post*, 17 May.
- Jakarta Post. 2002. Megawati steps up attacks on regional governments. 4 March.
- Junaidi, A. 2004. Rights commission proposes agrarian dispute committee. *Jakarta Post*, 24 June.
- Karstedt-Henke, S. 1980. Theories for the explanation of terrorist movements. In *The politics of internal security*, edited by E. Blankenberg. Frankfurt, Germany: Suhrkamp.
- King, D. Y. 2003. *Half-hearted reform: electoral institutions and the struggle for democracy in Indonesia*. London and Westport, Connecticut: Praeger.
- KomNasHAM. 2004. *Laporan Tahunan 2004*. Komisi Nasional Hak Asasi Manusia.
- Kompas. 2000. Department of Agriculture separates from the Department of Forestry. *Kompas Online*, 7 November.
- Kompas. 2004. Petani tolak RUU sumber daya agraria. *Kompas*, 24 July.
- Kurniawan, M. N., and M. Taufiqurrahman. 2003. Activists divided over agrarian reform. *The Jakarta Post*, 2 August.
- Lane, M. 2004. *Re-organization of mass politics and the weakened national revolution in the era of neo-liberal globalization*. Asia Research Center, Working Paper 102 Murdoch University.
- Mariani, E. 2005. Walhi's 25th birthday: from a nice child to a angst-filled youth. *Jakarta Post*.
- Maryono, A. 2002. Central Java Councils shuns autonomy law revisions. *The Jakarta Post*, 12 February.
- McCarthy, J. 2000. The changing regime: Forest property and Reformasi in Indonesia. *Development and Change* 31 (1):91.
- Mercer, C. 2002. NGOs, civil society and democractiazation: a critical review of the literature. *Progress in Development Studies* 2 (1):5-22.
- Moniaga, S. 1998. Advocating for community-based forest management in Indonesia's Outer Islands: political and legal constratins and oppportunities. Paper presented at IGES International Workshop on Forest Conservation Strategies for the Asia and Pacific Region, 21-23 July, Hayama, Japan.
- Nurhayati, I. 2003. Agrarian and natural resources management reform Now! was the civil society cry during the People's Assembly (MPR) annual sitting. WALHI campaign document. Unpublished.
- Peluso, N. L. 1992. *Rich forests, poor people: resource control and resistance in Java*. Berkeley, Los Angeles, London: University of California Berkeley.
- Peluso, N. L., and P. Vandergeest. 2001. Genealogies of the political forest and customary rights in Indonesia, Malaysia and Thailand. *Journal of Asian Studies* 60 (3):761-812.

- Pokja PA-PSDA. 2004. Ringkasan Konferensi Nasional Pengelolaan Sumberdaya Alam, May 23-25, 2000, Jakarta.
- Rasyid, M. R. 2003. Regional autonomy and local politics in Indonesia. In *Local power and politics in Indonesia: decentralisation and democratisation*, edited by E. Aspinall and G. Fealy. Singapore: Institute of South East Asian Studies.
- Robison, R. 1986. *Indonesia: The rise of capital. Southeast Asia Publications Series, no.13* canberra: Asian Studies Association of Australia.
- Sandoval, S. A. M. 1998. Social movements and democratization: the case of Brazil and the Latin Countries. In *From contention to democracy*, edited by M. G. Giugni, D. McAdam and C. Tilly. Cumnor Hill, Oxford, UK: Rowman and Littlefield Publishers, Inc.
- Santoso, U. 2005. *Hukum agraria dan hak-hak atas tanah*. Jakarta: Prenada.
- Saraswati, M. S. 2005. Judicial reform essential to support democracy. *Jakarta Post*, January 3.
- Schwarz, A. 1995. *A nation in waiting: Indonesia in the 1990s*. San Francisco: Westview Press.
- Sijabat, R. M. 2005. Freedom of association largely flouted. *Jakarta Post*, 10 December.
- Slaats, H. 1999. Land titling and customary rights: comparing land registration projects in Thailand and Indonesia. In *Property rights and economic development: land and natural resource in Southeast Asia and Oceania*, edited by T. Meijl van and F. Benda-Beckmann von. London and New York: Kegan Paul International.
- Sophiaan, A. A. 2002. Opposition grows against Autonomy Law review. *The Jakarta Post*, 6 February.
- Tim Kerja Mengagas Pembentukan. 2004. *Penyelesaian konflik agraria dan usulan pelebagaannya di Indonesia*. Naskah Akademik.
- Uhlin, A. 1997. *Indonesia and the "third wave of democratization": the Indonesian pro-democracy movement in a changing world*, Nordic Insritute of Asian Studies *Democracy in Asia Series, No.1*. Richmond, Surrey, U.K.: Curzon.
- Weller, R., P., ed. 2005. *Civil life, globalization, and political change in Asia: organizing family and state*. London and New York: Routledge.
- Yulianto, O. A. 2003. Network-based pro-democracy actors: case studies on five organizations. In *Indonesia's post-Soeharto democracy movement*, edited by S. A. Prasetyo, A. E. Priyono and O. Törnquist. Jakarta: DEMOS.