

Assessing multi-level policies for conservation of the Heart of Borneo as ‘dual’ commons

by

Makoto INOUE (Waseda University), Noriko OKUBO (Osaka University),
and Yukari TAKANURA (The University of Tokyo)

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1. Introduction

Ecosystems in the Heart of Borneo (hereinafter, HoB) have a dual nature: the local and global commons. As the local commons, HoB is inhabited by indigenous peoples who depend their livelihood on the forests for swidden agriculture, hunting, NTFP under their own customary laws. As the global commons, HoB is targeted by a trans-national conservation agreement as well as prominent international conventions.

By using the terminology in the field of the research on common-pool resources (CPRs), HoB ecosystem itself can be considered to be ‘resource system’, in which the local people depend their livelihood on ‘resource units’ extracted from the ‘resource system’ of HoB. ‘Resource units’ are synonymous with ecosystem services, because human society extracts and uses ‘resource units’ from CPRs to gain environmental, economic, social or cultural benefits (Miyanaga and Shimada, 2018). Ecosystem services are sometimes location specific, and they tend to differ from place to place because human-environment interactions occur substantially at the local level (Lin et al, 2015). Hence, governance of such ecosystem services is best addressed through self-governance by the local affected stakeholders (Lin et al, 2015; Miyanaga and Shimada, 2018). This gives us robust ground to attach importance to the local reality when examining the national policy for the governance of ‘dual’ commons.

Our research aims at clarifying relevant multi-level policies such as international, national and local level, and assessing the way of mutual application among them.

2. International framework

Forest policies are now elaborated to target triple benefits. First benefit or poverty alleviation is regarded as an activity for “Goal 1. no poverty” of SDGs. Forest policies also may contribute to conservation of biodiversity, the second benefit, which is one of the principal objectives of the Convention on Biological Diversity and “Goal 15. life on land” of SDGs. REDD+ activities mainly implemented under the UNFCCC may impact forest policies, which may contribute to climate change mitigation/adaptation, the third benefit, and thus to achieving “Goal 13. climate action” of SDGs. These international conventions and instruments have provided/may provide a framework for national and local policies relating to forest ecosystem.

In order to satisfy above-mentioned triple benefits, public participation is considered as an important basis, which is included in “Goal 16. peace, justice, and strong institutions” of SDGs. The participation right in decision making is one of three pillars of Principle 10 of Rio Declaration, the Aarhus Convention and the Bali

Guidelines with access to information and access to justice. According to the result of the EDI (Environmental Democracy Index), Indonesia got high integrated index score (1.80) of three pillars, that is the first place in Asia and 15th place among 70 countries evaluated in the world. It shows Indonesia is a relatively well-institutionalized country in terms of environmental democracy, where participation by the local people would play very important roles to achieve the triple benefits. We also should notice Escazu Agreement reached in 2018, in which participation of indigenous people and local community in resource management is one of the important points.

Based on the international framework, we can identify indispensable four viewpoints such as poverty alleviation, biodiversity conservation, climate change mitigation/adaptation, and participation. It is, however, very difficult for us to evaluate the outcome of forest policies in terms of biodiversity conservation and climate change mitigation/adaptation, because it needs long-term monitoring and natural scientific approach. Then we will focus on poverty alleviation and participation to evaluate national policies and local reality.

3. National policies

3-1. Action plans for HoB

International framework more or less affects policies and programs related to HoB. Indonesian government is committed to implement the action plans through the HoB program activities as follows: (1) transboundary management, (2) protected area management, (3) sustainable natural resources management, (4) ecotourism development, (5) biodiversity conservation, (6) climate policy. These activities are conducted in both of protected area and other areas. It is certain that the most important ministry to be in charge of conservation of HoB is Ministry of Environment and Forestry, though other ministries such as Coordinating Ministry for Economic Affairs and National Development Planning Agency also contribute to HoB conservation.

3-2. Legal framework for participation

Ministry of Environment and Forestry is in charge of the policies in both of conservation and non-conservation areas, that will be clarified below. It is important to notice that participation is very important for the people to keep their right to use the land and forest resource against designation of conservation areas and against other rights such as timber concession in non-conservation area. Legal framework for participation is quite important for the people to ensure their livelihood possibility in both conservation and non-conservation areas, that will affect poverty alleviation.

(1) Conservation areas

For conservation forest area such as national park (*Taman Nasional*), wildlife sanctuary (*Suaka Margasatwa*), nature reserve (*Cagar Alam*), nature tourism park (*Taman Wisata Alam*), great forest park (*Taman Hutan Raya*), hunting park (*Taman Buru*), the management is not entrusted to the people, but managed by the ministry. National park is under the authority of and managed by the national park office (*Balai Taman Nasional*) under the direct control of Ministry of Environment and Forestry. Wildlife sanctuary, nature reserve, nature tourism park, and hunting park are managed by natural resources conservation office (*Badan Konservasi Sumber Daya Alam: BKSDA*) under

the provincial forest service. Management of great forest park is entrusted to the provincial government.

In terms of the total area, national park, or the most important conservation area in terms of quality and quantity, occupies about 60% of the conservation areas in Indonesia (Statistics of Ministry of Forestry, 2010); wildlife sanctuary accounts for 19%; nature reserve gets 17%. These three conservation areas occupy 95% of the conservation areas in Indonesia. This is the reason why we selected the national park area as one of the research sites for the research on the Heart of Borneo conservation.

Law No.5/1990 on Conservation of Living Resources and Their Ecosystems provided a legal status of National Park in Indonesia. Though article 37 urges the importance of citizen participation, the actions the government should take were just mobilizing the citizens, and developing conservation awareness through education and extension programs.

Ministerial Decree No.424/Menhut-II/2004 on collaborative management of conservation area functioned a turning point to introduce people's participation into the conservation area management, though the decree did not include the concrete process/procedure for collaboration. Ministerial decree No. P56/Menhut-II/2006 on the guideline for zoning national park allows park management agencies to set aside certain areas as "special zone" for community use such as cultivation, which indirectly recognize tenure rights of the people.

The most comprehensive framework for participation was defined by the law No. 32/2009 on Environmental Protection and Management. This law is considered to specify the "green access rights" (Okubo, 2017), based on Aarhus Convention in 1998, consisting of access to information, right to participate in decision-making, and access to justice.

(2) Non-conservation areas

For forest area, law No. 41/1999 on Forestry forms the basis of participation and the rights of the people. Basically except for conservation forests, management of national forest lands such as production and conversion forests are entrusted to individuals, cooperatives, and private companies in a certain variation.

Among many regulations and decrees related to the rights of the people to manage the land and resources, the regulation of the minister of environment and forestry No.p.83/2016 on Social Forestry (*Perhutanan Sosial*) seems comprehensive and important. The social forestry is defined as forest management activities by the local people or indigenous people on national forest lands or customary/private forest lands. Six forms are expected to applied as social forestry: (1) village forest (*Hutan Desa*) on national forest that is managed by village cooperative and enterprises, (2) community forest (*Hutan Kemasyarakatan*) on national forest that is managed by people's group, farmers group, and cooperatives, (3) plantation forest by the people (*Hutan Tanaman Rakyat*) on national production forest that is managed by group or individual, (4) people's forest (*Hutan Rakyat*) on private land, (5) customary forest (*Hutan Adat*) on customary land (outside of the national forest land), (6) partnership forestry (*Kemitraan Kehutanan*) on national forest in collaboration between right holder (ex. private company) and the local people.

In 2012 the Constitutional Court passed the judgement that the article 5 of law No.41/1999 on Forestry, that declared customary forest (*Hutan Adat*) was approved in

national forest area, was a violation of the constitution, and customary forest should be released from the national forest area. Since then, AMAM (*Aliansi Masyarakat Adat Nusantara*) and other NGOs have urged the government to establish customary forest (*Hutan Adat*) models to demonstrate how the rights of customary forest communities might be recognized and operationalized (Hidayat et al, 2018). Up to October 2015, 22 customary forests were recognized in the form of Decrees of the Ministry, though the process has been rather drawn out. One of them is Juaq Asa in West Kutai district, East Kalimantan province. This represented a significant breakthrough as it is the first time since Indonesia's independence, that indigenous peoples have been formally recognized by the Indonesian state as having full right ownership of their land forest areas (Hidayat et al, 2018).

(3) Evaluation points

For both of conservation and non-conservation areas, Indonesia has evolved fairly good legal systems in terms of participation of the local people, though much progress in terms of the rights of the indigenous people is expected. It is expected the legal system will positively affect their livelihood.

Even so, we should carefully evaluate Indonesian national legal system in comparison with international standard, especially the Bali Guidelines (BG) adopted at the meeting of UNEP in 2010. According to Stec (2017), the following three aspects have tendencies to face the problems when applying public participation into practice.

(a) **Notification (BG 8):** Members of the public concerned should be informed of their opportunities to participate at an early stage in the decision-making process. In the early stage, there is still a room for the plan to be withdrawn.

(b) **Duty of the state (BG 9) and role of enterprises:** States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner. Enterprises should include the cost for public participation into the budget.

(c) **Due Account and public announcement (BG 11):** States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

We took these evaluation points into consideration when evaluate the reality of participation in the field.

4. Local reality

4-1. Conservation area

In conservation area, or the villages adjacent to Kayan Mentaran National Park, the people practice swidden agriculture outside the park and collect non-timber forest products (NTFP) in the park. The system of collaborative management of the park acquired formal recognition in 2002, that was endorsed by Ministerial Decree No. 1215. The collaborative system was further evolved by establishing the multi-stakeholder policy board (*Dewan Pembina dan Pengendali Pengelolaan Kolaboratif: DP3K*) in 2007. Among the members of *DP3K* are: Head of East Kalimantan Forestry Office, Head of Malinau Forestry and Plantation Office, Head of Nunukan Forestry and Plantation Office, Head of East Kalimantan Planning Board, Head of Nunukan Environmental Impact Control Body, Chairman of Indigenous People's Forum (*Forum*

Musyawah Masyarakad Adat: FoMMA), NGOs (WWF, Conservation International, etc.), and universities (University of Mulawarman, etc.).

The park management did not seem to have negative influence on their livelihoods due to democratic governance mentioned above. Actually, the meeting was organized prior to the beginning of the zoning process in a village (evaluation point: notification). The land area where the people are permitted to practice swidden agriculture was expanded as a result of the meeting in a village (evaluation point: due account).

There, however, are some drawbacks to be improved in the near future. In a village, we found a certain gap between elites and others in terms of the process of consensus building (evaluation point: duty of the state). In other village, only a small number of people took part in the meeting to discuss the zoning of the national park, though demarcation of the park was fixed in 2016 (evaluation point: notification). A village head does not notice the demarcation of the park (evaluation point: notification). The result of demarcation of the park was made public just on a bulletin (evaluation point: public announcement).

The point of substantial participation of the people is free, prior, informed consent (FPIC) to the zoning process, because the zoning of the national park is quite important for the people to use their forest resources and forest land. They are not allowed to enter into the Core Zone (*Zona Inti*); they can collect non timber forest products (NTFP) such as aloes-wood (*Gaharu*) in Primary Zone (*Zona Rimba*) as a buffer zone for the core zone; they practice tourism activities in Utilization Zone (*Zona Kemanfaatan*); they collect NTFP such as rattan as well as reserve customary conservation forest (*Tanaq Ulen*) in Traditional Zone (*Zona Tradisi*); they can practice swidden agriculture within 500 meters along the rivers, and harvest timber in Special Zone (*Zona Khusus*).

Other than the FPIC to the zoning process, economic condition of the people, that may be affected by the access from the city, is quite influential to the people's livelihood. The people near to the Kayan Mentarang National Park do not get economic benefit from ecotourism because access to the site from the cities is extremely difficult. If the number of the tourists increase, their income from ecotourism, especially from tour guide, traditional dance performance, and handicrafts, is expected to increase.

4-2. Non-conservation area

In non-conservation areas, or other villages in Apo Kayan and Ulu Mahakam areas, the HoB conservation may provide a certain benefit to the people by way of forest management under the umbrella of 'social forestry' that is formally recognized by the government, though we have not yet examined the cases. The most influential activities for both of the livelihood of the people and HoB conservation are certainly forest development, or logging activities, and oil-palm plantation development by private companies. Our discussion here will be focused on the situation of participation in the planning of logging activities by a large timber and plywood company who has more than 770,000 hectare of logging concession areas consisting of six natural forest areas.

In line with the policy guidelines, the company launched 'community development' program in 1998 to provide a truck twice a month for the people in Apo Kayan region (plateau area) to move from their village to a town in Ulu Mahakam area (basin area) for selling their products and buying the necessities of life.

There was a conflict between the company and the people. The people, or the

Kenyah, has customary conservation forest/land called *tana ulen*. Though they do not have written rules, the villagers are prohibited from cutting and burning trees in *tana ulen*. They, however, are permitted to cut trees only for the purpose of getting material to build their own houses. Thus, forest ecosystem in *tana ulen* was conserved for long-term by the people. Before starting logging activities, the company indicated an annual work plan (*RKT: Rencana Kerja Tahunan*), and stated that the location outside the *RKT* area, where *tana ulen* was located, was designated as protected forest by the government. The people did not know the information on the protected forest, rejected the *RKT*, and painted trees in red in *RKT* area to claim their property right. In this regard, the state did not function to ensure participation of the people (evaluation points: notification, duty of the state, due account and public announcement). The company also did not pay any attention to the peoples' participation (evaluation point: role of enterprise). Finally the company gave up logging there. A former village head who agreed to *RKT* changed to a new village head or former village secretary who opposed *RKT*.

According to the article 68 of law No.41/1999 on Forestry, the community shall be informed about plans of forest allocation, forest product utilisation and forestry information; be provide information, suggestions and considerations for forest development; have the right to receive a compensation for loosing access to their surrounding forests due to its designation as forest area. Strictly to say, the right of the people ensured by the law was neglected.

5. Discussion and conclusion

Generally to say, the 'dual' commons is considered to have tendency to face contradictions between the livelihood of the local people and global need for conservation. We found the reality was different. 'Dual' commons such as HoB provide advantage for the local people to get support from international framework. The condition of the 'dual' commons is always watched by various stakeholders in terms of environmental democracy and triple benefits. The government is compelled to adapt the policies to international agreements. At the same time, the voice of the people these days has more power to urge on the government for policy change. Thus, the 'dual' commons seem a typical case to apply/realize "a pincer strategy" (Inoue, 2014) toward the state, in which relevant stakeholders put top-down and bottom-up pressures to the government.

In the process of consideration of multi-level policies and local reality, we successfully assessed the ways how the international framework, especially the issue of participation, can be applied to evaluate national policies and local reality.

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