

Local Policy-making Mechanisms

Processes, Implementation and Impacts of
the Decentralized Forest Management System
in Tanjung Jabung Barat District, Jambi, Sumatra

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Study Center for Legislation and Policy on Regional Autonomy (PSHK-ODA)
in cooperation with the
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Glossary

Adat	Customary
APL	<i>Areal Penggunaan Lain</i> , Non-Forestry Use Area
Bappedada	<i>Badan Perencanaan Pembangunan Daerah</i> , Regional Development Planning Board
BPD	<i>Badan Perwakilan Desa</i> , Village Representative Body
BPN	<i>Badan Pertanahan Nasional</i> , National Land Agency
BUMD	<i>Badan Usaha Milik Daerah</i> , District-owned Company
Dishutbun	<i>Dinas Kehutanan dan Perkebunan</i> , Forestry and Estate Crops Office
DPRD	<i>Dewan Perwakilan Rakyat Daerah</i> , District Parliament
FGD	Focus Group Discussion
GBHD	<i>Garis-garis Besar Haluan Daerah</i> , Broad Outlines for District Policies
HL	<i>Hutan Lindung</i> , Protection Forest
HP	<i>Hutan Produksi</i> , Production Forest
HPA	<i>Hutan Pelestarian Alam</i> , Preservation Forest
HPH	<i>Hak Pengusahaan Hutan</i> , Large-scale Commercial Forest Concession
HPHH	<i>Hak Pemungutan Hasil Hutan</i> , Small-scale Commercial Forest Concession
HPT	<i>Hutan Produksi Terbatas</i> , Limited Production Forest
HSA	<i>Hutan Suaka Alam</i> , Nature Reserve and Conservation Area
HTI	<i>Hutan Tanaman Industri</i> , Industrial Timber Plantation
IPH	<i>Izin Pemanfaatan Hutan</i> , Forest Utilization Permit
IPHH	<i>Izin Pemungutan Hasil Hutan</i> , Forest Product Extraction Permit
IPHHI	<i>Izin Pengambilan Hasil Hutan Ikutan</i> , Forest By-Product Collection Permit
IPHHK	<i>Izin Pemanfaatan Hasil Hutan Kayu</i> , Permit to Use Timber Forest Products from State Forests
IPHHBK	<i>Izin Pemanfaatan Hasil Hutan Bukan Kayu</i> , Permit to Use Non-Timber Forest Products from State Forests
IPHHKR	<i>Izin Pemungutan Hasil Hutan Kayu Rakyat</i> , Permit to Use Timber Forest Products from Privately Owned Forests
IPHHKT	<i>Izin Pemungutan Hasil Hutan Kayu Tanaman</i> , Permit to Use Timber from Timber Plantations
IPKR	<i>Izin Pemanfaatan Kayu Rakyat</i> , Permit to Use Timber from Privately Owned Forests)
KUHP	<i>Kitab Undang-undang Hukum Pidana</i> , Indonesia's Criminal Code
Muspida	<i>Musyawarah Pimpinan Daerah</i> , District Leadership Forum
NGO	Non-governmental Organization
PAD	<i>Pendapatan Asli Daerah</i> , Regionally Generated Revenues

Pansus	<i>Panitia Khusus</i> , Special Committee at Local Parliament
PDIP	<i>Partai Demokrasi Indonesia</i> , Indonesian Democratic Party
Perda	<i>Peraturan Daerah</i> , District Regulation
PSDA	<i>Provisi Sumber Daya Alam</i> , Natural Resources Rent Provision
PSHK-ODA	<i>Pusat Studi Hukum dan Kebijakan Otonomi Daerah</i> , Local NGO working with CIFOR in Jambi Province that focuses on the study of legislation and policy related to regional autonomy
Restra	<i>Rencana Strategis</i> , Strategic Plan
RHH	<i>Retribusi Hasil Hutan</i> , Forest Product Taxation
RTRWP	<i>Rencana Tata Ruang Wilayah Provinsi</i> , Provincial Spatial Plan
SKSHH	<i>Surat Keterangan Sahnya Hasil Hutan</i> , Permit to Transport Forest Products
SPORD	<i>Surat Pendaftaran Obyek Retribusi Daerah</i> , Letter of Application for District Taxation
TGHK	<i>Tata Guna Hutan Kesepakatan</i> , Forest Land Use Consensus
TNI	<i>Tentara Nasional Indonesia</i> , National Armed Forces

Preface

This case study is part of a series describing the impacts of decentralization in the forestry sector in Indonesia. Over the last two years (2002–2004), a team of researchers from regional universities, NGOs and CIFOR worked on a policy action research project: *‘Can Decentralization Work for Forests and the Poor?’* intended to help inform policy decision making. The research has involved working with multi-stakeholder networks in five provinces across Indonesia (South Sulawesi, East Kalimantan, Jambi, West Kalimantan and Papua) in gathering and sharing detailed socio-legal, economic and ecological analyses of the impacts of decentralization on forestry and the poor.

The foundations for decentralizing Indonesia’s highly centralized governance system were laid out in Law No. 22/1999 on Regional Governance and Law No. 25/1999 on Fiscal Balancing between the Central and Regional Governments. Decentralization has provided district governments with considerable opportunities to reform their governance, development and public service delivery. The most tangible manifestation of decentralization in the forestry sector was that district heads were given authority to grant small-scale forest concessions for the first time.

The first two years of decentralization in Indonesia represented a time of transition and adjustment. Forest-rich districts celebrated this new freedom to gain direct economic benefits by establishing district timber regimes. As a result there was a boom in small-scale logging. The national government reacted with a new

set of forestry policies attempting to limit forest degradation, mainly by curbing district authority. At about the same time, many district governments and local stakeholders started to realize that their level of timber exploitation was not sustainable. In these districts, a process of policy learning led to new, more carefully considered district forestry policies. However, their potential was limited as the central government had already taken back much of the district’s authority for forestry.

Under the New Order regime, the forest governance system had created an unsustainable timber extraction regime. It has also been described as a ‘poverty-creating’ model of forest management (DFID 1999)¹. So far, decentralization in Indonesia has not magically solved the problems built up over decades of over-exploitation and under-investment in natural resource-based development. Decentralization has undoubtedly brought short-term economic windfalls to some forest-dependent communities, and brought decision-making closer to local stakeholders. However, if forest and eco-system management at the local level is to be sustainable, all the stakeholders who will be impacted by government policies in this area need still greater involvement.

Their input should help to ensure that final policies provide them with real opportunities to improve their livelihoods and the natural environment within a framework of sustainable natural resource management.

CIFOR gratefully acknowledges the financial support of ACIAR and DFID as well as the important role played by partners

in the five locations: Hasanuddin University (UNHAS), Tanjungpura University (UNTAN), State University of Papua (UNIPA), the Study Center for Regional Autonomy Law and Policy (PSHK-ODA), Yayasan Konservasi Borneo and Yayasan Pionir Bulungan. We would also

like to thank the district governments, village communities and other local stakeholders in the areas where the research was conducted. Special thanks go to the Indonesian Ministry of Forestry's Agency for Forestry Research and Development, FORDA.

Bogor, Indonesia

Siân McGrath
Project Coordinator

Abstract

Following the enactment of Decentralization Laws No. 22/1999 and No. 25/1999, and several Forestry Ministry's decrees issued in 1999, district governments throughout Indonesia were given a greater authority to formulate local regulations over forest resources. The District Government of Tanjung Jabung Barat in Jambi took this opportunity to introduce three policies regarding small-scale timber utilization and forestry revenues.

This report begins with a normative legal analysis and basic evaluation of these policies. It then explores the district's policy-making processes and mechanisms for implementing district regulations and describes the functions and roles of the relevant district institutions. The report then figures out the players in the process and how they influence the policy

agenda and at the end provides an analysis of the impacts of decentralized forest policies on local people, focusing on small-scale timber concession licences.

This work is the result of research meant to generate information and analysis to facilitate negotiated recommendations for improving forest policies and policy making processes by supporting public input to shape the decentralized forestry policy agenda for the district, and help develop a forest management model oriented to increased prosperity and justice for local people. The research calls for the District to draft a new regulation on public participation in district policy making, with the policy objective of building consensus and synergy amongst local stakeholders by using appropriate public involvement mechanisms.

1.1 Background

Indonesia's decentralization laws, enacted in 1999, took effect in January 2001. These new laws decentralized authority to the districts and re-balanced revenue sharing between the district, provincial and central levels of government. Law No. 22/1999 on Regional Government and Law 25/1999 on Fiscal Balancing were devised as part of a collective effort to restructure state governance and revenue sharing. Central government was driven primarily by pressures from district and provincial governments to create a system of governance that would be more fair and democratic, and promote regional prosperity. The new decentralization measures were brought in as an effort to maintain the unity of this diverse nation.

The new laws represent a quantum leap in the history of governance in Indonesia. Districts have been granted much wider autonomy than ever before². However, many commentators felt that the agenda for decentralization should not only have set out the transfer of government authority from the centre to the regions: it should have gone further to improve levels of participation at all levels of society, as an integral part of the new Indonesian governance system, after the collapse of the dictatorial New Order regime in 1998 (Haris 2003, p2). In the spirit of improving public access to decision-making, it is important that all stakeholders have an opportunity to provide critical responses to the impacts, whether positive or negative, of the new system of governance.

The positive impact of decentralization has been that the bargaining position of district governments has strengthened. The new policies have also provided district governments with more space to present locally relevant needs and aspirations³. Likewise, decentralization has provided districts with the opportunity to manage their own resources independently, with greatly reduced control by central government.

That said, giving greater authority to the districts has not been free from problems in balancing the new responsibilities between the different levels of government. The most notable difficulty has involved the introduction of district regulations (*Perda*) that have led to double taxation⁴. Industry has been hit by tax bills from both central and district administrations for the same activity. This situation has been criticized as it has limited potential investment in the districts because of the higher cost of doing business under decentralization. The other problem faced by provincial-level governments is the difficult task of trying to coordinate province-wide governance activities⁵ between district heads (*Bupati*). This is especially problematic as the new laws have been interpreted as conferring more authority and political control on district heads than on provincial governors.

However, local people have complained about the low level of commitment by district and provincial governments (Nurhasim 2001). For many, the most important part of the equation has yet to be delivered in full. Many

local people have yet to enjoy higher levels of justice and prosperity or the improved services that had been promised under decentralization⁶.

Meanwhile, non-governmental organizations (NGOs) working on forestry sector issues have also questioned the district governments' commitment to preserving and conserving local forest ecosystems. Their doubts have been raised by the clear impression given by some district governments that they are continuing to use the central model of forest management: in short, they have continued to treat forestry as a prime source of income, albeit now for district budgets (regionally generated revenues – PAD)⁷. The NGOs argue that this resource should be managed for its long-term social, cultural, financial and ecological values, and not just for its immediate economic potential.

The implementation problems outlined above are also the result of a lack of preparation by central government, which did not provide adequate tools, guidance or support to the districts before enacting the decentralization laws. At the district level, difficulties arose as a result of the inconsistencies and ambiguities in national regulations, problems which were also very evident in the new district regulations. At the district level, local people have not yet been fully involved in decision-making mechanisms.

1.2 Research Objectives and Benefits

The aim of this research project was to generate information and analysis to facilitate negotiated recommendations for improving local policies and processes by supporting public input to shaping the decentralized forestry policy agenda for Tanjung Jabung Barat District (Tanjabbar), in Jambi Province, Sumatra. It is hoped that these research findings may be useful for the District Government of Tanjabbar: they may support the district government in its efforts to revise its forest policies to create more inclusive decision-making processes and to help develop a forest resource management model oriented to increased prosperity and justice for local

people as well as to promote forest conservation in the region. Furthermore, we hope that this study will stimulate the Tanjabbar District Government to draft a new regulation on public participation in district policy making⁸, with the policy objective of building consensus and synergy amongst local stakeholders by using appropriate public involvement mechanisms.

1.3 Research Focus and Structure of Report

This report begins with an analysis of the three main district forestry policies introduced by the District Government of Tanjabbar. We provide a normative legal analysis and a basic evaluation of these policies as a basis for future policy reform; this includes an evaluation of the weaknesses and distortions behind the assumptions, premises and theoretical perspectives that formed the basis of Tanjabbar District's three major district forestry regulations.

The second part of this report provides a clear outline of the district's policy-making processes and mechanisms for implementing district regulations, together with an account of how the District Head reaches his decisions regarding District Head's decrees (over which he has final and sole authority). The report describes the functions and roles of the different district institutions responsible for initiating and drafting new policies, time frames and processes for policy deliberation by the District Parliament (DPRD). Finally, we outline the players in this process and how they influence the policy agenda. This section closes with an evaluation of the weaknesses and different perceptions of the inception process for forest decentralization policies.

The third part of this research report outlines the different impacts of forestry decentralization policies on local people. This analysis is based on statistical data and findings from the field. Besides looking at how new, small-scale concession permit licences are granted and the impact they have had on village communities, the report investigates the views and hopes of local community members regarding the

new permit system and decentralization in the forestry sector. We also outline examples of conflict or contradictions between different policies, difficulties with law enforcement and weak legal institutions. Finally, we consider the impact of illegal practices in the forestry sector.

Before presenting some conclusions and recommendations on possible options for

improving the three regional regulations studied here, we present information and relevant research notes detailing with the impacts of the research activities of the Study Center for Legislation and Policy on Regional Autonomy (PSHK-ODA) and the Center for International Forestry Research (CIFOR) in Jambi, especially in the District of Tanjabbar.

2.1 The Multi-Stakeholder Policy Action Research Approach and Activities

We used a policy action research approach, whereby all concerned stakeholders were given an opportunity to take part in the study through information sharing, public consultation, public meetings and focus group discussions (FGDs). Given the varied interests in forest policy impacts, our project was conducted in cooperation with the provincial and district governments as well as the local legislature in the District of Tanjung Jabung Barat (Tanjabbar), the universities, the press and local non-governmental organizations (NGOs), who provided inputs and information (mostly secondary data) for this study.

At the village level we were helped by the close cooperation of village heads and their staff, community leaders, the head and members of the Village Representative Bodies (BPD), as well as local community members. In particular, local villagers provided information and views about the implementation and impacts of the new forestry regulations governing the small concessions in their areas.

2.2 Framework of Research Activities

The study was guided by two clear lines of enquiry. These are illustrated in Figure 1. The first took the form of a legal review of policy-making processes in Tanjabbar District, and the second involved a rigorous study of the mechanisms and opportunities for citizens' involvement in the creation of district regulations.

2.3 Problem Analysis

The conclusions and recommendations presented at the end of this report are based on legal, process and impact analyses of forestry sector policies in Tanjabbar District. Our research team used three methods of analysis, outlined below.

2.3.1 Legal analysis

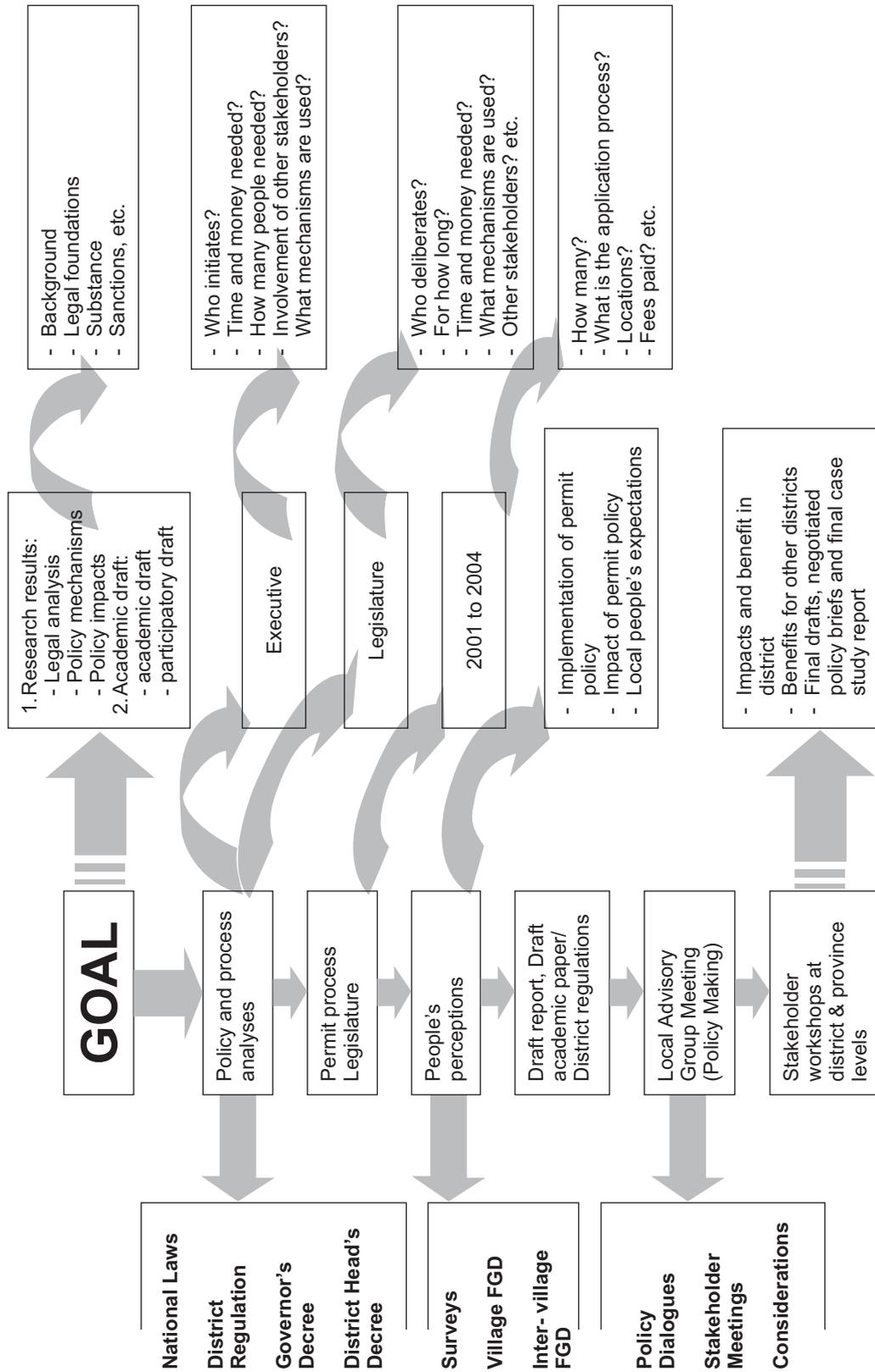
This section makes a legal analysis of the three main district regulations (*Perda*) issued in Tanjabbar, together with the relevant guidelines on their implementation.

- i) District Regulation No. 21/2001 on Forest By-Product Collection Permits (*Izin Pengambilan Hasil Hutan Ikutan*), known locally as *Perda* IPHHI;
- ii) District Regulation No. 13/2002 on Forest Product Extraction Permits (*Izin Pemungutan Hasil Hutan*), known locally as *Perda* IPHH; and
- iii) District Regulation No. 15/2002 on Forest Product Taxation (*Retribusi Hasil Hutan*), known locally as *Perda* RHH.

The legal analysis was based on current public debate in the district regarding the basis and purpose of these district forestry regulations, as well as the policy content and impacts of these regulations in regard to forest sustainability and local livelihoods. The legal enquiry that formed part of this study asked the following questions:

1. Does the content of these district regulations lie within the legal jurisdiction of the District of Tanjabbar? If yes, to what extent?

Figure 1. Research Framework: Forestry Policy-making Mechanism in Tanjungbar



2. Is the legal content of the district regulations consistent vertically (e.g., in line with relevant provincial and national policies) and/or horizontally (e.g., in line with other district-level policies). If there are contradictions, what are they, and what are their impacts?
3. How were these district regulations formulated and how were local stakeholders involved?
4. Have these district regulations been drafted and implemented in line with policy-making procedures as prescribed by law?

These questions were used to determine the extent to which the District Government of Tanjabbar acted within the bounds of the legal authority granted to it by the new decentralization laws. If the government has acted within its legal vires, the legitimacy of its policies and activities cannot be questioned.

However, if it has exceeded the authority granted to it under the new decentralized system for forest management we can conclude that the new regulations may be subject to annulment by higher authorities (e.g., the Ministry of Forestry) or by judicial review. For all three studies we analyzed the provisions for implementation and enforcement and the legal protection granted to permit holders.

We also considered how these policies conformed with other national/local laws and policies. In addition we analyzed the process and techniques used for drafting these legal instruments in the context of the national laws and regulations governing policy formulation at the district level.

2.3.2 Analysis of the process

Our analysis of the mechanisms used and the legal processes followed in drafting these forestry regulations was based on the insights offered during in-depth interviews with key stakeholders involved in the drafting process, including members of the District Parliament (DPRD) of Tanjabbar, namely its Chair and Secretary. We also met with key officials from the provincial and district-level executive

branch of government, including the Governor of Jambi, Head of the Provincial Forestry Office, District Head of Tanjabbar, Head of the District Planning Board (Bappeda), Head of the District Forestry and Estate Crops Office, Head of the National Land Agency (BPN), and Head of the Legal Bureau (*bagian hukum*) of the Secretariat of Tanjabbar District Government.

2.3.3 Impact Analysis: Research Locations, Data Collection and Multi Stakeholder Involvement

Site selection was based on routine discussions between the Study Center for Legislation and Policy on Regional Autonomy (PSHK-ODA) and the Center for International Forestry Research (CIFOR) with inputs from Walhi NGO, the Heads of the District Forestry and Estate Crops Office and Bappeda; Tanjabbar District was eventually selected. Of the five subdistricts in Tanjabbar (Tungkal Ulu, Merlung, Tungkal Ilir, Betara and Pengabuan) we decided to focus on two (Merlung and Tungkal Ulu) for this study, because these subdistricts have the largest forest areas in Tanjabbar. From these two subdistricts, four representative villages were selected (Lubuk Kambang, Lubuk Bernai, Penyabungan and Suban).

Four key criteria were used for designating these villages as research locations, as follows:

- a. Small-scale concession permits issued by the District Government of Tanjabbar, using its new decentralized authority, were in operation on forest land around these villages.
- b. These villages all experienced direct impacts from the new forestry regulations governing the concessions operating in their areas.
- c. There is great potential for conflict over forest resource allocation via the new permit system in these villages (legal, social, economic etc.).

To guide our research activities and ensure that our findings were locally relevant we

convened a Local Advisory Group (LAG) with policy makers including the Governor of Jambi, District Head of Tanjabbar, Head of the Provincial Forestry Office, Head of the District Forestry Office, Head of the Bappeda Tanjabbar, Legal Bureau of the Tanjabbar Government Secretariat, District Revenue Office (*Dispenda*) and members of the district parliament. We held regular meetings with our LAG, and conducted separate one-to-one qualitative interviews with members and other relevant stakeholders. In addition to these activities we held FGDs on issues related to forestry and decentralization with academics, NGOs, the press and other relevant stakeholders (every two months in 2003), Walhi and *Media Jambi* (Daily News) and at the Provincial Forestry Office.

Using advice and access to information generated by these regular contacts, secondary data on impacts was collected from relevant government records and literary reviews of relevant documents including legal reviews, academic papers and articles in the broadcast and print media.

More importantly, our analysis of the impacts of these policies was also based on local participant observation, FGDs and qualitative interviews with local communities in the four selected villages i.e., Penyabungan, Lubuk Kambing, Lubuk Bernai and Suban, to understand the interests and needs of local people in relation to the new small-scale forest concession permit system.

We gathered primary data from stakeholders at the village level to see how the policies played out on the ground in relation to operations, permit applications and the process for granting and allocating permits. FGDs were used as a strategy to encourage discussion and debate and flush out the different views and opinions within local communities. Three FGDs with village members took place in March and June 2003. These were followed by facilitated policy dialogues with village members in February, April and May 2004.

Finally, we held two workshops, one at provincial level and one at district level, in 2004. The purpose of these workshops was to

disseminate the results of the research and to facilitate multi-stakeholder negotiations based on further inputs and feedback. We hope that this approach will help increase policy makers' awareness and acknowledgement of local opinions on the impacts of the new policies.

2.4 Stakeholder Analysis

During the initial stage of this research (2002–2003), we conducted a stakeholder analysis to identify the relationships and dynamics between different groups.

The stakeholder analysis also helped to identify future possibilities for improving the local communities' access to benefits and decision making related to forestry in their area. A diagram was produced illustrating different stakeholders and their forestry-based interests (Figures 2 and 3).

From this stakeholder analysis we are able to see the relative level of access to forestry benefits enjoyed by each stakeholder; these are summarized from highest to lowest below:

- *Highest*, central government, forestry sector business owners, plantation sector business owners and holders of Permits to Use Timber Forest Products in Privately Owned Forests (IPHHKR permit issued by district government);
- *Second*, district and provincial governments, district and provincial parliaments and local NGOs, for example JIC (Joint Investigation Committee) Justice, an NGO in Jambi that is influential with decision makers;
- *Third*, the village administration (the village head), security personnel and the military;
- *Fourth*, Subdistrict officials, the BPD, environmental NGOs (e.g. Walhi) and universities;
- *Lowest*, village members and *adat* (customary) representatives, who are the group with the least access to forest resource benefits.

As for access to forestry policy making, our stakeholder map for Tanjabbar shows

Figure 2. Stakeholders and their Access to Forestry Benefits

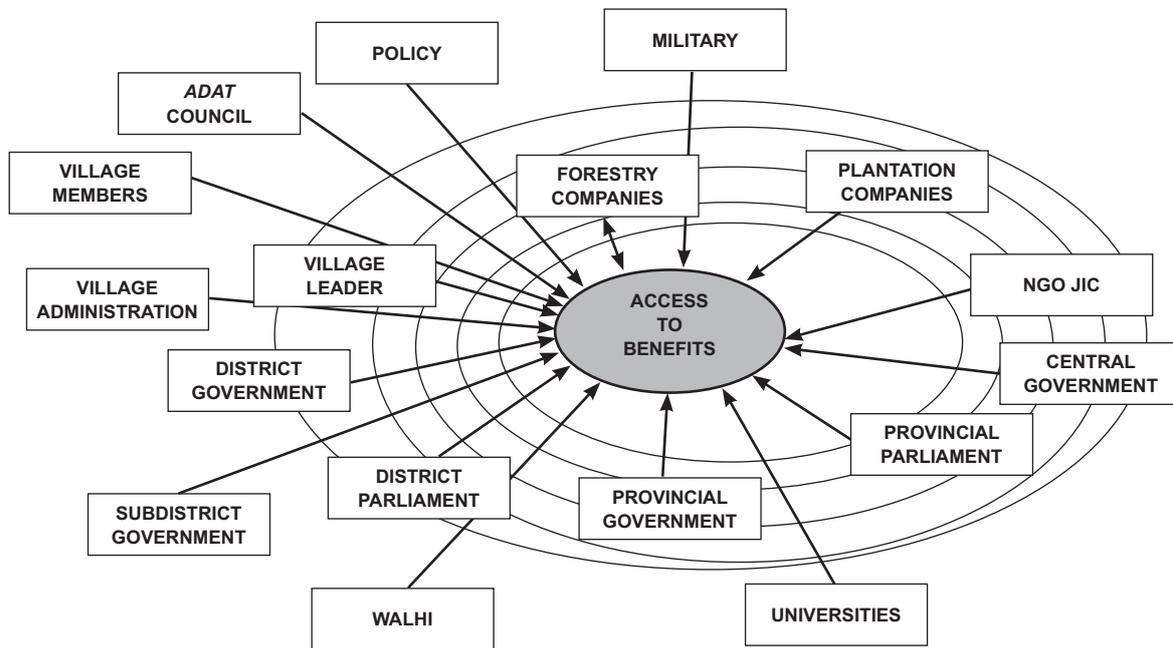
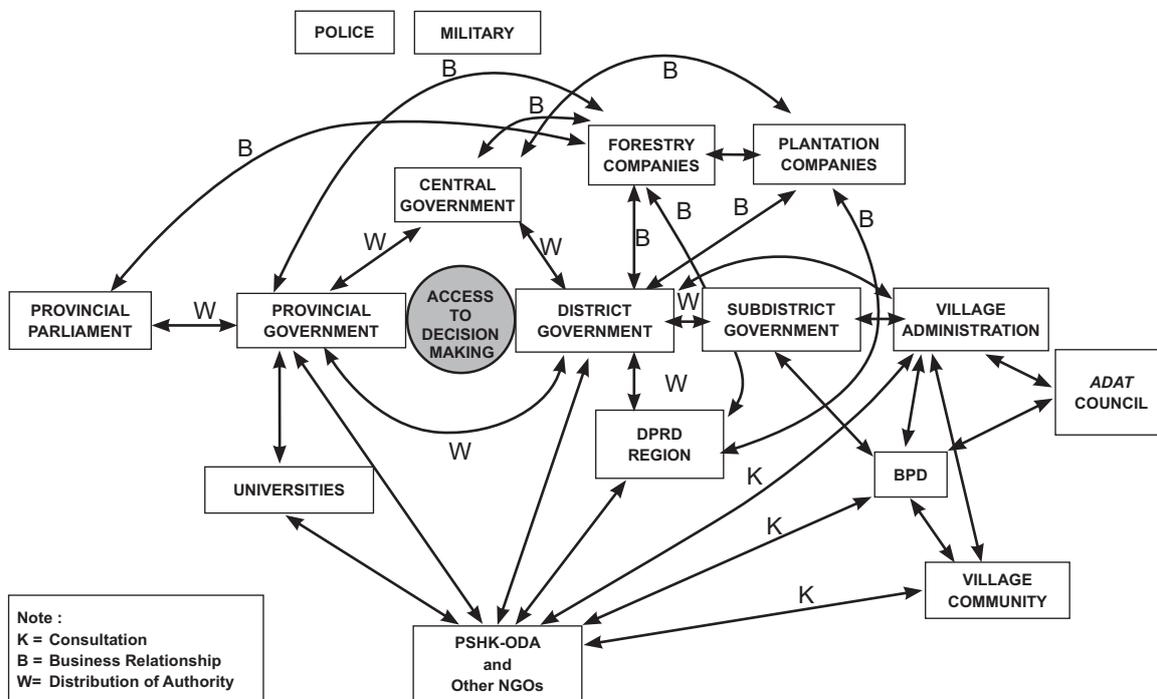


Figure 3. Stakeholders and their Access to Forestry Policy Decision Making



relative access levels from highest to lowest as follows:

- *Highest*, central government Executive, the provincial and District Government Executives and the respective parliaments at all levels of government;
- *Second*, universities, business owners, subdistrict governments;
- *Lowest*, NGOs working closely with the community, i.e., Walhi, JIC Justice Jambi, the village government, BPD, *adat* leaders and village communities who live close to resources, and the police and military (TNI) who have the power to implement the permit system in the field.

In Tanjabbar, the government (central, provincial and district) and the legislature have the most influence over decision making under decentralization. However, the business community also exerts great influence over policy making. This group has very close ties with the policy makers, as is clear from the fact that the authority to issue small-scale concessions lies in the hands of the district government. PSHK-ODA, as an NGO focusing on policy making, also has significant access to the processes in Tanjabbar and has close ties with the executive and legislative branches, as well as the village institutions and other NGOs, in its effort to advocate for positive reforms

2.5 Profile of Tanjabbar District

Tanjung Jabung District was divided into two new administrative districts, Tanjabbar and Tanjabtim (Tanjung Jabung Barat, or West Tanjung Jabung, and Tanjung Jabung Timur, or East Tanjung Jabung) on 4 October 1999⁹. Kuala Tungkal was designated as the capital city of the new District of Tanjabbar, which was sub-divided into five new subdistricts (Tungkal Ulu, Merlung, Tungkal Ilir, Betara and Pengabuan)¹⁰. The new district has a population of approximately 221 671 and covers a total area of 5 503.5 km².

Despite extensive deforestation under the New Order government, Tanjabbar still has one of the largest remaining areas of forest in Jambi.

The most extensive forest cover is found in the subdistrict of Tungkal Ulu, which provides a watershed for the Pengabuan River, which flows into Kuala Tungkal. Based on Tanjabbar's 'Strategic Plan for Forest Development'¹¹ the 257 344 ha of forest land in Tanjabbar District are officially classified as follows:

a. Protected forest/ Protected peat forest	21 494 ha
b. National Park (Bukit Tigapuluh National Park)	9 900 ha
c. Limited Production Forest	45 650 ha
d. Production Forest	177 300 ha
e. Community Forest Park (<i>Taman Hutan Rakyat</i>)	3 000 ha

However, these official classifications are quite different from the data held by Jambi Provincial Forestry Office (1999)¹², which states that the forest area in Tanjabbar District is approximately 210 291.16 ha in area. Based on this provincial data, forests in Jambi are classified differently as: Nature Reserve and Conservation Areas (*Hutan Suaka Alam/HSA*), Preservation Forests (*Hutan Pelestarian Alam/HPA*), Protected Forests (*Hutan Lindung/HL*), Limited Production Forests (*Hutan Produksi Teratas/HPT*) and Production Forests (*Hutan Produksi Tetap/HP*), as can be seen in Table 1, below.

The difference in the official data held by Jambi Provincial Forestry Office and Tanjabbar District Forestry and Estate Crops Offices is difficult to understand. It is technically impossible that the forest cover in Tanjabbar actually increased between 1999 and 2002 (from 210 291.16 ha to 257 344 ha). This would be possible only if the Tanjabbar District Government had not allowed any forest exploitation and at the same carried out extensive reforestation. In reality, according to the annual report of Tanjung Jabung Barat District Forestry and Estate Crops Office (Tanjung Jabung Barat District Forestry and

Estate Crops Office 2002), several companies operated active forestry and timber plantation concessions¹³. Another clear indication from official records that extensive exploitation took place is provided in the district's financial reports, which show that Tanjabbar received large contributions from the forestry sector (Anonymous 2002d).

Although official records held by the Provincial Forestry Office indicate that the forest area in Jambi is 2 179 440 ha – or 42.73% of the total land area of Jambi – the total forest area is far below that figure (Moeryanto 2003,

p4). Forest cover had, in fact, been disappearing at a rapid pace for over a decade in this district, and has continued to disappear since decentralization was introduced. For the last 20 years, Tanjabbar's forest resources have been logged out and forest land has been converted, steadily adding to the vast plantation area, now totalling some 42 125 ha of oil palm plantation (Badan Pusat Statistik 2002). Between 2000 and 2002, there is an increase in the area of oil palm plantation of around 1658 ha or 2% per year¹⁴.

Table 1. Distribution of Forest Land in Jambi, 1999

No.	District	HSA (ha)	HPA (ha)	HL (ha)	HPT (ha)	HP (ha)	Total (ha)
1.	Kota Jambi	0	0	0	0	0	0
2.	Batanghari	12 145.37	15 840.00	0	74 202.42	144 101.82	246 289.61
3.	Muaro Jambi	0	41 042.00	40 500.00	64 446.12	21 695.00	167 665.12
4.	Tanjabbar	0	12 480.00	21 473.00	42 426.71	133 911.45	210 291.16
5.	Tanjabt看	3 829.00	126 136.00	23 657.00	0	56 692.68	210 314.68
6.	Bungo	0	28 800.00	13 075.06	0	100 709.51	142 584.57
7.	Tebo	2 400.00	22 110.00	6 657.08	30 551.15	221 953.61	283 671.84
8.	Sarolangun	12 025.63	0	65 887.59	90 903.70	124 477.40	293 294.32
9.	Merangin	0	151 500.00	19 880.27	38 169.90	134 458.53	344 008.70
10.	Kerinci	0	250 830.00	0	0	0	281 320.00
	TOTAL	30 400.00	648 720.00	191 130.00	340 700.00	938 000.00	2 179 440.00

Source: Anonymous (1999)

3.1 Analysis of Tanjabbar District's Authority under the New Regional Regulations

The introductory considerations of the District Regulations (*Perda*) on IPHHI (No. 21/2000 on Forest By-Products Collection Permits) and RHH (No 15/2002 on Forest Product Taxation) state that the basis upon which they have been created is consistent with national regulations¹⁵.

The District Regulation on IPHHI clearly states that the taxation of by-products from forestry operations is to be regulated by the district¹⁶. Legally, policies setting out the district's authority to collect fees should be provided with *Penjelasan Umum* or a general elaboration that provides a detailed legal basis for the authorities. However, none of the three district regulations under study provide such an elaboration. In the absence of this legislation in Tanjabbar, there is technically no legal basis for the authority implied in its three new regulations on forestry. This indicates that these district regulations were formulated without due understanding of the need for a firm legal basis for drafting new policies.

Furthermore, to implement District Regulation IPHH No. 13/2002, the Tanjabbar District Government issued District Head's Decree No. 189/2003 on 22 April 2003. The decree provides guidelines on the processes for applying for small-scale concessions¹⁷. This means that whilst the forestry district regulations were approved by the district parliament and publicized in the district gazette,

the regulations cannot be implemented without the District Head's decree as the operational basis for their implementation.

In the hierarchy of national laws, a District Head's decree is positioned below a district regulation¹⁸. A district regulation is legally binding as it is passed by the parliament and publicized in the district gazette¹⁹. The District Head's decree should rely on a district regulation²⁰ before it can be implemented, and not vice versa.

In the meantime, of the three regulations concerning forestry activities in Tanjabbar (District Regulations on IPHHI, IPHH and RHH), only District Regulation IPHH No. 13/2002 has been officially implemented, as it is supported by District Head Decree No. 189/2003. The two other district regulations were passed three years ago, but technically they cannot be implemented as District Head decrees have yet to be formulated to guide their implementation.

In addition to identifying the absence of appropriate legal references and supporting policies for each of the new forestry policies, our analysis highlighted the following formal weaknesses in the drafting of the new policies:

- a. District Regulations No. 21 IPHHI and No. 15 RHH refer to higher, central regulations as the basis upon which they have been formulated. However, these higher legal regulations are no longer in force. For example, the introductory considerations listed in the new district regulations cite the Minister for Home Affairs' Decree No. 119/1998, which has been superseded

Table 2. List of Permits to Use Timber from Privately Owned Forests (IPKR) outside State Forest Areas in Tanjabbar for 2001

No.	Applicant	Land area (ha)	District Head's permit	Production target (m ³)	Notes
1.	Swakarsa Kp. Baru Cooperative, Tungkal Ulu	APL 100 ha	518/755/Eko 29 March 2001	1 300.00	IPKR No. 150/2000, 6 July 2000.
2.	Penga-buan Jaya Farmer Group, Parit Pudin, Pengabuan	APL 100 ha	518/1236/Eko 12 May 2001	2 588.00	IPKR No. 321/2000, 7 September 2000.
3.	Pancuran Gading Cooperative, Suban, Tungkal Ulu	APL 100 ha	518/1812/Eko 2 July 2001	6 380.50	IPKR No. 400/2000, 18 November 2000
4.	Pancuran Gading Cooperative, Suban, Tungkal Ulu	APL 100 Ha	518/1813/Eko 2 July 2001	6 108.58	IPKR No. 401/2000, 18 November 2000
5.	Beringin Jaya Pel. Dagang Farmer Group, Tungkal Ulu	APL 100 ha	518/1816/Eko 2 July 2001	3 173.39	IPKR No. 522.21. D/3796/Dinhut/2001/1416/ Dinhut/2001 year 2000
6.	Sungai Rambai Cooperative, Pengabuan	Lahan Masy 100 ha	518/1933/Eko 12 July 2001	3 921.63	IPKR No. 522.21. D/3796/ Dinhut/2001/ Dinhut/2001 year 2000
7.	Bujang Timol Suban, Tungkal Ulu	APL 100 ha	518/1955/Eko 14 July 2001	4 410.18	IPKR No. 522.21. D/3796/ Dinhut/2001/Tahun 2000, 6 July 2000
8.	Khairul Umam Foundation, Suban, Tungkal Ulu	Lahan Masy 100 ha	518/2095/Eko 26 July 2001	16 845.00	IPKR No. 403/2000, 20 November 2000
9.	Binjai Group Cooperative, Taman Raja, Tungkal Ulu	APL 100 ha	518/2119/Eko 30 July 2001	15 987.32	IPPKR No. 402/2000, 20 November 2000
10.	Binjai Group Cooperative, Taman Raja, Tungkal Ulu	APL 100 ha	518/2119/Eko 30 July 2001	14 271.63	IPKR No. 159/2000, 10 July 2000
11.	Mandasakti LB. Bernai Cooperative, Tungkal Ulu	APL 100 ha	518/2064/Eko 25 July 2001	2 573.94	IPKR No. 324/2000, 21 Sept 2000
12.	Compartment Kp. Baru, Tungkal Ulu	APL 100 ha	518/2536/Eko 14 Sept. 2001	8 705.49	IPKR No. 286/2000, 23 August 2000
13.	Compartment Kp. Baru, Tungkal Ulu	APL 100 ha	518/2537/Eko 14 Sept. 2001	3 881.22	IPKR No. 287/2000, 23 August 2000
14.	Swakarsa Kp. Baru Cooperative, Tungkal Ulu	APL 100 ha	518/2554/Eko 14 Sept. 2001	7 743.35	IPKR No. 150/2000, 6 July 2000
15.	Bernai Jaya LB. Farmer Group, Bernai, Tungkal Ulu	APL 100 ha	518/2555/Eko 14 Sept. 2001	3 518.81	IPKR No. 183/2000, 24 July 2000
16.	Keruing Indah LB. Farmer Group, Bernai, Tungkal Ulu	APL 100 ha	518/2556/Eko 14 Sept. 2001	3 945.58	IPKR No. 392/2000, 13 November 2000
17.	Gagak Sakti Farmer Group, Taman Raja, Tungkal Ulu	APL 100 ha	518/2557/Eko 14 Sept. 2001	7 540.40	IPKR No. 522 21/D/2534/Dinhut/2000

Source: Tanjung Jabung Barat District Forestry and Estate Crops Office (2002)

by the enactment of Law No. 32/2000²¹. Likewise, these district regulations both cite Government Regulation No. 68/1998²² as a legal basis, but this regulation was superseded by the enactment of the new Forestry Law 41/1999. The use of an inappropriate legal basis for these district regulations has critical implications, not least that there is enough of a legal drafting error to warrant their annulment.

- b. District Regulation No. 15 RHH, in its introductory considerations, states that responsibility for forest product taxation and forest management falls under the authority of the district government. The legal implication of this statement is that central government no longer has any authority over the forestry sector in Tanjabbar. This provision is inconsistent with Government Regulation No. 25/2000: this national regulation stipulates that ‘the determination of criteria and standards for forest utilization permit subscription fees, Forest Resource Rent Provision (PSDH), the Reforestation Fund and investment funds shall become the authority of central government’²³. There are also no fewer than three national laws and one regulation that confirm that this authority lies with central government and not with the districts²⁴. However, the central government’s authority is undermined by Law 22 on Decentralization, which stipulates in very general terms that responsibility for natural resource management is devolved to the district level. If, however, the Tanjabbar District Government were to follow the larger number of laws that more clearly allocate responsibility for forestry sector taxation to central government, it would mean that the district government had no legal basis for levying fees on forestry activities, and this would lead to illegal double taxation.
- c. Based on the same argument outlined in paragraph b., Tanjabbar District Government has also annulled the

provincial government’s authority in respect of forest management. This contradicts a national regulation that clearly sets out 18 different authorities for forest management at the provincial level²⁵. This regulation stipulates that ‘the province has the authority to issue permits regarding forest product utilization, animal and plant use, plantation activities and forest product management’²⁶.

3.2 Permits for Forestry Resource Utilization in Tanjabbar

Based on District Head’s Decree No. 76/2000 on Permits to Use Timber from Privately Owned Forests²⁷ (IPKR) and another decree on natural resource rent provision,²⁸ some 17 IPKR (Permits to Use Timber from Privately Owned Forests) have been issued since 2001. The IPKR permits are to be granted to cooperatives, farmer groups or foundations in areas outside state forest (*kawasan hutan*), i.e., 100 ha of Non-Forestry Use Areas (APL) or on privately owned land (Table 2) in accordance with the technical recommendations of the District Forestry and Estate Crops Office. During the same year, PT. Inhutani V (a state-owned company) held two Timber Utilization Permits (centrally issued IPK) for an area of 885 ha (Table 3).

In 2002, through the implementation of IPHH policy (Forest Product Extraction Permits), the Tanjabbar District Government also issued 55 Permits to Use Timber Forest Products from Privately Owned Forests (IPHHKR) and 13 Permits to Use Timber from Timber Plantations (IPHHKT) for an area of 1 017 ha in 2003 (Table 4).

Tanjabbar District Government issued 74 IPHHKR permits for 2002–2004, 55 of which were issued in 2002, 13 in 2003 and 6 in 2004. The permit areas were located in various subdistricts of Merlung and Tungkal Ulu. Table 5 shows timber production and fees collected from active IPHHKR permits in Tanjabbar in 2001–2003.

Table 3. List of Centrally Issued Permits to Utilize Timber (IPK) in Tanjabbar for 2001

No.	IPK issued	Area (ha)	Validity	Location	Permit holder
1.	61/Kpts/Kwl-1/2001 28 February 2002	685	28 February 2001 to 28 February 2002	Plantation area of Bukit Kausar BDPNP/APL Eks HPH PT. HTII, Tungkal Ulu	PT. Inhutani V
2.	62/Kpts/Kwl-1/2001 28 February 2002	200	28 February 2001 to 28 February 2002	Plantation area of Pradira Mahajana BDPNP/APL Eks HPH PT. HTII, Tungkal Ulu	PT. Inhutani V

Source: Tanjung Jabung Barat District Forestry and Estate Crops Office (2002).

3.3 Tanjabbar Forestry Regulations: Analysis of Contents

3.3.1 Objectives behind the formulation of the new regulations

In the introductory considerations of the three district regulations (IPHHI, IPHH and RHH) it is clear that Tanjabbar District Government is trying to facilitate an easy process for acquiring permits for forest uses without explicitly stating the purpose of or background to the creation of the regulations. This lack of clarity about the objectives behind the new policies may result in legal and social conflicts in the future.

Based on our extensive consultations with local stakeholders about their aspirations and needs in relation to forestry policy making, it is clear that there are at least two fundamental objectives that should underpin any new forestry regulations. *First*, to improve law and order in managing forests in a more aspirational and participatory manner that will provide equal justice and democratize the management of forest resources²⁹; *Second*, to provide greater opportunities for the local people living in or around the forests to gain most benefit from those forests. In practical terms, district regulations based on these two objectives should ideally include the following provisions:

1. Provisions for a more inclusive and transparent system for issuing permits for forest use. District regulations must emphasize the need to publicize permit

applications before they are approved. It is crucial that the public is made aware of submitted permit applications as this will give local people the opportunity to assess and file complaints or give their input to support the process of deciding which applications to pass. To date, non-disclosure of information about permit applications has sown the seeds for much of the conflict between permit holders and local people. Disclosure is essential, not only to democratize forest resource management but also to minimize potential conflicts.

2. In line with provisions in Law 22 on Decentralization, all permit holders must be subject to requirements that protect and acknowledge local culture, practices and wisdom. District regulations should contain a stipulation that permits cannot be granted without the prior knowledge, consent and full involvement of the local customary community or the village authorities (Village Representative Body (BPD) and the village head) in the proposed activities³⁰.
3. District regulations must include clarification of the local cooperatives' rights to acquire permits. Are the requirements for cooperatives the same as those for large private companies? Who are eligible members? Is the cooperative representative and inclusive of the whole community? How was the cooperative established? Can permits be given to the *adat* community without establishing a

Table 4. List of IPHHKR and IPHHKT Permits Issued in Tanjabbar for 2003

No.	Name of permit holder	Permit number (#) and date of issue	Area (ha)	Note
1.	Damai Sejahtera Cooperative, Desa Teluk Nilau	#347 Year 2003 29 May 2003	100	IPHHKR
2.	Binjai Group Cooperative, Desa Taman Raja	#381 Year 2003 6 June 2003	100	IPHHKR
3.	Mitra Dasal Cooperative	#529 Year 2003 29 July 2003	100	IPHHKR
4.	Merlung Cooperative, Desa Sungai Rotan	#273 Year 2003 13 May 2003	100	IPHHKR
5.	Pelabian Jaya Farmer Group, Desa Lubuk Bernai	#336 Year 2003 27 May 2003	100	IPHHKR
6.	Wirakarya Sakti LimitedCompany, Tungkal Ulu	#225 Year 2003 30 April 2003	11.30	IPHHKT
7.	Wirakarya Sakti LimitedCompany, Tungkal Ulu	#223 Year 2003 30 April 2003	57.16	IPHHKT
8.	Wirakarya Sakti LimitedCompany, Tungkal Ulu	#224 Year 2003 30 April 2003	83.10	IPHHKT
9.	Wirakarya Sakti LimitedCompany, Tungkal Ulu	#226 Year 2003 30 April 2003	13.40	IPHHKT
10.	Insan Cita Cooperative, Desa Lubuk Kambing	#643 Year 2003 29 October 2003	100	IPHHKR
11.	Serumpun Jaya I Farmer Group	#620 Year 2003 8 October 2003	53	IPHHKR
12.	Serumpun Jaya II Farmer Group	#619 Year 2003 8 October 2003	100	IPHHKR
13.	Serumpun Jaya II Farmer Group	#618 Year 2003 8 October 2003	100	IPHHKR

Note : IPHHKR: Permit to Use Timber Forest Products from Privately Owned Forests

IPHHKT : Permit to Use Timber from Timber Plantations

Source : Tanjabbar District Forestry and Estate Crops Office, April 2004 (unpublished and raw data)

Table 5. Timber Production and Fees collected in Tanjabbar from IPHHKR Permits, 2001–2003

No.	Year	Timber production (m ³)						Total
		Ø 30 cm up	(Rp.)	Ø 20–29	(Rp.)	Ø 10–19	(Rp.)	(Rp.)
1	2001	33 716.76	2 023 005 600	23 108.37	693 251 100	102 108.86	1 531 632 90	4 247 889 600
2	2002	26 024.79	1 561 487 400	54 062.52	1 621 875 600	341 326.74	5 119 901 100	8 303 264 100
3	2003	45 435.00	2 726 100 000	36 958.58	1 108 757 400	137 190.21	2 057 853 150	5 892 710 550
Total		105 176.65	6 310 593	114 129.47	3 423 884 100	580 625.81	8 709 387 150	18 443 864 250

Note : Ø = Diameter

IPHHKR : Permit to Use Timber Forest Products on Privately Owned Forests

Source : Tanjabbar District Forestry and Estate Crops Office, April 2004 (unpublished and raw data)

- cooperative? These questions must be duly considered in order to establish the appropriate norms in the regulations, as well as to facilitate their implementation.
4. District regulations must clarify the district government's responsibility to invest local revenues from forestry for the benefits of villagers and local communities who live in the area where the forest has been exploited³¹. This emphasis will help to ensure equitable distribution of the benefits of locally-managed concessions and to increase the welfare of the local community.

3.3.2 Areas and locations of the new small-scale IPHH concession permits

District Regulation No. 13 IPHH states that IPHHs can be issued to cooperatives as well as to small and medium-scale businesses in partnership with cooperatives in Industrial Timber Plantation (HTI) areas within production forests³². This district regulation also states that a maximum of 100 ha will be provided for cooperatives and a maximum of 20 ha for 'individual' permit applicants. These stipulations are unclear, leading to the following uncertainties when it comes to implementation:

1. Uncertainty over the extent of a district's authority to issue permits.
There is legal uncertainty about what should happen if a permit application covers an area located within two or more districts. The IPHH policy makes no provision for cases such as these, despite the fact that national legislation clearly states that if a district permit application covers an area located in more than one district, the authority for granting the permit lies with the provincial government, namely by giving authority to the provincial governor³³. District regulations should set out clear rules to govern cross-district permit applications. This uncertainty has the potential to cause conflicts of authority between the District of Tanjabbar and the

provincial government or neighbouring districts.

2. The location assignment for IPHH contradicts other regulations. Based on a decree from the Minister of Forestry in Jakarta, small-scale concession permits should not be issued for areas already covered by any other forestry permit. However, Tanjabbar's concession policy allows IPHH concessions to be issued on HTIs. This contradiction may lead to overlaps and poor spatial planning as well as to conflicts over which land-use permits are considered legitimate on the ground.

3.3.3 Enforcing district regulations (RHH, IPHH and IPHHI)

The quality of legal drafting in Tanjabbar District's regulations seriously limits the district government's ability to enforce the provisions in its own policies. In the first instance, these regulations do not clearly outline the sanctions that will be imposed or the actions that constitute violations of the law. Secondly, some of the sanctions defined in these policies exceed the maximum punishments allowed under prevailing national law. Finally, failure to use clearly defined legal terms and references makes it difficult to interpret or establish how various sanctions should be applied or by whom.

Article 12 of District Regulation No. 13 on IPHH stipulates that IPHH permit holders are obliged to prevent forest fires within their IPHH concessions. Theoretically, these obligations must be followed by 'sanctions' when there is failure to prevent fires. However, the district regulation fails to define these 'sanctions'. Likewise, the regulation states that permits will be revoked if 'a violation of laws occurs' or if 'the obligations are not fulfilled by the permit holders', without defining permit holders' obligations or specifying either the laws or the type of violation that will lead to the cancellation of a permit.

Where sanctions are clearly defined, they often contradict national rules and regulations. For example District Regulation No. 15 on RHH

(Article 12) stipulates that the fine imposed for non-payment of tax will amount to a maximum of ten times the tax owed, while Article 39 of Law 34/2000 limits the maximum fine payable to four times the amount owed.

The administrative sanctions that can be imposed on permit holders for non-compliance include warnings and cancellation of permit³⁴. Our research with local stakeholders identified the fact that, ideally, other types of administrative sanctions should also be included, as more effective ways to ensure policy-compliance. These included discontinuing administrative services such as the issuance of timber transport passes, freezing logging permits for a certain period, reducing the targeted timber production allowed under the permit and imposing administrative fines.

Another policy weakness that limits law enforcement potential is Article 16 of District Regulation No. 13 on IPHH which states that ‘violations of the IPHH policy may result in imposition of criminal sanctions, fines or administrative sanctions as prescribed by Forestry Law No. 41/1999 and other national laws.’ However, no distinction is made between criminal and administrative sanctions. Normally, an administrative sanction falls under the authority of the government and may be imposed without any court ruling, whereas criminal sanctions can be imposed only via a court ruling. Fines are then imposed through civil court rulings, separately conducted or after criminal court procedures finish and a decision for criminal punishment has already been made.

The principles of criminal justice require that criminal activities and related sanctions should be clear and easy to understand³⁵. There are currently too many areas of uncertainty over what constitutes a clear case of breaking the law. Where sanctions are more clearly defined, none of the forestry regulations indicate which agency or government officials are responsible for imposing them. The district regulations do

not provide enough guidance on exactly what counts as a violation that will lead to sanctions, what these sanctions will involve, or who is responsible for imposing them.

3.3.4 Implementation and legal enforcement

During 2002–2003 12 criminal cases related to the forestry sector were brought before Tanjabbar District Court in the district capital, Kuala Tungkal. These mostly concerned illegal logging activities (Tables 6 and 7)³⁶. What is interesting to note about these cases is that the court’s judgement was not based on district regulations but on the central administration’s Forestry Law No. 41/1999.

Basing law enforcement measures on national legislation without any reference to provisions in the district’s own legislation makes it impossible to impose sanctions devised by the district to regulate its concession system. For example, the District Regulation on IPHH clearly outlines the legal responsibilities (orders and restrictions) of all district permit holders³⁷. It also outlines several sanctions for non-compliance³⁸. However, as the district court still refers only to central Forestry Law No. 41/1999³⁹, which carries no provisions for imposing sanctions or punishing non-compliance with district forestry policies, the provisions in the district regulations are not enforceable in the district court. This situation seriously hinders the legal enforcement of district policies. This fact underlines the notion of how the central policies still dominate law enforcement in the face of the numerous criminal activities evident in the forestry sector in Tanjabbar.

Whilst the district courts might rule against the defendant in illegal logging cases, and order prison sentences and fines as a punishment, the tables below clearly show that once the case proceeds to appeal at the Supreme Court the defendant is invariably found not guilty or the sentence and fine are radically cut.

Table 6. Criminal Offences in Violation of Forestry Law No. 41/1999 in Tanjabbar, 2002

No.	Case file	Name of Accused	Articles violated (BFL No. 41/1999)	Date of District Court decision	District Court decision	Illegal harvest	Jambi Appellate Court decision	Supreme Court decision
1.	03/Pid. B/2002/PN.KTL	Bayhadi Bin Safarudin	Article 50 (3) point h; Art. 78 (7)	28 February 2002	2 years' prison, Rp. 500 000 fine and 1 month's detention	7 logs	1 year 6 months' prison	5 months' prison
2.	04/Pid. B/2002/PN.KTL	Uwar Alias Udar Bin A. Wahab	Art. 50 (3)h; Art. 78 (7)	28 February 2002	2 years' prison, Rp. 50 000 fine and 1 month's detention	13 logs	1 year 6 months' prison	-
3.	05/Pid. B/2002/PN.KTL	Ramli Bin Arifin	Art. 50 (3)h; Art. 78 (7)	28 February 2002	6 months' prison, Rp. 500 000 fine and 1 month's detention	7 logs	1 year 6 months' prison	Overtured
4.	06/Pid. B/2002/PN.KTL	Kusnadi Alias Edi Bin Zain	Art. 50 (3)h; Art. 78 (7)	28 February 2002	1 year's prison, Rp. 500 000 fine and 1 month's detention	13 logs	4 years' prison	-
5.	07/Pid. B/2002/PN.KTL	Abd. Rasyid Bin Laupek	Art. 50 (3)h; Art. 78 (7)	28 February 2002	1 year's prison, Rp. 500 000 fine and 1 month's detention	7 logs	4 years' prison	-
6.	11/Pid. B/2002/PN.KTL	Abd. Gani Bin Endek, and others	Art. 50 (3)h; Art. 78 (7)	28 March 2002	Prison sentence, respectively: Accused 1 (A1). eleven months A2. 8 years A3. 8 years A4. 8 years A5. 6 years A6. 8 years Rp. 500 000 fine; 1 month's detention	7 logs, 3 type-40 kelekat wood logs, 4 type-30 punak wood logs	4 years' prison each	Overtured

Source: Tanjabbar District Forestry and Estate Crops Office, April 2004 (unpublished and raw data)

Table 7. Criminal Offences in Violation of Forestry Law No. 41/1999 in Tanjabbar, 2003

No.	Case file	Name of accused	Articles violated	Kuala Tungkal Court decision	Decision	Illegal harvest	Jambi Appellate Court decision	Supreme Court decision
1.	67/Pid. B/2003/PN.KTL	Ardiyanto Alias Yanto	Art. 50 (3)h; Art. 78 (7)	5 August 2003	1 year's prison, Rp. 500 000 fine and 1 month's detention	453 logs	Appeal	-
2.	149/Pid. B/2003/PN.KTL	Heri Mukti Alias Heri Bin Iskandar	Art. 50 (3)h; Art. 78 (7) and (15)		Currently in process	Logs	-	-
3.	152/Pid. B/2003/PN.KTL	Padli Alias Ali Bin Basarudin	Art. 50 (3)h; Art. 78 (7)	5 December 2003	1 year's prison, Rp. 500 000 fine and 1 month's detention	Logs	Appeal	-
4.	155/Pid. B/2003/PN.KTL	Ngadenan Bin Sugiarto	Art. 50 (3)h; Art. 78 (7) and (15)		Currently in process	Logs	-	-
5.	156/Pid. B/2003/PN.KTL	Suyoto Bin Kasim	Art. 50 (3)h; Art. 78 (7) and (15)		Currently in process	Logs	-	-
6.	170/Pid. B/2003/PN.KTL	Asril Alias Uyun Bin Agus	Art. 50 (3)h; Art. 78 (7)	9 December 2003	8 months' prison	Logs	Appeal	-

Source: Tanjabbar District Forestry and Estate Crops Office, April 2004 (unpublished and raw data)

4.1 Forestry Policy Making at the District Level

In practice, at both central and district levels of government there are very limited opportunities for public involvement in decision making concerning the forestry sector. The processes do not involve those stakeholders who may be directly or indirectly affected by policy outcomes. Universities, NGOs, civil society groups and the business community are still not considered an important source of information and views to guide policy making. Remote communities who are dependent on forests for their entire livelihoods are almost completely excluded. To date, neither central government nor the Tanjung Jabung Barat (Tanjabbar) District Government has issued a regulation setting out standards and mechanisms for public involvement in policy making at the district level.

Generally, there are two processes for local policy making in Jambi Province. The first option is that members of parliament propose a draft regulation, which is then debated in parliament (Figure 4). This process is governed under the standing orders of the respective district parliaments⁴⁰. This route is possible only if members of parliament actually have the expertise and experience required to initiate a draft regulation.

The second option allows local executive bodies to initiate the process. They prepare and submit a draft regulation to the district parliament, with an introductory note written by the District Head (Figure 5).

With generally poorly qualified local members of parliament, all policy making in Tanjabbar follows the second method. Local staff within executive offices generally know more about sectoral issues and hold responsibility for implementing final regulations.

The mechanisms used are based on old Local Government Decrees issued in 1992 and 1993⁴¹: they refer to a law introduced in the 1970s (Law No.5/1974), and largely follow the process set out in this law, apart from some small (partial) adjustments⁴².

The second method comprises four phases. During the **policy drafting phase**, government offices initiate the first draft of the policy. A specific institution takes the lead in preparing a draft and convening a series of internal meetings to deliberate on the draft and submit it to the Legal Section under the District Secretariat. The initiator further discusses the draft during the **synchronization phase** with a legally qualified person from the latter office. Issues related to legal norms and principles, potential stakeholders to be invited during the deliberation and other strategies for submitting the draft to the parliament are discussed during this phase. Once the draft is submitted to parliament, the next phase, the **pre-hearing session**, begins. The local parliamentary committee sets and publicly announces an agenda for deliberating the draft. During this phase, the committee also disseminates the draft to interested parties for comments and input. A **final hearing**, the last phase, comprises five plenary sessions in which the District Head and

Figure 4. Flow Chart of Legislative-Initiated District Regulations

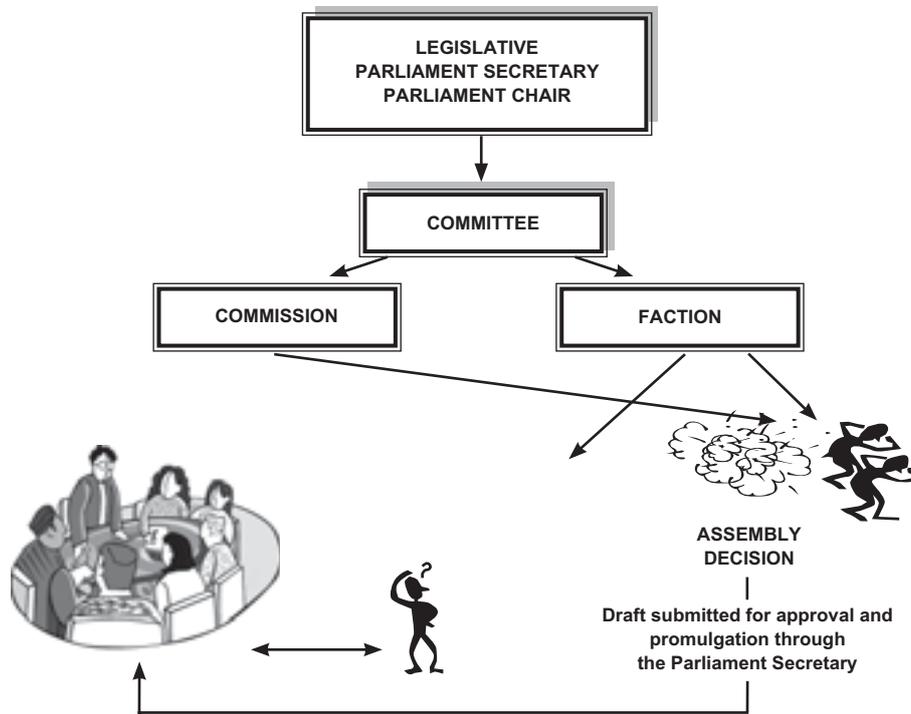
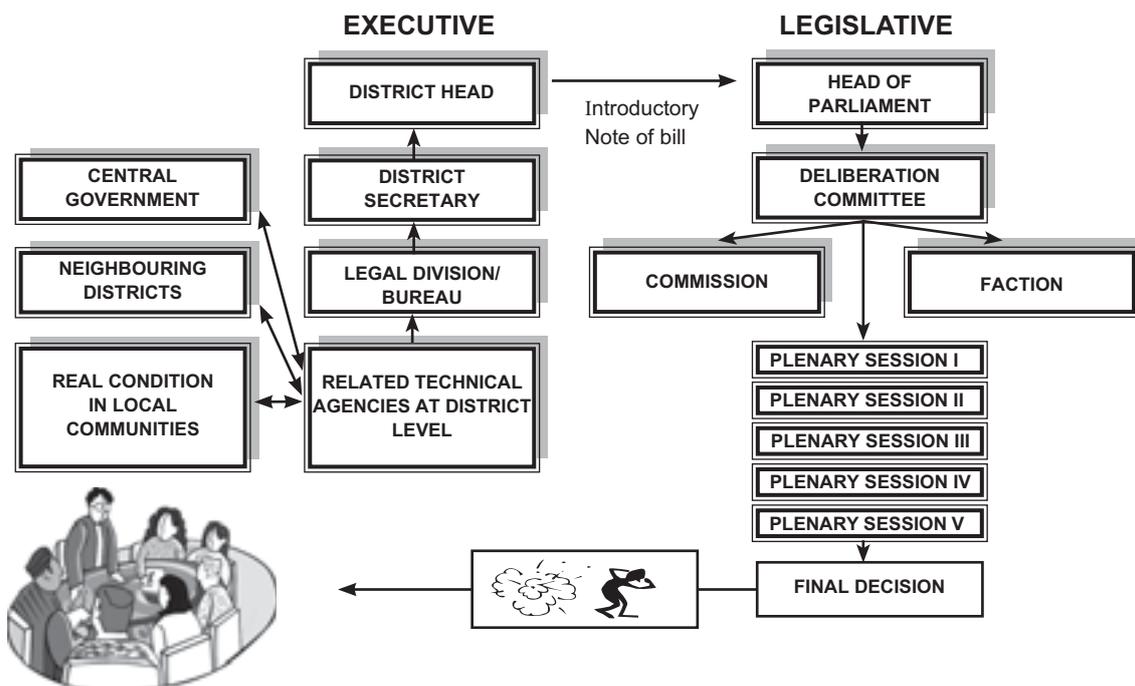


Figure 5. Flow Chart of Executive-Initiated District Regulations



members of parliament consecutively present introductory notes, perspectives, comments and responses from the first three sessions. The last two plenary sessions are devoted to the presentation by a special committee of agreed amendments to the draft and the making of a final decision.

What follows is our analysis of how the district's regulation formulation process took place, partly from the point of view of public participation:

1. Policy Drafting

We found that, in reality, when the three regulations were drafted the District Forestry and Estate Crops Office (*Dinas Kehutanan dan Perkebunan, dishutbun*) simply adopted regulations from the neighbouring districts of Batanghari and Tebo⁴³. The wholesale adoption of local regulations from other districts provided little opportunity for Tanjabbar stakeholders to take part in articulating their aspirations, commenting on and informing the policy process from an early stage. The first draft reflected the conditions and aspirations in another district, which may entirely differ from local communities' needs in Tanjabbar.

Three officials from the District Forestry and Estate Crops Office met on three occasions to discuss the draft. There was no consideration during these meetings of the substance or how to implement the draft regulation. Having adopted a neighbouring district's policy, it is possible these officials considered it legally sound and practicable to implement. In the event they made only slight adjustments – to names, places and tariffs.

There is no budget allocated to legal drafting for District Forestry and Estate Crops Office staff, nor are there any initiatives to provide training in legal drafting. This lack of support and training was another reason why local stakeholders felt that the consultation process had never been optimal. Likewise, since the district legislation programme, or Program Legislasi Daerah, has not begun, the process of formulating draft regulations did not accord with any of the directions set out in the Broad

Outlines for District Policies (GBHD), the district development programme (Propeda), or the guidelines for the District Strategic Plan (Renstra).

2. Policy Synchronization

During the policy synchronization phase staff from the District Forestry and Estate Crops Office held discussions with staff from the Legal Bureau (*biro hukum*) of the district government secretariat. These discussions were generally limited to wording and legal norms within the bill. This stage did not establish the legal background, purposes and principles that should have formed the basis of the draft regulation. The Legal Bureau determined who should be invited to these meetings, and they were not always attended by officials with any professional expertise in the policy area under discussion. This phase provided little or no room for public consultation.

To date, only university experts have been invited to these discussions. Community representatives who will be directly affected by the policy outcomes have never been involved. The forestry drafts were then passed forward to the District Head, who submitted them to the district parliament for deliberation. The Executives submitted between 16 and 39 draft district regulations to the parliament, each with an introductory note from the District Head. As the parliament received district regulations in 'packages' like this, it limited the quality and quantity of time they could invest in deliberating each regulation.

3. The Pre-Hearing Session

A local parliamentary committee (*Pansus*) now sets the agenda for deliberating the draft district regulations. This phase should have provided the first opportunity for the public to participate. However, large numbers of drafts were submitted together and there was no clear time allocation for discussing each draft, therefore it was difficult for members of the public to have their say on any particular draft. Copies of the draft regulations were sent out to members only after the committee had already

set the agenda. This made it difficult for any member of parliament outside the committee to review the drafts, and even more difficult for members of the public to review them or even know when an issue might be discussed in parliament. Table 8 shows the time allocation set by the committee for discussing and adopting 16 draft regulations.

It is hard to see how all 16 draft regulations could be deliberated and passed in such a tight schedule. Do individual members have the right to reject the committee's decision to deliberate all draft regulations as one package? Can they appeal for additional time to consider important regulations? These questions relate to the role of the district parliament members as representatives of the local community at large. As local people's representatives, they should be entitled to raise objections concerning decisions that do not take account of the people's aspirations.

4. The Hearing

The final hearing took place in the local parliament. The draft of District Regulations on IPHH and RHH⁴⁴ were deliberated and adopted simultaneously with 14 other draft regulations⁴⁵. The final hearing comprised five plenary sessions:

a. Plenary Session I

The District Head submits introductory notes for each proposed draft regulation. Ideally, the introductory note should include the background, purpose, scope and principles of each draft. This is beneficial for several reasons: (1) it demonstrates that the policies

put forward have gone through serious study and investigation; (2) parliamentary members, or factions, can immediately make general observations (support, questions or rejections) regarding the substance of the regulation; and (3) it avoids the impression that the process of deliberating a draft regulation is nothing more than a formality. However, the District Head did not include any detailed information in the introductory notes (see Annex 1). This made it difficult for local parliamentary members to understand the main ideas behind the proposed drafts.

The first plenary session, on 16 October 2002 (see Table 8 above), was chaired by Tanjabbar District Parliament Chair and attended by:

- i) 32 out of the 40 members of parliament;
- ii) members of the Tanjabbar Leadership Forum (*Muspida*)⁴⁶;
- iii) the heads of the district government offices/agencies;
- iv) heads of Tanjabbar Government Secretariat Bureaux;
- v) directors of district-owned companies (BUMD) in Tanjabbar⁴⁷.

According to the notes of the plenary session, no village representatives or local community members from forested areas were present at these sessions, although they were the stakeholders most relevant to the issue being discussed.

No one who attended the plenary session received copies of the proposed drafts prior to the meeting. From a democratic perspective, the people present at these sessions should receive at least basic information concerning

Table 8. Schedule of Plenary Sessions to Discuss 16 Draft Regulations in Tanjabbar

Stage	Date	Time	Activity
Plenary Session I	Monday, 16.10.2002	09:00	Submission of introductory note
Plenary Session II	Monday, 21.10.2002	09:00	General observations by the factions
Plenary Session III	Thursday, 24.10.2002	09:00	Response of the District Head to the general observations
Plenary Session IV	Thursday, 28.11.2002	09:00	Presentation of the report of the special committee
Plenary Session V	Thursday, 2.12.2002	09:00	Final general observations, adoption of the 16 district regulations, closing remarks from the District Head

the drafts under discussion. Information about the proposed drafts should also be made widely available to the public to raise awareness and give local people the opportunity to review the proposals.

b. Plenary Session II

During the second plenary session the parliamentary factions share their general perspectives. For the District Regulations on RHH and IPHH, the second Plenary was held five days after the first. Like the first it was attended by government executives, members of parliament and directors of state-run enterprises. No community representatives were invited and no record of the discussion was distributed to the public. During this session, six factions presented their general observations about drafts of District Regulations on IPHH and RHH, as shown in Table 9.

There was no debate over the substantial issues raised by the drafts, no discussion of their potential impacts, and no questions about how they would actually be enforced.

c. Plenary Session III

During the third session the Executive and the District Head respond to the general observations made by the factions in the

previous session. The District Head makes a summary response to all the observations; he does not provide detailed explanations for each question. Likewise, the Executive provides a summary response on general topics rather than responding to specific issues or questions.

d. Plenary Session IV

The fourth session, or special committee meeting (*Rapat Pansus*), gives a Special Committee⁴⁸ an opportunity to discuss drafts with the relevant technical agency. Based on these discussions, the Special Committee produces a final report. The presentations of the 16 drafts simply outlined the amendments to the drafts. Any articles in the draft that had not been amended were considered to have been approved, and were thus not mentioned in the report. The Special Committee's task is challenging because the members have no experience of reviewing legal documents; their reports are rudimentary. For example, they were limited to recording that an article has been 'amended', with little if any description of the amendment.

e. Plenary Session V

In the final session, all factions sum up their final perspectives (*Stemotivering*) and the draft

Table 9. General Observations of the Factions Regarding the IPHH and RHH Bills

No	Spokes person	Basic Argument of the Faction's General Observation
1	Bambang Krisna (PDIP)*	No comments regarding the IPHH and RHH drafts proposed by the District Government.
2	Williyah Sudirman (Partai Golkar)*	No comments regarding the two drafts proposed by the District Government. Notes that RHH policy should not burden society.
3	Ahmad Syirali, SH (Reformasi)*	No comments.
4	M. Fadli (Kebangsaan)*	Sanctions included in both are vague.
5	Burhanuddin (PPP)*	The drafts are consistent with the needs of Tanjabbar District. The faction refuses to make many comments and entrusts the draft to a Special Committee for further deliberation.
6	Dentjick Hariyanto (TNI/Police)*	There should be a dissemination period before the drafts are adopted

***Political parties:**

PDIP Partai Demokrasi Indonesia, Indonesian Democratic Party

Golkar Golongan Karya, Functional Group - a political party that initially served the New Order Government

PPP Partai Persatuan Pembangunan, an Islamic Party

TNI Tentara Nasional Indonesia, National Armed Forces

regulation is approved and adopted as a district regulation. It is very rare for a draft not to be passed at this stage. For example, the district forestry regulations were passed automatically on 2 December 2002. All 16 drafts considered that day were approved under a single District Parliament Decree, No. 10/2002 on the Approval of 16 Draft Regulations.

Session notes or minutes from these plenary sessions have never been publicized or distributed to other stakeholders. Publication is important and beneficial because: (1) local people are privy to the historic processes of local decision making; (2) it becomes a shared learning experience, as parliamentary members can learn from previous experience and public inputs; and (3) the public can read and assess the performance of their representatives in parliament.

Methods for district policy making in Tanjabbar leave very little room for public participation. As very few amendments are ever made to proposed drafts, this means that the initiators' interests heavily influence the final regulation. Little attention is paid to substance, or to whether the regulation is consistent with regulations for other sectors, therefore new regulations are needed allowing active public participation at all stages, from policy initiation to implementation.

Ideally, a more comprehensive process might allow inputs from the public about on-the-ground issues such as how deforestation contributes to chronic flooding problems, a shortage of village firewood and future building materials, and less land for smallholder agriculture as forest areas are converted to other uses.

4.2 Forestry Permit Issuance Process in Tanjabbar

4.2.1 Application procedures for obtaining IPHHKR and IPHHKT permits

The formal and informal procedures for obtaining Permits to Use Timber Forest Products

from Privately Owned Forests (IPHHKR) and Permits to Use Timber from Privately Owned Timber Plantations (IPHHKT) are outlined below.

a. The formal procedure

Following the formal procedure, applicants must fulfil several requirements⁴⁹ and go through a long, complicated procedure lasting 1–3 months or more. Those who follow the formal procedure are usually new to the timber business, and are applying for the first time. They have to follow 16 steps:

1. A request must be submitted to the District Head through the Economic Section Head⁵⁰ of the District Secretariat with a copy to the Head of the District Forestry and Estate Crops Office;
2. The Economic Section (*Bagian Ekonomi*) forwards the request to the District Head's Assistant II;
3. The District Head's Assistant II forwards the request to the District Secretary;
4. The District Secretary forwards the request to the District Head;
5. The District Head recommends that the District Forestry Office conduct a field check;
6. The results of the field check are reported to the District Head with recommendations on whether to approve the permit. Field checks observe the following:
 - a) Status of the location: whether or not it is inside an area covered by other permits. If the proposed location is inside an area covered by other permits, the permit application will be rejected.
 - b) The timber production inventory, its density and potential harvests.
 - c) The distance to the permit location. The applicant must pay the district forestry official for transport and accommodation costs incurred during the site check. The relevant section of the District Head's Decree⁵¹ does not clearly specify the amount that should be paid for field checks. This opens

the way for corruption and misuse of power by the forestry officials in the field.

- d) Area mapping.
7. Based on recommendations from the District Forestry and Estate Crops Office, the District Head approves or rejects the permit application. If it is approved, the application is forwarded to the Economic Section.
 8. The Economic Section forwards the approval to the Legal Section (*Biro Hukum*).
 9. The Legal Section then has to formulate a District Head's Decree for Permit Issuance.
 10. The draft decree is forwarded to the District Head's Assistant II.
 11. The Assistant II forwards the draft decree to the District Secretary.
 12. The District Secretary forwards the draft decree to the District Head.
 13. The District Head signs the decree.
 14. The decree is returned to the Legal Section to be given a file number.
 15. The Legal Section forwards the decree to the Economic Section.
 16. The applicant obtains the approved permit from the Economic Section.

In reality, permit applicants rarely follow this lengthy formal procedure, which is beset by numerous delays as the application makes its way to and from various offices. It is not easy to follow all the steps, particularly for farmers or small cooperatives from villages. For example, the applicants are required to submit a map of the proposed permit location (scale 1: 10 000). This should be approved by the Head of the District Forestry and Estate Crops Office. Cooperatives also need to submit a financial report covering the last two years of operation. Applicants need an expert check and legal verification for these documents. Again, this takes time, connections and money.

As a result, some new permit applicants use a 'service agent' (locally known as a *makelar ijin*), who is very familiar with informal

procedures. The local officials referred to these service agents as 'old players' (*pemain lama*) in the timber business.

b. Informal Procedure

Informal procedures save time by bypassing the normal bureaucratic processes. Applicants who take this route are usually people with a good deal of experience of applying for permits, or they are permit service agents. They are able to conclude a permit application in less than two weeks. They take the following steps:

1. Before submitting a written request to the District Forestry and Estate Crops Office, the applicant first asks a field officer to check the proposed location for the permit.
2. The field officer checks the location to determine whether or not the proposed location lies within a forest area covered by other permits.
3. If it does not lie within a forest area covered by other permits, the formal request is sent directly to the Head of the District Forestry and Estate Crops Office, who charges a handling fee of around Rp. 15 million (US\$ 1667 at 1 US\$ = Rp. 9000) or less if the applicant is well known to the officials.
4. The Head of the District Forestry and Estate Crops Office recommends the District Head to approve the application based on the prior field observations.
5. The District Head issues a Decree approving the application; the permit can be collected from the District Forestry and Estate Crops Office

4.2.2 Implementation of Forest Product Utilization Permits

Our focus group discussions with members of the four villages studied revealed that they have very limited access to information about the procedures for acquiring small-scale logging permits (IPHHKR/IPHHKT). In interviews, farmers from the four villages told us that local community members who live next to the IPHHKR concession areas do not own permits.

Local communities living closest to these concessions have not seen a share of benefits from logging under these permits. The Village Head of Lubuk Bernai in Merlung Subdistrict complained about how difficult and confusing it is to obtain an IPHHKR permit.

Local people are turned into mere spectators; it is outsiders (mostly affluent people or officials from the district capital or even from other cities) who exploit the riches of their forests. The IPHH policy has facilitated the exploitation of the remaining local natural forest outside the production forest area in Tanjabbar, but the largest benefits are enjoyed by certain powerful and educated players. The right to issue small-scale concessions was devolved to local governments with the explicit intention of giving local communities a share of the benefits from logging in their areas. This has not happened in the four villages we studied in Tanjabbar. One reason for this elite capture of the benefits is that the permit allocation system is centralized at the district level. Village authorities (village head or Village Representative Body, BPD) are not involved in any decision-making processes, either in formulating district policies or reviewing permit applications. The village authorities are left out of the loop and therefore have no power. They are not involved in monitoring applications, and have no role in monitoring operations. For example, the heads of two villages (Lubuk Kambing and Lubuk Bernai) indicated that some permit holders operate beyond the designated area, but they are powerless to do anything about it.

4.2.3 Public participation in district policy making

Public participation in policy making was high on the decentralization agenda, enshrined in several national laws and regulations⁵². In theory this means that the law should guarantee public participation. Positive results should include:

1. Local regulations are strongly based on local people's interests and needs. The regulations will be more suited to

conditions on the ground, and more likely to meet local needs and expectations.

2. Local people are encouraged to be more law-abiding and socially responsible. Local stakeholders are more likely to comply with regulations if they have actively participated in creating them.
3. Local governments are empowered to democratize the policy-making process, and become more accountable to their constituents. Open consultation with stakeholders, such as universities, NGOs, the general public and local communities, allows 'checks and balances' to come into play.

Our research with local stakeholders indicated that public participation in Tanjabbar could be improved in the following ways:

1. A regulation should be developed that will standardize and legalize mechanisms for public participation. It can be used to guide local government in making local regulations and will also strengthen public trust and compliance.
2. Sufficient human and financial resources should be provided. It is also important that the regional government supports the 'public participation fund' (*Dana Partisipasi Masyarakat*, DPM) from the regional budget, based the district's existing plan for formulating local regulations.

Public participation could be achieved through:

1. Policy research and formal academic recommendations (*naskah akademik*);
2. Open discussions such as seminars and workshops;
3. Policy memos or policy briefs – developed with local stakeholders and widely distributed;
4. Publication of local policies in print and electronic media;
5. Public hearings in local parliament; and
6. Distribution of draft regulations to various stakeholders, asking for and using feedback to formulate final regulations.

Public participation is important in order to avoid passing regulations that benefit only certain individuals or groups. A clear mechanism is necessary to allow local people to voice their opinions and aspirations and be actively involved in local policy making and implementation.

4.2.4 Reforming the permit allocation system in Tanjabbar

In relation to the permit allocation procedures in Tanjabbar, our research suggested the following key points for policy reform:

1. The District Regulation on IPHH and District Head Decree No. 189/2003 do not clearly state the official fee for acquiring IPHHKR or IPHHKT permits. This loophole opens a window of opportunity for officials to gain improper profits. To clarify the legal position and improve transparency in forestry sector contributions to district revenue, the official fees and taxes must be clearly stated in the District Head's decree. If this is not done, significant amounts of money will not go into the district revenue but *into the personal accounts of certain officials*.
2. There is a lack of information for local communities regarding to permit allocations, thus disseminating basic information about policies and permit application procedures is an important factor in providing greater opportunities for local communities to benefit from local forest resources.
3. Weak systems for controlling and monitoring how concessions are operated

result in over-exploitation and unsustainable management of local forest resources. Examples include logging outside the designated IPHHKR area or felling trees below the minimum permitted diameter. These illegal practices are nothing new: they were common under the centralized large-scale commercial concession and industrial timber plantation systems (HPH/HTI). Central government at that time was not able to control the activities carried out by the companies, and this has resulted in devastating forest degradation. Similar impacts will apply in the implementation of IPHH policy if the District Government of Tanjabbar does not improve the monitoring system through active local stakeholder participation. As the groups closest to these resources, local communities could play an important role in an effective system for monitoring IPHH operations in the field. The district government could involve village authorities as well as local communities (e.g., *adat* institutions, community organizations or informal leaders) more closely in policy making, including planning, implementation and evaluation processes.

The adoption of these key points is highly recommended to avoid formulating and implementing defective district policies and laws that act against local people's interests and result in the permanent loss of valuable forestry resources.

5.1 The Problems of Vertical and Horizontal Coordination

As part of its effort to increase regionally generated revenues (PAD), the Tanjabbar District Government has introduced local forestry fees⁵³. It has established a Local Forestry Fees Collection Centre (*Tempat Penarikan Retribusi Kehutanan*, TPR) and a Forest Protection and Conservation Post, known locally as P3H (*Pos Pengamanan dan Pelestarian Hutan*) in Tanjabbar. According to the District Head, the purpose of the P3H is not only to protect regional revenue sources but also to halt illegal logging, which is rampant in the district. The District Head hopes that P3H will decrease the transport of illegal timber to and from Tanjabbar. However, in practice the TPR and P3H have brought their own, new problems:

a. Dispute over authority between the district and provincial governments

The authority to collect forest product fees still lies with the provincial government. The application of a similar fee by Tanjabbar District Government effectively leads to double taxation for permit holders (Syam 2003 p.45). To resolve these coordination problems, on 15 April 2002 the provincial and district governments in Jambi made an agreement concerning Fee Collection and Revenue Allocation generated from the forestry, plantation and farming sectors. The agreement included uniform standards for different types of permits and forestry fees in each district, as follows:

- Locally Issued Forest Product Extraction Permits (IPHH) should be regulated by district policies; they may be allocated on a maximum area of 100 ha inside or outside the official state forest, and are valid for six months to one year. Only individuals (for privately owned land), cooperatives, district-owned companies, small/middle-scale private enterprises, state owned/privately owned companies in partnerships with cooperatives/local farmers groups are eligible for these permits, and a local fee is payable to the district government.
- The fee payable was fixed according to the type and size of trees logged, and the location of the permit site. This ranged between Rp. 5000/m³ and Rp. 60 000/m³, with the most mature trees from natural forests attracting the highest tariffs.
- The agreement also set out exactly which fees the district is authorized to collect⁵⁴.

The agreement also covered the distribution of local forest product (RHH) fee revenues. Producer districts have to deposit 40% of local fees collected in a special account held by the provincial government, which will later redistribute them to the other districts/municipalities: producer districts receive 60%, the provincial government receives 25% and non-procedur districts/municipalities receive 15%.

This agreement was initiated by the Governor of Jambi to reduce conflicts between

district governments and between the provincial and district governments.

Two years later, however, this agreement had not yet to come into force (Jambi Provincial Forestry Office personal communication). Some districts have yet to revise their forestry regulations (District Regulations on IPHH and RHH) to comply with the agreement, and have yet to make their first payment to the province from their forest sector revenues.

b. Revenue loss

Around 2000–3000 m³ of illegal timber has been transported out of Tanjabbar. The district government is estimated to have suffered a loss of Rp. 220 million⁵⁵ in revenues as a result of illegal logging and timber transportation.

In practice, the establishment of a TPR in Tanjabbar has simply created more opportunities for corruption at the district level. According to the Deputy District Head of Tanjabbar, some local officials have been caught in dealings with truck drivers transporting timber not far from these posts. Officials manning these posts also falsify records, recording far less timber than the trucks are actually carrying.

Companies require an official Permit to Transport Forest Products (SKSHH). If they try to pass a TPR without an SKSHH they have to pay a fine of Rp. 90 000/m³⁵⁶. However, local people told us that transport trucks pass through for a fee of Rp. 180 000 per trip, or they can pay Rp. 90 000/m³ for an SKSHH.

The income from these fines alone is significant; however, this provision effectively legalizes illegal logging⁵⁷. It is very difficult to halt illegal logging activities when non-documented timber can be transported on payment of a fine. It is also impossible to know how many fines are actually paid at these posts, and what the district account should really be receiving. This practice is regulated under a Joint Decree⁵⁸, issued by the District Heads of Muaro Jambi and Tanjabbar.

c. Forest Degradation

The joint decree of the District Heads of Muaro Jambi and Tanjabbar has given logging operators

a legal mechanism to transport logs taken illegally from inside Bukit Tigapuluh National Park; the park is increasingly threatened with destruction as a result of this policy. The district government's failure to draft regulations based on local people's interests and needs has also contributed to this loss. Local livelihoods issues and social or ecological interests have been sidelined in favour of an exclusive policy-making system.

Another factor endangering Bukit Tigapuluh National Park is confusion and conflicts over the location of the park boundaries. The villagers of Suban claim that they do not know where the boundaries lie. Forest delineation is under central government authority: it does not involve any of the local people living in and around forest areas. It is therefore not surprising that the community is unaware of the boundaries. The national park is adjacent to the villagers' farmland, but as they played no part in setting the boundaries local communities do not feel a strong responsibility for implementing the distant policies emanating from the central or district governments.

One important point that should be made is that the forest management policies, both in the centralized and decentralized periods, have tended to classify forests as a resource to be exploited solely for economic purposes. Little consideration has been given to preserving and maintaining the non-economic or local subsistence functions of forests. Likewise, little attention has been paid to the question of regeneration. These issues have not been prioritized during the formulation of forest management policies at any level of government.

5.2 Conflict between the Community and HPH/HTI Companies before Decentralization

Research in the Subdistricts of Tungkal Ulu and Merlung showed conflicts between local communities and logging companies, for example:

5.2.1 Forced land occupation, permit manipulation and pollution by PT. Inti Indo Sawit Subur (PT. IIS)

PT. IIS is one of seven CPO (Crude Palm Oil) companies in the province of Jambi; these companies make a significant contribution to the PAD in Tanjabbar. PT. IIS, a large company, received a centrally issued business permit (*Hak Guna Usaha*, HGU)⁵⁹ in 1990 to open an oil palm plantation and processing business covering an area of 3500.3 ha in Tanjabbar District. PT. IIS occupied land that had been managed traditionally by local communities for generations. It occupied the land by force: PT. IIS employed the military and the police to open its plantation area. It evicted local people on the basis that the land was company property. It also claimed that the land was 'abandoned'.

An oil palm plantation area used by PT. IIS in the Subdistrict of Merlung also extended 1000 ha beyond the area original designated to it by central government. This fuelled the conflict between the community and the company. At that time, the villages in the Tungkal Ulu area were living in very poor conditions due to the lack of available agricultural land. Several villages, including Penyabungan, Lubuk Terap, Rantau Badak, Pulau Pauh, Merlung and Tanjung Paku, lost their land during the forced occupation.

In 1998, with the fall of the New Order regime and the rise of the *reformasi* movement, people in most villages began to reclaim their customary (*adat*) lands. By mobilizing the masses, they boycotted the activities of PT. IIS and demanded their land back. Following decentralization, the district government facilitated talks between the community and the company. The people demanded the return of the *adat* land and a reassessment of the size of their land. Finally, an area of 0.83 ha was returned to each household in the villages of Merlung, Lubuk Terap, Penyabungan, Rantau Badak and Pulau Pauh, with a further agreement that the government would continue the re-assessment process.

5.2.2 Forestland occupation and deforestation by PT. Dasa Anugerah Sejati (PT. DAS)

In 1991, PT. DAS obtained an HGU to establish a crude palm oil plantation and processing plant. This permit was allocated for agricultural land and a forest area covering 9077 ha in the Subdistrict of Tungkal Ulu⁶⁰. No fewer than nine villages were located in this area.

Farming areas in the new concession had been managed traditionally for generations, and under customary law it was recognized as being collectively owned for the benefit of the local communities. However, the company took over the land without giving proper compensation. Some villagers received compensation for the value of the crops growing on their land (rubber, durian, etc.) at the time, but they received no compensation for the long-term loss of their land. Many villagers were forced to become hired labourers, working for the company on what had previously been their own farmland.

The local people's poverty worsened because PT. DAS preferred not to employ locals; instead, it brought in skilled labour from Java and other islands. The company justified this by claiming that the local people were not skilled in factory or plantation management. Local people were hired only as daily labourers (*buruh harian lepas*, BHL) on a daily wage of Rp. 11 000 or US\$ 1.20 (US\$ 1 = Rp. 9000). As casual labourers, they have no clear contract and can be laid off without compensation or notice.

Central government in Jakarta gave local people no opportunity to question the allocation of their lands to a private company or to demand – at the very least – employment from the company. To date, not one single local person is employed under contract as either a factory or plantation labourer.

To establish its plantations, PT. DAS cleared the primary forests around the local people's farmland. The forests had been a source of income for local people, and had maintained the water supplies for their farms. With its permit from central government in hand, the company turned the natural forest into rubber and oil

palm plantations. The resulting deforestation caused a massive flood, which devastated the village of Tungal Ulu in January 2002.

PT. DAS used the slash-and-burn method to clear the natural forests. This method is high risk, but it is also fast and cheap. Local people told us that the company had intentionally allowed the fires to spread over an area of 15 000 ha. It established its plantation over this entire area, although its permit was originally for only 9007 ha⁶¹.

Table 10 below shows the livelihoods impacts, which were hardest on local women, after the arrival of the plantation company, PT. DAS, in Penyabungan village in the Subdistrict of Merlung.

5.3 Conflict between the Community and HPH/ HTI Companies after Decentralization

Following decentralization, as the promises of land re-assessment failed to materialize, in 2000 the people of Merlung village protested again. The 0.83 ha of land returned to them by PT. IIS was seen as no more than a ploy to silence their demands. The people of Merlung pushed Tanjabbar District Government and the provincial government to reassess their land immediately.

Three hundred people occupied a PT. IIS office on the plantation area. They ransacked the office and then burnt it down, because no one from the company responded to their demands. They also harvested the crops on the plantation. As a result the police arrested the villagers for theft. Local community members went to the district parliament to demand the release of those held under arrest. In the end, the company and the local government invited the community to negotiate with them, and all those who had been arrested were later released.

PT. IIS discharges the waste from crude palm oil processing into the Beranak River. The company offloads once a week when the water level in the river is at its highest. During the dry season the villages are filled with the stench

of the waste. Villagers in Merlung complain that they can no longer bathe in the river (Pak Fauzi personal communication). The people of Penyabungan village told us that they can no longer fish in the river because it is too polluted (Pak Zainal personal communication).

Meanwhile, the conflict between the residents of Penyabungan village and PT. DAS is yet to be resolved. The company has taken over a further 1100 ha of farmland from the residents of Penyabungan village to establish a rubber and oil palm plantation area. The local people have made numerous efforts to stop this. They have tried to negotiate with the company, they have asked the local government to mediate, and, finally, they have demonstrated in the rubber plantations. To date, none of these efforts have had positive results.

The company is also engaged in ongoing conflicts with other villages (such as Pematang Pauh, where 300 ha of community land has been taken over). However, in these cases the company has been able to influence key village leaders by putting them on the payroll and promising them a share of the land. As a result, the wider community has been afraid to protest because it would then have to face established and powerful farmer groups such as KOTALU (*Kelompok Tani Tungal Ulu*).

Our review of the impact of forestry policies issued by the central and district governments, both during the centralized period (before *reformasi*) and after decentralization, demonstrates that the implementation of all of these policies has led to conflict and undesirable effects for the communities living near or in the forest. *The main difference* lies in the parties who are involved in the conflict. During the centralized period, conflicts usually involved villagers struggling with plantation companies, the military or the police.

Since decentralization, villagers have been able to protest and voice their anger more freely. As a result, there has been a wider variety of conflicts. Villagers fighting their cases have come into conflict with the local government or the companies, although such conflicts do not usually escalate into open conflict. The

Table 10. Impacts on Livelihoods Following the Arrival of PT. DAS in Penyabungan Village, Merlung Subdistrict

Before arrival of PT. DAS	Since arrival of PT. DAS
The villagers tried to meet the basic family needs by planting vegetables/nutmeg.	The villagers can no longer plant vegetables as there is no access to land.
The villagers spent a great deal of time with their families because their gardens/farms were close to home.	The villagers do not spend enough time with their families because they must work as labourers or find rough work (collecting sand and rocks) to meet the needs of the family.
There is a tradition of cooperation among women, e.g., during festivities women worked together to prepare the food and help each other with harvests.	Cooperation still exists, but it has reduced as the women have to work independently to earn enough for their families.

district government has come into conflict with the provincial government and with the plantation companies. There have been fewer incidents involving violent or open conflict since decentralization.

The residents of Merlung village have asked the Center for International Forestry Research (CIFOR)/ Study Center for Legislation and Policy on Regional Autonomy (PSHK-ODA) research team to facilitate discussions with local decision makers in Tanjabbar regarding land use in their area. The local communities hope that they can cultivate the land abandoned by PT. IPA (an oil palm plantation company). The community would like to forge a partnership with PT. IPA or Tanjabbar District Government (or even work alone) to make use of the unused area.

Although there has been no formal approval from the district government or PT. IPA, around 60 local households have begun to make use of the area by cultivating quick-harvest crops, such as corn, beans, etc. With or without approval, they have begun to cultivate the area because their livelihoods depend on it. The residents of Merlung told us that they were tired of watching others exploit land that was once theirs. We hope that the district government will use these discussions as an opportunity to learn and formulate a local policy to resolve land disputes and provide fairer distribution of natural resources to local communities.

5.4 Policy Action Research: Impacts

As a result of the 2-year research project conducted by PSHK-ODA Jambi and CIFOR, there have been some positive changes in the regional policy-making process in Tanjabbar.

1. The District Forestry and Estate Crops Office has asked the research team to conduct a critical analysis of its 2004 'Draft District Regulation on Inspection and Forest Product Measurement Services' and its subsequent implementation decree (PSHK-ODA is currently reviewing these policies). All the District Forestry and Estate Crops Offices in Jambi Province have already approved the draft.
2. The District Forestry and Estate Crops Office of Tanjabbar has requested PSHK-ODA to formulate an alternative draft regulation to the one proposed above. Tanjabbar District Government believes that by consulting PSHK-ODA and receiving input from a wider range of stakeholders this draft – if approved – will be the first to have undergone public consultation.
3. The Legal Division at the District Secretariat has asked the research team to work with it to revise and evaluate several problematic district regulations (both forestry and non-forestry).
4. The Head of the Regional Development Planning Board (Bappeda) of Tanjabbar

- has requested the research team to work with his office to provide training for Tanjabbar District Parliament's newly elected members on 'Legal Drafting of District Regulations and District Budget Formulation'. The Head of Bappeda has allocated funds from his agency's 2004 additional budget.
5. The District Head of Tanjabbar has supported the research team with several activities including policy research and efforts to strengthen village authorities and institutions by providing training in methods of participation and formulating local regulations – 'the local regulation formulation technique' – to support the district government in protecting and preserving the forests.
 6. The Governor of Jambi Province has also supported steps taken by PSHK-ODA to strengthen village institutions by providing training in the 'local regulation formulation technique' to promote the establishment of self-sufficient villages and support the district government in developing participatory policies to protect and conserve remaining forests. Training is scheduled for 2004–2005 and will be fully funded by the governor and the provincial government.

6.1 Conclusions

Based on a review of the District of Tanjung Jabung Barat (Tanjabbar)'s forestry regulations (*Perda*), our research highlighted the following fundamental issues:

- Policy-making mechanisms need to be reformed because they have basic procedural weaknesses, unclear content and inapplicable policies, making implementation difficult on the ground. Therefore Tanjabbar District Government should conduct a judicial review, overview and evaluation of all its forestry laws and involve a wide range of local stakeholders.
- District regulations should not contradict higher regulations. A local policy is contradictory if it regulates an area that does not lie within the remit of the district government, if its technical or procedural aspects and content are not consistent with higher regulations, or if it refers to now-defunct higher regulations.
- National and district regulations should be consistent with recognized indigenous laws and norms. The existence of local (village or customary (*adat*)) laws is implicitly recognized in the national decentralization law and regulations⁶²; these reintroduced the acknowledgement of customary peoples and their autonomy, which was omitted from Act No. 5/1979 under the New Order regime.
- Local regulations should not contradict basic principles of good governance, for example:
 - There must be formal rules, to ensure accuracy (clarity of the subject, content and meaning) and fair play and to avoid procedural malpractice;
 - Philosophical, judicial and sociological aspects and formal legal certainties must be considered;
 - Principles concerning formal legal certainty, trust, emerging expectations, equity, accuracy, balance, misuse of power and arbitrary prohibition must be included in the content.
- Self-reliance in this period of decentralization does not mean that the districts may create regulations that contradict the national legal system and neglect the public good on a wider scale. The interests of the local community are a very important concern, but the national legal framework should ensure that district policies also accommodate the interests of the other districts, therefore the review of the authority prescribed by Law 22/1999 must be oriented towards maintaining common standards, law and order in forest management and preservation. District regulations must therefore be viewed from a regional and national perspective and not simply as an exercise in territorial jurisdiction. Local regulations should not have negative ecological, environmental or economic impacts, either locally or for neighbouring regions.
- The role of the public (as relevant stakeholders) will be an important component in the formulation of policy as

it is essential to prevent local regulations from benefiting well-connected and wealthy individuals or groups, which would fuel public resentment, and could lead to serious local conflicts. There needs to be a clear mechanism for local people and the wider public to voice their aspirations and actively take part in the policy-making process, thus it is also important to formulate a regulation regarding public consultation mechanisms to clarify how the public may be involved in the process, execution and monitoring of the regulations.

6.2 Recommendations

6.2.1 Recommendations for policy formulation mechanisms

Based on the results of the study of Tanjabbar District forestry regulations, the study team has formulated the following recommendations:

1. The District Government of Tanjabbar should conduct a judicial review and an in-depth evaluation/revision of the three forestry regulations.
2. National regulations also need to be reviewed and reformulated to allow districts to issue policies based on legitimate local needs and aspirations, provided that they do not contradict widely accepted national principles. Districts often implement divergent policies because higher regulations do not reflect district realities, or because districts see them as serving powerful interests in central government. A process of legal drafting at central government level involving the affected districts would ensure that higher regulations were applicable, equitable and relevant to local stakeholders' needs. This would help ensure district compliance.
3. The District Government of Tanjabbar must involve local villagers and village authorities, alongside universities, NGOs, the executive branch, legislative branch, the press, the private sector and the military and police in a multi-stakeholder forum. This forum could act as an arbitration body to resolve problems and conflicts arising from the implementation of the forestry policies in Tanjabbar. This step must be taken in order to anticipate and resolve the conflicts and continually adapt and improve district forestry policies and methods of implementation.
4. An allocation of human and financial resources is needed to support public participation processes. The regional budget must include a provision for Community Participation Funds/*Dana Partisipasi Masyarakat* (DPM).
5. The District Government of Tanjabbar, along with the universities and NGOs, must support local village institutions to strengthen village autonomy, particularly in the forestry sector, through training activities for village officials, Village Representative Bodies (BPD) and *adat* community members. This step will be critical if the district government is to support self-reliance in the villages.
6. To give local regulations greater legitimacy with constituents and promote their involvement in policy making, a regulation is needed to set out mechanisms for formulating participatory district regulations. The reasons for this need in Tanjabbar are as follows:
 - a. There is no clear mechanism for local people to voice their aspirations and to participate actively in the formulation of regulations.
 - b. There are still substantial flaws in the regulations that have already been formulated.
 - c. Properly formulated regulations may be used by the local government and local parliament as guidelines for formulating local regulations that fulfil the principles of good governance; they would also demonstrate an effort to rebuild public trust and improve local democracy.

7. There are several mechanisms to support public participation in formulating policies:
 - a. Policy action research and/or academic papers;
 - b. Open discussions such as seminars, workshops, etc.;
 - c. Publication of policy memos, policy newsletters or announcements in the print media;
 - d. Interactive dialogue in electronic and broadcast media (radio, TV, E-mail, fax) etc.;
 - e. Hearings with the local parliament;
 - f. Requesting stakeholders' inputs by sending them draft regulations and relevant information regarding drafts.
3. The time limit for approval/rejection of applications must be clearly set.
4. The permit application must be announced to the public (especially in the location where the permit has been applied for) to ensure that local people have an opportunity to influence the application, and that the permit is not used outside the designated location.
5. Close monitoring and control by the District Forestry and Estate Crops Office and local community institutions are required to prevent illegal logging in Bukit Tigapuluh National Park.
6. A regulation is needed that clearly stipulates how revenues generated from the forestry sector will be shared between the district and local communities (village or *adat* institutions).

6.2.2 Recommendations for permit-granting mechanisms

1. An official and transparent mechanism is needed for permit applications. This mechanism should be easily understandable and accessible to all. It could be initiated through the revision of the district regulations and decrees.
2. Fees should be set for acquiring permits, to prevent funds from entering the accounts of certain officials rather than the account of the District Government.
7. Local regulations should be publicly, regionally and nationally oriented towards sustainable use of local forest resources.
8. The national government should work with district governments to establish a framework for developing district regulations capable of meeting local needs in line with commonly accepted national standards.

¹ DFID, 1999. *Indonesia: Towards Sustainable Forest Management*, Final Report of the Senior Management Advisory Team and the Provincial Level Forest Management Project, 2 Vols., Departement for International Development (UK) and Departement of Forestry, Jakarta.

² Explicitly, Article 7 (1) of Law 22/1999 states that the authority of the district government covers all aspects of government except with regard to national security and defence, the judiciary, national fiscal and monetary policies and religious affairs.

³ For example, some districts in the Province of Jambi have made complaints about Government Regulation No. 34/2002 on Forest Allocation, Forest Management Planning, Forest Extraction and Forest Area Use (see also Minister of Forestry Decree No. 171/Menhut-II/03 dated 24 March 2003, which is addressed to all the governors and district heads). The District Heads of Tanjung Jabung Timur and Muaro Jambi have openly and categorically refused to implement this regulation in their districts. These two districts have not revised their local forestry regulations, which they claim have been formulated according to MPR Decree No. III/2000, Law No. 22/1999 and Law No. 41/1999 (details can be found in 'Report from Business and Production Division of the Jambi Provincial Forestry Office: Response from the District Secretary of Tanjung Jabung Timur to Government Regulation No. 34/2002'. See also letter from the District Head of Muaro Jambi No. 503/053/Dishutbun, dated 23 January

2003, addressed to the Director General of Production, Department of Forestry).

⁴ The Chair of the Indonesian Chamber of Commerce (Kadin), Aburizal Bakrie, has hinted that more than 1000 regional regulations have hindered investment in the regions because business owners are now forced to pay various district taxes in addition to their central tax liabilities (for more detail see Haris 2003, p4).

⁵ During informal discussions with PSHK-ODA at his residence and at his office (22 March and 25 June 2003 respectively), the Governor of Jambi, Zulkifli Nurdin, described how coordination between the province and the district heads has weakened following decentralization. This can be seen through the joint agreement between the provincial government (and provincial parliament) and the Tanjabbar District Government (and district parliament) on Regionally Generated Revenue Allocations in the Forestry, Plantation and Fisheries Sector, signed on 25 April 2002. At that time, all the district governments agreed to cancel their district regulations on Forest Utilisation Permits (IPH) and revise their regulations on Forest Product Taxation (RHH). In practice, some districts (such as Batanghari, Muaro Jambi, Tebo, Bungo and Sarolangun) are still implementing IPH policy. However, Tanjabbar District Government did not issue IPH regulations.

⁶ Zainal, a well known community leader in Penyabungan village, Merlung, Tanjabbar, stated that the community had not experienced significant economic change and justice in

this era. A similar statement was made by the Tungkal Ulu Farmer Group/Kelompok Tani Tungkal Ulu (Kotalu), Merlung Subdistrict, in a Focus Group Discussion.

⁷ From the draft regulation introductory note presented by the District Head of Tanjabbar to the District Parliament on 16 October 2002 and from the introductory considerations of Tanjabbar forestry regulations, we can see that the Tanjabbar District Government is persistent in trying to increase its regional income through the forestry sector by providing facilitation in acquiring permits. As a consequence, permit applications can be approved without having to go through strict procedures.

⁸ Clarification of Article 53 of the Draft Law on Legislation approved by the Parliament on 6 June 2004 provides room for public participation, either in written or verbal form, in the deliberations of draft regulations in accordance with the Parliament's Standing Orders.

⁹ The creation of this new administrative area was regulated by Law No. 54/1999 on the Formation of the Districts of Sarolangun, Tebo, Muaro Jambi, and Tanjabtim; see also Law No. 14/2000 on the amendment of Law No. 54/1999 on the Formation of the Districts of Sarolangun, Tebo, Muaro Jambi and Tanjabtim.

¹⁰ See Article 5 of Law No. 54/1999.

¹¹ See Tanjung Jabung Barat District Forestry and Estate Crops Office (2002 p: 4)

¹² Anonymous (1999)

¹³ Active concession holders are recorded as HPH PT. Hatma Hutani, HPH PT. Rimba Hutani, HTI PT. Wirakarya Sakti and HTI PT. Wana Teladan.

¹⁴ In 2000 oil palm plantations covered 40 467 ha of land, increasing to 42 125 ha by 2002.

¹⁵ See the Minister of Home Affairs Decree No. 119/1998 on Types and Coverage of Local Taxation for the Provincial Level and the District Level, Government Regulation No. 62/1998 on the Transfer of Central Government Authority on Forestry to the Regional Governments, and Government Regulation No. 25/2000 on Provincial Authority as an Autonomous

Region.

¹⁶ In its introductory consideration this law stipulates that: 'through the enactment of the Minister for Home Affairs Decree No. 119/1998 on Types and Coverage of Local Taxation for the Provincial Level and the District Level, the taxation of by-products from forest utilization is considered as district taxation'.

¹⁷ The implementation of district regulations depends on the decree of the District Head: this has been stated by the District Forestry and Estate Crops Office and clarified by the Legal Bureau at the District Secretariat. According to the Head of the Legal Division, District Regulation on IPHHI and RHH cannot be implemented because they contradict other, higher level regulations such as the Ministerial Decree No. 05.1/Kpts-II/2000 and Government Regulation No. 34/2002 (Hidayat personal communication).

¹⁸ As prescribed by MPR Decree No. III/MPR/2000.

¹⁹ According to the explanation of Article 73 (1) of Law 22/1999.

²⁰ See Article 72 of Law 22/1999.

²¹ Law No. 32/2000: on the Amendment of Law No. 18/1997 on Regional Taxation.

²² This regulation implements Forestry Law No. 5/1967.

²³ See Article 2 (3) point 4g of Government Regulation No. 25/2000.

²⁴ The central government's authority is upheld under the following laws: (1) Law No. 20/1997 on Non-Tax State Revenue; (2) Law No. 25/1999 on Fiscal Balancing; (3) Law No. 41/1999 on Forestry; and (4) Government Regulation No. 22/1999 on the Types and Deposit of Non-Tax State Revenue.

²⁵ Based on Government Regulation No. 25/2000, the authority of the provincial government in the forestry sector includes 18 authorities that cover the establishment of forest areas, permit issuance, forest preservation, etc.

²⁶ See Article 3 (5) point 4j of Government Regulation No. 25/2000.

²⁷ See District Head's Decree No. 77/2000 on the Natural Resources Rent Provision (*Provisi Sumber Daya Alam*, PSDA) on Timber

Production Originating from Privately Owned Land.

²⁸ A provision that burdens the community with taxation and sanctions must be based on a joint decision by the District Head and district parliament in the form of a district regulation, not a decree. For that reason, decisions made unilaterally through a District Head's decree alone cannot be justified.

²⁹ See and compare with Article 3 of Forestry Law No. 41/1999, which elaborates the purpose of forest management in Indonesia including increasing public welfare by: (a) ensuring the existence of the forests; (b) optimizing the various functions of the forest (environment, socio-cultural and economic); (c) increasing support for rivers; (d) developing capacity and community empowerment; and (e) ensuring fair and sustainable distribution of benefits.

³⁰ As prescribed by Article 110 of Law No. 22/1999, which states, 'The district government or third parties that plan to develop the village area into an area for settlement, industry or other services are obliged to involve the village authorities and BPD in planning, execution and monitoring'.

³¹ As prescribed by Article 18 (4,5) of Law No. 34/2000.

³² Article 3 (1b) and Article 4 (1 and 2) of District Regulation on IPHH.

³³ See Article 3 (4i) of Government Regulation No. 25/2000 and the Minister for Forestry's Decree No. 10/Kpts-II/2000 on Guidelines for Granting Industrial Timber Plantation Permits (HTI), which states: 'in the event that the proposed area for IPHH (and location for timber plantation) is located in between or among more than one district/municipality, then the permit application must be addressed to the Governor'.

³⁴ Articles 14 (3), 15 and 16 of District Regulation IPHH.

³⁵ Law 34/2000 and Law 18/1997.

³⁶ Illegal logging is prohibited by Article 50 (3) of Basic Forestry Law No. 41/1999.

³⁷ District Regulation No. 13/2002 on IPHH: Article 10 (1), Art. 11 (4), Art. 12, Art. 14 (3), Art. 15 (1) and (2)).

³⁸ Article 16 of the District Regulation on IPHH states that violations of these responsibilities may be punished through criminal, civil (compensation), and administrative sanctions.

³⁹ It is prohibited to: (a) illegally claim forest areas; (b) clear forest areas; (c) conduct logging activities within a radius of 500 m of the edge of a dam or lake, 200 m from the edge of water sources or rivers in swamp areas, 100 m from river banks, 50 m from the edge of streams, twice the height of cliffs; 130 times the difference between the high water mark and the low water mark from the edge of a beach. It is also prohibited to: (a) burn the forests; (b) cut, harvest or extract forest products without legal permits; (c) accept, buy or sell, trade in, store or own forest products that are supposedly known to have originated from illegal activities; (d) conduct general investigations, or exploration or exploitation of minerals in the forest areas without permission; (e) transport, control or own forest products that do not carry legal documentation; (f) graze animals in the forest area without permission; (g) transport heavy machinery or other tools that may be used to transport timber without permission; (h) carry tools that may be used to cut down trees in the forest without permission; (i) throw away items that may cause fire and damage the forest, also endangering the existence of the forest; and (j) transport vegetation and unprotected wild animals from the forest without permission.

⁴⁰ Article 26 of Tanjabbar District Parliament Decision No. 2/2002 on the Standing Orders of the District Parliament of Tanjabbar. The Standing Orders stipulate that in order to propose a draft regulation: (1) at least five members of the district parliament must propose a draft regulation to the Parliament Speaker; (2) in the plenary session, the initiators are given the chance to explain their proposal; (3) the parliament will decide either to accept or reject the proposal; (4) pending the decision to accept or reject the proposal, the initiators may make revisions; (5) after being accepted by the assembly, the proposal officially becomes an assembly proposal and follows the same

procedures as draft regulations proposed by the District Head.

⁴¹ See also papers written by Fauzi Syam, PSHK-ODA entitled: Partisipasi publik terhadap kebijakan publik di propinsi Jambi (Public participation in public policies in Jambi) (2002); Demokratisasi pembuatan peraturan daerah di propinsi Jambi: upaya mewujudkan hukum yang aspiratif dan berwibawa (Democratic formulation of regional regulations in Jambi) (2000); 'Increasing public participation in local policymaking (2000) and other relevant papers presented to seminars and workshops in Jambi Province.

⁴² Partial adjustment means uninstitutionalized adjustment (not formulated in the district regulations). In practice, this type of adjustment can be seen through the addition of expert staff in the District Legal Bureau (e.g., in Jambi and Tanjabbar), consultation with the legal division from the Department of Home Affairs, additional stakeholders in the deliberations at the parliament, and involving parliament members in the formulation with the legal division. These adjustments are incidental depending on the draft regulation being deliberated; it is unclear whether they should be formulated under a new District Head's decree or still be based on a decree issued during 1993–1994. In reality these adjustments develop through practice.

⁴³ The adoption of district regulations formulated in other districts is a new phenomenon in Jambi. At the Executive level, official visits are made to other districts in order to collect copies of regulations. The District Parliament, on the other hand, conducts comparative studies. The visits, however, usually neglect the issue of legal protection to the community and are detrimental to the development of local laws as the regulations formulated by other districts might not be appropriate to the situation in Tanjabbar.

⁴⁴ Deliberations for the bill on IPHHI had been conducted earlier, with 38 other drafts that were finalized on 26 May 2001.

⁴⁵ See Annex 1 for a full list of the other 14 drafts deliberated at this time.

⁴⁶ Muspida is a forum to discuss problems and issues in the district. It usually consists of representatives of the security agencies, senior civil servants, the leadership of the district parliament and representatives of social organizations.

⁴⁷ Those absent from this session according to the list of invitations: four district office heads, one division head, seven district company directors, and three district forum members.

⁴⁸ The Special Committee of the District Parliament was established under the District Parliament Leader Decree No. 12/2002 and is composed of 22 members.

⁴⁹ As prescribed in District Regulation IPHH Article 5 as well as Articles 2 and 3 of District Head's Decree No. 189/2003.

⁵⁰ Applying through the Economic Section at the District Head's Office prolongs the process. This mechanism opens up the opportunity for some district officials to increase the 'service fees' and for applicants to make use of service agents.

⁵¹ District Head's Decree No. 189/2003, Article 3 (2).

⁵² As mandated by Law No. 22/1999, Law No. 41/1999, Law No. 34/2000 and Law No. 18/1997.

⁵³ See also Anonymous (2002a).

⁵⁴ The district is authorized to collect a local fee (RHH) for small-scale permits (IPHHKR/IPHHKT/IPHH), Forest Resource Rent Provision (PSDH) and RHH on small-scale permits inside the state forest area, and on Industrial Timber Plantations/HTI.

⁵⁵ See also Anonymous (2002b).

⁵⁶ In accordance with Jambi Governor's Decree No. 522.12/5100/Dinhut, dated 3 September 2002.

⁵⁷ See also Anonymous (2002c).

⁵⁸ From a legal perspective, the Joint Decree of the two District Heads cannot be justified. Any policies that may burden the community through taxation must be formulated by the local government and local parliament.

⁵⁹ Issued by the National Land Agency (BPN).

⁶⁰ The permit covered the villages of Penyabungan, Lubuk Terap, Badang, Pematang Pauh, Taman Raja, Kampung Baru, Pelabuhan Dagang and Lubuk Bernai.

⁶¹ This change was also observed in Government Document No. 560-778, where the original 9077 ha has been increased to 15 000 ha.

⁶² Recognition of the diversity of Indonesia's villages is reflected on the explanation of Article 93 (1) of Law No. 22/1999. Government Regulation No. 76/2001 concerning Generic Guidelines with Regard to Village Settings further emphasizes the operational regulations.

- Anonymous 1999 *Surat Keputusan Gubernur Kepala Daerah Tingkat I Jambi No. 108/1999 tentang Penetapan Luas Kawasan Hutan di Propinsi Jambi berdasarkan Peta Paduserasi Tata Guna Hutan Kesepakatan (TGHK) dan Rencana Tata Ruang Wilayah (RTRW) Propinsi Jambi, 7 April 1999*. (Jambi Governor's Decree No. 108/1999 on the Designation of Forest Areas in Jambi Province based on agreed Land Use and Spatial Plan Maps). Jambi Provincial Government, Jambi.
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Introductory Speech from the District Head of Tanjabbar regarding 16 (sixteen) Draft District Regulations in Tanjabbar on the Occasion of the First Plenary Session of the Tanjabbar District Parliament, 16 October 2002

Assalamualaikum Wr. Wb.

Greetings

The Hons. Parliament Speaker, Deputy Speakers and members of the Tanjabbar District Parliament,

Fellow Muspida of Tanjabbar Members,

Head of the Kuala Tungkal Court

Deputy District Head and District Secretary

Assistants, Head of Offices/District Technical Support and Division Heads of the Tanjabbar Secretariat and to all present here today.

Let us praise Allah SWT, God Almighty, for without His blessing we would not be given the strength to convene here today on the occasion of the plenary sessions of the District Parliament of Tanjabbar in this new building. On this occasion I would like to present the draft regulations which we have formulated to the legislative, which consist of:

1. The Draft Regulation on the Establishment of District Company 'PD Jabung Barat Sakti Holding Company'
2. The Draft Regulation on the Amendment of Regional Regulation No. 11 Year 1997 on the Establishment of PD BPR Tanjung Jabung (Establishment PD BPR Tanggo Rajo)
3. The Draft Regulation on the Amendment of Regional Regulation No. 4 Year 2001 on the Organizational Structure of the Local Apparatus and Tanjabbar District Parliament Secretariat
4. The Draft Regulation on the Organizational Structure of Kuala Tungkal General Hospital
5. The Draft Regulation on the Guidelines to Establish the Community Empowerment Institution
6. The Draft Regulation on the Financial Structure of the District Head and Deputy District Head
7. The Draft Regulation on Forest Product Fees (RHH)
8. The Draft Regulation on Forest Product Extraction Permits (IPHH)
9. The Draft Regulation on Business Permits in the Areas of Industry and Trade
10. The Draft Regulation on Fees for Company and Warehouse Registration
11. The Draft Regulation on Construction Permits (SIUJK)

12. The Draft Regulation on Fees Regarding Personal Identification Cards, Family Certificates and Civil Registry Certificates
13. The Draft Regulation on Taxation on the Sale of Products from District Businesses
14. The Draft Regulation on Commercial Permits
15. The Draft Regulation on Fees Payable to Government Entities
16. The Draft Regulation on the Amendment of Regional Regulation No. 23 on Buildings

Mr Speaker,

As mentioned there are 16 draft regulations that we as the Executive have proposed for your approval. This reflects our consistency, as mandated by your institution, to conduct significant efforts to improve the livelihood for the people living in the District of Tanjabbar. To achieve such goals, there need to be legal foundations in the form of regional regulations in order to conduct our activities. These regulations play a significant role as they are a manifestation of the policies that are to be put in place. We are aware that these efforts to formulate public policy must fall under the guidelines of the Strategic Plan set by Regional Regulation No.1 Year 2001.

As the Head of the Executive branch, I am aware that without your support and cooperation, there is not much that I can perform. I hope that you will support these policies that I have proposed without looking into any other interest but that of the public good.

Mr Speaker,

In this occasion let me briefly summarize some of the draft regulations that we have put forward today. In this era of regional autonomy, we are asked to look for breakthroughs and opportunities to increase our local income, through methods of diversifying taxation or increasing these taxes and most importantly transforming the district government to become entrepreneurs themselves. As an entrepreneur, the district government must form or develop companies to conduct business activities.

As we know, we have our own local company, 'Jabung Barat Sakti', however, the unfortunate experiences of that company have shown us the importance of the certainty of law. District-owned companies up to this point have only been established under District Head decrees. For this reason, we would like to propose the draft regulation on the establishment of a company with the same name, 'Jabung Barat Sakti'. This will be a holding company which consists of several subsidiary companies which operate in different fields of business. It is hoped that this company will be able to gradually expand, however profit orientation should always be the main goal. I hope that the parliament will allow this company to first reach its break-even point before demanding a portion for the regional income. Your support is needed in order to facilitate BUMD PD Jabung Barat Sakti in conducting its mission as the economic spearhead of the district of Tanjabbar.

Mr Speaker,

Today we would also like to propose the draft regulation on the taxation on the sale of locally produced goods. This will be the foundation for the District Government to sell goods produced by the District Government's businesses, for example the programme to sell one million ducks that we are currently engaged in. Duck eggs or ducks produced by the Farming Office can be sold to the farming community or to the general public, and I encourage our Division Heads to continue this sprit of entrepreneurship.

Mr Speaker,

During our last encounter, I have already raised the issue of establishing a district funding agency, PD-BPT Tanggo Rajo. The establishment of PD-BPT Tanggo Rajo has been done through the Amendment of Regional Regulation No. 11 Year 1997 on the Establishment of PD-BPT Tanjung Jabung, which has already been passed. However, due to banking deregulation policies and the economic crisis which hit the country, we were unable to operate PD-BPT. The establishment of PD-BPT through the amendment of an existing draft is meant to speed up the process of permit application at the Central Bank, if approved by the District Parliament, then PD-BPT Tanggo Rajo will be able to operate in early 2003. PD-BPT Tanggo Rajo is established with a mission to promote locally based economy. This is in line with the development strategy to provide a financial agency that is close to the community/production source. Therefore this agency will be able to provide service to the economically disadvantaged, small-scale businesses and cooperatives at the villages or towns. As primary capital I will mobilize all my staff to become account holders in PD-BPT.

Mr Speaker,

We also plan to conduct a diversification of local taxes. New taxes will be able to revive existing taxes that have already supported our regionally generated revenues. I am certain and optimistic that diversification and intensification of local taxes as well as the entrepreneurship of the District Government will result in an income of Rp. 12 billion, however we must work together to achieve this goal. My assessment is that we have conducted the necessary actions to develop the District of Tanjabbar, and although we have not yet grown out of the economic crisis the yearly economic growth of Tanjabbar has increased. Our growth in 2001 is even higher than that of the Province of Jambi, which is 3.93% or 1.9% excluding revenues from oil and gas, whereas Tanjabbar has shown a growth of 6.76% or 4.23% excluding oil and gas revenues.

Although the economic growth in Tanjabbar for 2001 is in part due to the oil and gas sector, the mining, industry, agriculture, trade, hotel and restaurant, and service sectors have provided a large contribution to the Tanjabbar economy. The future of the economy in Tanjabbar will surely depend on our efforts to implement policies and programmes that we have established.

Mr Speaker,

The policies that we have formulated to propel our economy will be meaningless if they are not fully supported by an effective district government apparatus: one that will implement the policies and the programmes and also provide the best service to the community. It has been approximately a year since we implemented governance according to Regional Regulation No. 4 Year 2001 on the Organizational Structure of the Local Apparatus and Tanjabbar District Parliament Secretariat. Recent developments, however, force us to reorganize our district government apparatus.

Several divisions or offices are no longer considered appropriate to exist independently, therefore they need to be dissolved. Other divisions or offices, however, need to be introduced to take into account the current situation and conditions. What I would like to stress here is the addition of new assistants for the District Head Office. Currently there is only one assistant who must work in three different sectors. The District of Tanjabbar is the only district in the country with only one assistant. This reorganizing has gone through long stages of preparation by a team set up under District Head Order No. 061/020/ORG, dated 14 January 2002, and based the recommendation of the District Parliament No.14/2001, dated 26 May 2002, which provides the opportunity for the executive to review the organization of the local apparatus after the adoption of Regional Regulation No. 4 Year 2001.

The team which I have appointed has conducted its duties thoroughly by observing the performance of the District Government apparatus, gathering various input, and conducting comparative studies of neighbouring districts and districts outside the province.

Mr Speaker,

In this opportunity we would also like to propose the draft regulation on Organizational Structure of the District General Hospital. Regional Regulation No. 4/2001 has been implemented for more or less a year, however, the district hospital is still operating based on Regional Regulation No. 2/1997. With the issuance of Decree of Minister for Home Affairs Decree No. 40 Year 2002 on the Guidelines for the Organization and Management of District Hospitals, there must be a separate district regulation.

At this juncture I would like to give the opportunity for the District Parliament to provide the name for this hospital. Should it be named after a national hero? I want this hospital to be named after a person who has committed him/herself to the District of Tanjabbar.

Mr Speaker,

I would like to conclude by asking your understanding over the concerns that we have brought forward to you today. Although we have not elaborated each and every draft regulation, the formulation of each draft regulation had been based on the relevant rules and procedures. As the Executive we hope that these draft regulations will be deliberated effectively according to the agenda set forward.

Finally I would like to convey my gratitude for your kind attention.

May Allah SWT provide His blessings to all of us, Amen.

Wassalamualaikum Wr. Wb.

Kuala Tungkal, 16 October 2002

District Head of Tanjung Jabung Barat

Drs. H. Usman Ermulan

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