Formalizing the logging sector in Indonesia: historical dynamics and lessons for current policy initiatives

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Introduction

Illegal logging is cause for international concern as it circumvents the laws set up to protect the environment and the rights of people (Lawson and MacFaul 2010). It includes logging from areas were extraction is not allowed, logging of protected species, extracting more than the allowable harvest, and logging of oversized or undersized trees (Casson and Obidzinski 2002). In response to concerns over illegal logging practices, national governments and international institutions have been taking measures to regulate the logging sector. Over the last few decades, the emphasis has moved from centralized and top-down regulations towards decentralization, marketization and increased involvement of actors other than the central state, such as sub-national level government authorities, NGOs, communities, and the private sector (Agrawal et al. 2008; Ros-Tonen et al. 2008). Today, the national governments of most timber producing countries see themselves primarily as the facilitator of private initiatives, for example through the setting of standards and by providing business incentives. At the same time, international forest-related regulations have increasingly been focusing on voluntary instruments such as the development of principles for good governance, standardization and certification (Van Heeswijk and Turnhout 2013). There has been growing interest in timber legality, which could in theory help timber-producing countries to control the sector, while increasing tax revenues. This
resulted in international programs to stimulate legality control based on general legality standards (Wiersum et al. 2013).

One of the most important international programs to support trade in legal timber is the Forest Law Enforcement, Governance and trade (FLEGT) Action Plan. This was developed by the European Commission in 2003 in order to ensure that only legal timber would enter the European Union. The mechanism is simple: A timber exporting country can sign a Voluntary Partnership Agreement (VPA) with the EU, in which the producer country commits to develop a system to verify that all timber is produced according to national laws. As part of the FLEGT program, the European Union developed general principles for timber legality, but the specification of the principles is left to the participating countries. The way the general principles are operationalized at the national level therefore highly depends on the history and prevalent discourses within the respective countries (Van Heeswijk and Turnhout 2013). Although the FLEGT policy states that legality standards should include measures to prevent negative impacts on local communities, the main focus is on verifying document-based compliance with government regulations in the traditional forest sector, and there is no reference to the legal position of artisanal timber exploitation and trade for domestic purposes (Wiersum et al. 2013).

Indonesia – the world’s largest producer of tropical logs (ITTO 2011) with a proportion of illegal timber that is estimated to be around 40% (Lawson and MacFaul 2010) – signed a VPA with the European Union on September 30\textsuperscript{th}, 2013. As part of Indonesia’s preparation for the VPA, the government launched a timber legality assurance system in 2009, known as SVLK (\textit{Sistem Verifikasi Leglitas Kayu}). Under the VPA, SVLK certification is sufficient for timber to enter the European market. The SVLK is the main government-run legality verification system and must ensure that all timber is harvested, transported and processed in accordance with
Indonesian law. SVLK requires wall-to-wall compliance and will be mandatory for all timber enterprises in Indonesia by the end of 2014. There are, however, concerns about the robustness of the system, mostly related to the complexity of Indonesia’s timber sector and associated regulations (Fishman and Obidzinski, forthcoming).

In more general terms, Green et al. (2007) argue that there are problems with relying on the concept of legality as the basis for curbing damaging aspects of logging, as the state’s law does not necessarily protect the interests of local people and the environment. When forests are owned by the state, logging is legal when it is in concordance with the conditions of government legislature relevant to concessions, but this does not necessarily result in sustainable extraction on the ground, and may conflict with customary rights and compromise local livelihoods. A process of democratization, such as one that has occurred in Indonesia since 1998, may help to address such tensions between central and local levels of governance – at least in theory (Edmunds and Wollenberg 2003; Colfer and Capistrano 2005).

Discussions on legality have mostly focused on the industrial forestry sector, while the possible effects of such instruments on local communities have received little attention. To understand the possibilities and pitfalls of a regulatory framework such as the SVLK, it is useful to look at past experiences with the government’s attempts to formalize logging practices. The main objective of this paper is therefore to analyze the historical dynamics of the formalization of logging in Indonesia and their outcomes for local communities, and to draw lessons that are applicable to the current debates about timber legality adherence in the forestry sector. In Indonesia most logging takes place on state land. Whereas in this article we focus on the formalization of these
logging practices, elsewhere in this issue Kelly and Peloso provide an overview of the historical dynamics regarding the formalization of state land itself.

Below we will first explore the main efforts to formalize logging in three time periods, i.e. (i) the colonial era; (ii) the early 1970s under the rule of General Suharto; and (iii) the decentralization period of the early 2000s. After that we discuss the common elements and seek to generalize based on these observations, offering lessons for the current push for formalization. We use a political ecology approach, which assumes that an understanding of contemporary phenomena requires insight into historical processes. The political ecology perspective also implies that we pay particular attention to the linkages between logging practices and a broader political-economic context as the use of natural resources is influenced by political, economic and social processes (Blaikie and Brookfield 1987; Peluso 1992a).

**Colonial era: From local to central control**

Until the early 1900’s, the management and exploitation rights of Indonesia’s forest resources were with the colonial government’s Forest Service. An important point in the legal history of Indonesia’s forest management was the agrarian law of 1870, through which the Dutch colonial government declared all forest lands and lands that were unclaimed (i.e. land that was not cultivated or land that had been fallow for more than three years) as the domain of the state – the so called ‘*Domeinverklaring*’ (Peluso, 1992b). Initially the colonial government was primarily interested in the teak resources on Java. Although the ‘*domeinverklaring*’ was also enacted in other provinces in 1875, the colonial Forest Service applied this law differently in Java and the rest of the archipelago (Boomgaard 1996; 2005). On Java the forest administration was highly centralized, with direct state control over all land that could not be proven to be owned by
villagers (Peluso 1992b). The main objective was to reduce the presence and activities of rural communities in the forest and attempts by the communities to continue their customary ways of exploiting forest resources were considered illegal (Vandenbosch 1941).

The situation was different on the islands outside of Java, known as the Outer Islands. The forest resources outside of Java were perceived of less commercial interest, primarily due to difficult access and the high costs of exploitation. The Dutch therefore installed a type of indirect control, leaving the forest resources under the authority of local leaders. As such, the colonial government allowed customary systems to coexist with the colonial legal system. As a whole, more than 50 percent of the area of the Outer Islands was under the administration of native sultanates (Vandenbosch 1941). The indirect rule afforded local native leaders control over utilization of forests for timber and other products, which was an important source of independent income for sustaining prestige and authority (Furnivall 1944).

The sultanates outside of Java were free to engage in logging ventures of any kind. Timber trade was usually based on the opkoop systeem (buying-up system), also known as bevolkingskap (logging by locals) (Nandika 1937). It involved a town-based timber exporter, some middlemen, and contracted lumberjacks. These actors were interlinked by a system of advance payments in kind or in cash for deliveries of timber within an agreed upon period of time. At the top of the trade network were timber firms and large-scale traders that secured a profit-sharing agreement with the local sultans (Boer de 1937; Ensing 1938).

Increased foreign-financed operations in the early 1930s resulted in increasing uncontrollability of the opkoop system. Dutch officials lamented the inefficiency of the system, wastefulness and the use of indentured labor (Suchtelen van 1933). Also, the colonial government realized that it was missing out on potential revenues through taxation, as a large
portion of the harvested timber was leaving Dutch territory without taxation. This led the Dutch authorities to impose stricter regulations on ‘logging by natives’. In 1934, in an attempt to eliminate the opkoop system, the government curtailed sultans’ authority over forest resources by requiring all prospective loggers to acquire large-scale concessions or smaller scale logging plots (Lindblad 1988). This regulation, known as Houtaankap-reglement, also imposed taxes on extracted timber and minimum production quota, introduced a timetable for operations, and specific penalties for violations (Hahmann 1937; Soepardi-Wardi 1956). As a result, timber operators rushed to register logging plots and concessions rather than risk legal reprisals and confiscations (Potter 1988).

Despite the new regulation, the holders of concessions and logging plots continued to rely on the opkoop system for their production. One of the reasons for the continuation of the system was a legal loophole, i.e., village communities were free to cut trees for their own use without taxation. As a result, sub-contractors and traders preferred to continue contracting local lumberjacks to cut logs. Whenever loggers would encounter Forestry or Police officers, they could say the timber was for subsistence use (Emanuel 1935). Despite such manipulation of the 1934 forestry regulation, the decree effectively struck a balance between generating timber revenues for the central government while at the same time allowing native rulers and their associates to derive benefits (Obidzinski 2003). The efforts to formalize the logging sector thus resulted in a situation that was acceptable to all the most powerful actors, i.e., the colonial government, timber traders and native leaders. The changing regulation had little effect on local communities, who continued to be hired as lumberjacks on a contract basis.

**Suharto: Further concentration of benefits**
In 1967, general Suharto replaced President Sukarno, who had been the first President of Indonesia after its independence. Under Suharto, the government’s approach to forest resources became more centralized. He introduced the Basic Forestry Law (BFL) in May 1967, which secured the state’s control over forest areas in the whole country, designating 143 million ha as ‘forest land’ (Kawasan Hutan) – not less than three quarters of Indonesia’s total land area. With the Law, the central government in Jakarta aimed to affirm control over forest resources with the main aim being to increase revenues in support of national development programs. The BFL recognized the existence of customary rights on forest resources, but at the same time it stated that national development objectives would always override local claims. According to several authors (e.g., Bachriadi and Sardjono 2006; Galudra and Sirait 2006) the BFL should be regarded as a prolongation of the Dutch approach to forest lands.

During colonial times and under Sukarno, it had already been common for local elites to use timber trade as a tool for political mobilization and income supplementation. General Suharto further perfected the forestry sector into one of most important instruments of economic and political patronage. In 1970 the government issued Regulation No. 21/1970 concerning Forest Concession Rights and Forest Product Harvesting Rights, after which Suharto started granting large-scale concession (HPH) rights both within his own network of family and friends (notably among the military), as well as to generate local political support and gain financial contributions (Christanty and Atje 2004). As a result, individuals related to the military and members of the extended Suharto family formed an oligarchy of domestic timber industrialists – with a particular prominent position for Mohamad (Bob) Hasan – which managed to generate significant wealth (Gellert 2010). Under Suharto logging permits progressively concentrated in the hands of a few, and by the mid 1990s five large timber companies controlled 18.5 million
hectares, which was 30 per cent of the country’s timber concessions (Casson and Obidzinski 2002).

During the first years of Suharto’s regime the government would allow local districts and communities to engage in small-scale logging activities, and small-scale concessions could be issued locally. This was Suharto’s way to appease regional politicians. The number of small-scale logging plots grew, particularly in East Kalimantan (Manning 1971; Slamet 1971; Peluso 1983). In 1971, however, Suharto decided to ban small-scale logging. Comparable to the Houtaankap-reglement of 1934, the ban was justified with arguments related to inefficiency, wastefulness and the uncontrollability of manual logging, while praising the benefits of industrial intensification (Ruzicka 1979).

Just like the 1934 regulation had not stopped the opkoop system, Suharto’s ban did not succeed in eliminating small-scale logging. Its resilience can be explained by the fact that these practices had always been an important source of income for local elites and local government officials and institutions. Hence the emergence of widespread informal logging activities, which existed alongside formal concessions (Casson and Obidzinski 2002). Small-scale logging continued to persist throughout most of the 1970s – officially illegal, but firmly embedded in local power structures (Lauriat and Sacerdoti 1977; Sacerdoti 1979). Under the centralized state, lower level military and bureaucratic entrepreneurial networks could act as ‘semi-autonomous social fields’ (Wollenberg et al. 2006). Semi-autonomous social fields have their own principles, norms, rules and practices, and will selectively abide by or ignore laws that are imposed by the state (Moore 1973 cited in Wollenberg et al. 2006).

In the early 1980s, in an effort to increase revenues from the forestry sector, the government started stimulating the wood processing industry, for example by implementing a
ban on the export of logs. Investments in plywood production and the pulp and paper industry rose drastically, and forest products grew to 30% of all industrial exports by 1989 (Simangunsong 2004). These investments in the processing industry resulted in a capacity to process logs that was much higher than could ever be harvested in a legal and sustainable manner (Barr 2001; 2006; FWI/GFW 2002).

Suharto structured forestry regulations in such a way that the concessionaries could capture nearly all profits from timber (Koehler 1972; Broad 1995; Firman 1999). The main beneficiaries of Suharto’s policies were top military officers who had been granted concessions and the large-scale loggers they worked with (Ascher 1998). Rural communities residing in or near forest exploitation areas did not gain much from the booming timber trade. In fact, they were often negatively affected. While in the past there had been few direct interventions to stop the communities from forest resource extraction, the proliferation of large-scale and capital-intensive logging concessions in which the military had a major stake, led to much stricter exclusion from utilizing forest resources for village communities. Also, Regulation No. 21/1970 clearly stated that the concessionaires’ rights were overriding customary rights of local communities (Christanty and Atje 2004).

**Post-Suharto: From central to local control**

The dictatorial regime of President Suharto fell in May 1998. This marked the start of a period of far-reaching reforms, known as *reformasi*, with decentralization as one of its key elements. Suharto’s successor, president B.J. Habibie, passed two general laws to transfer decision-making power on a wide range of issues from the central government in Jakarta to districts (*kabupaten*) and municipalities (*kotamadya*). Habibie also had to show that his government was willing to
reform the forestry sector (Barr 1999; Brown 2001). The Ministry of Forestry and Plantations therefore issued instructions to allow communities residing in or near forest areas to be involved in extractive forest activities (including logging) through cooperatives, work groups, and associations. Moreover, the central government passed legislation giving provincial governors and district regents the authority to issue small forest concessions for logging. Governors were allowed to grant concessions of up to 10,000 hectares, while district regents could issue concessions up to 100 hectares.

Enthused by these regulatory developments, district heads started issuing both small-scale logging permits (sometimes overlapping with existing concessions) and district regulations to impose new types of fees and taxes on activities in the forest sector, e.g., timber transportation fees. The district authorities were eager, because the concessions generated financial resources for individual and institutional use in the districts. The small-scale concessions were attractive for logging enterprises, as they required relatively small initial investments, faced much shorter bureaucratic network, and had low tax obligations, as compared to large-scale (HPH) concessions. The result was a boom of small-scale logging in most of the forested parts of Indonesia (Casson 2001; Khan 2001; McCarthy 2002). The rapid rise of local logging activities was further stimulated by the economic crisis, which led many people to lose jobs, and by the fact that local actors no longer feared illegal logging, as the army had stopped protecting large-scale concessions, as it had been doing under Suharto (Casson and Obidzinski 2002).

In the decentralized context, businesses and rich individuals were willing to provide financial support for individuals running for a position as district head or major, but they would expect favors in return. As a result, the newly elected leader would be more accountable to the money providers than to the local people (Rhee 2006). The links between local entrepreneurs and
politicians have been a key factor contributing to the logging boom. As the central government’s regulations were unclear about the exact content of decentralized authorities, it was largely up to the local governments themselves to define the roles they would like to play in various sectors. This freedom provided local businessmen the opportunity to heavily influence district-level polices (Christanty et al. 2004; Christanty and Atje 2004). District governments would give out small concessions without clear regulations related to the monitoring of logging activities, and no sanction-mechanisms for loggers who logged outside of the concession areas. Timber would be considered legal as long as it was subject to district taxes, but there was no attention for whether the timber was harvested according to national laws. District authorities thus formalized activities that were previously considered illegal and the distinction between legal and illegal became increasingly blurred. Because of this new reality, loggers became less responsive to law enforcement measures by central authorities (McCarthy 2002; Casson and Obidzinski 2002). According to Wollenberg et al. (2006, p. 22) Indonesia had become a ‘fragmented state’ with district governments acting as ‘semi-autonomous fields’. This situation increased opportunities for collusion, corruption and the promotion of self-interest. It also increased the role of ethnic, family and personal ties in alliances between businessmen and politicians (Wollenberg et al. 2006).

Overall the net results for communities have been ambiguous. The opportunities to benefit from logging activities increased compared to the period before decentralization (Palmer and Engel 2007). But, although one of the objectives of the small concession policy had been to enable communities to set up their own logging enterprises, communities often lacked experience and financial means to do so. Hence a pattern emerged whereby the communities’ role was limited to providing forest areas for logging, and receiving compensation payments in
return. Often local timber entrepreneurs took on the role of license holders and contractors, while Chinese, Japanese, Korean and Malaysian buyers financed the business. The village benefits came mainly in the form of company fees per cubic meter of extracted timber, and some labor opportunities. It captured only a fraction of the market value of timber (Obidzinski 2003), and local benefits were not equally spread, as most of the money went to local elites and companies (Duncan 2007; Dermawan et al. 2006). Moreover, entrepreneurs often employed manipulative strategies, violating the contracts that were signed with communities in terms of agreed financial compensations and the development of infrastructure (Obidzinski 2003). Still, the ability to generate quick monetary returns with little or no investments rendered small concession logging attractive to village communities, which could well be related to widespread tenure insecurity as a result of the ongoing struggle for control over forest resources between the district, province and central governments (Ibid).

**Patterns and trends**

With international timber trade becoming increasingly lucrative in the 1930s, the colonial government tried to formalize the (mostly small-scale) logging sector on Indonesia’s Outer Islands by introducing a regulation based on concessions and logging plots. Although this regulation officially prohibited the common opkoop system, through which timber traders contracted local lumberjacks and shared part of their benefits with local sultans, it did not manage to eliminate these practices. The result was a situation in which the government could derive taxes, while the sultans would still receive a share. Local communities saw little of the growing revenues from logging practices.
The 1970s witnessed a second ambitious attempt to formalize the logging sector, when President Suharto started giving out large-scale logging concessions and issued a ban on small-scale logging. The beneficiaries were often closely affiliated to Suharto’s administration and the military. Local communities would receive no benefits from large-scale extractive projects in their localities or were even negatively affected, as they were prevented from accessing the forest resources they used to depend on. Similar to the first phase of formalization, district-level enterprises continued to exist, but were pushed in the informal sphere.

The fall of Suharto in 1998 marked the beginning of far-going decentralization. Local governments were now allowed to issue small-scale concessions, which functioned as an important source of unofficial income for local government authorities. Communities received some benefits from logging practices, often in form of compensation payments. A situation emerged in which different levels of government could have different notions of legality, and where local levels of government could legalize hitherto illegal activities.

Based on the above we extrapolate two general features of the Indonesian logging sector. First, illegal logging practices (i.e., logging practices that do not conform to the national law) have always been tolerated by local power holders, because they are among the main beneficiaries. Illegal logging networks, which involve local elites and their business confidantes, have thus persisted through time – only the constellation of participants has been changing. The fact that informal logging has been an important source of unofficial income for local elites and government officials helps to explain why formalization by the central government has never managed to eliminate these logging practices. Formalization efforts have only pushed these
activities further outside of the radar of central controlling mechanisms, and central authorities may have deliberately tolerated these informal activities at the periphery.

A second common feature of formalization measures in Indonesia is that they have had no or only limited benefits for local communities living in and near the logging concessions. The benefits of both formal and informal local logging activities have tended to flow to urban entrepreneurs and their political allies. After the fall of Suharto, the government introduced regulations that were specifically meant to improve communities’ benefits by allowing them to operate concessions through associations and cooperatives, but communities were generally not equipped to start their own operations, and would opt for fast cash through compensation payments instead. Such choices may also be prompted by communities’ lack of secure property rights over the forest resources and the land. Although ownership over forests does not necessarily lead to more sustainable use (see, e.g., Godoy et al. 1998; Acheson 2000; Fearnside 2001; Agrawal et al. 2008), securing local property rights is often considered as a key intervention to stimulate more inclusive and sustainable forestry practices (e.g., Christanty and Atje 2004). In the light of this, many observers applauded a recent ruling by the Indonesian Constitutional Court, which states that customary forests should not be classified as ‘state forest areas’ (Kelly and Peluso, this issue). Although complicated by the lack of official figures on the extent of customary forests, the ruling may provide a legal opening for communities to obtain formal property rights over forest resources.

Another explanation for the limited local benefits is the lack of downward accountability of local politicians. This was not aided by the 1979 Law on Village Government, with which the New Order regime of Suharto made all village heads accountable to the state, rather than to the villagers (Rhee 2006). Even after political reforms and far-going decentralization, the
accountability remained limited, and benefit distribution remained associated with patronage and corruption (Robbertson-Snape 1999; Robison 2006; Hadiz 2004; Duncan 2007).

**Does decentralization facilitate the use of legal standards?**

Illegality of logging is usually defined by the central state, but the central state does not necessarily represent local concepts of lawfulness (Green et al. 2007). In a decentralized state the government will in theory be more responsive to local realities, leading to better regulations and policies (World Bank 1997; Furtado 2001). In relation to natural resource management, decentralization is expected to ensure a fairer distribution of benefits from exploitation and to lead to more sustainable practices, because decision makers are closer to the resource and have a better understanding of local conditions (Edmunds and Wollenberg 2003; Colfer and Capistrano 2005).

A corresponding hypothesis is that in a decentralized context development and implementation of legality standards can be better aligned with local realities. Also, a transition from a centralized to a decentralized government would reduce the possibilities for semi-autonomous fields to operate independently of the national law, as a decentralized government would be better equipped to enforce state laws and regulations. In Indonesia, however, this has not been the case. Although decentralization has led to more influence of local society on forestry regulations, local politicians’ representation of, and accountability to, local populations has left much to be desired (cf. Agrawal and Ribot 1999). As a result, decentralization has not led to improved forest management. Instead, it has brought new forms of semi-autonomous fields that include the local government actors and their partner coalitions. These actor networks effectively evade central notions of legality to their own benefit (cf. Wollenberg et al. 2006).
addition to the lack of downward accountability and associated abuse of power by local regents, the Indonesian decentralization process has been characterized by a lack of clarity regarding responsibilities and roles of different government levels and a generally weak capacity of district governments (Rhee 2006). This combination of factors is the reason why the Indonesian decentralization process has so far not been conducive to the effective use of legal standards, and could potentially frustrate the implementation of the SVLK system, which was developed to assure timber legality under the Voluntary Partnership Agreement with the European Union.

**Reflections and policy implications**

Our review reveals a number of challenges related to the ongoing efforts to formalize logging in Indonesia. We have shown that logging regulations are not well aligned between various government levels, which has led to an unclear distinction of what is lawful and what is not. This constitutes a major challenge for current centralized formalization efforts. After all, what is the value of a legality certificate when legality is a fluid concept? Another challenge is to prevent small-scale actors slipping to the fringes where they continue their informal operations, as they have been doing throughout recent history. The most profound challenge, however, relates to the underlying causes of unsustainable logging. Indonesian logging – be it legal, illegal or somewhere in between – has a history of serving the short-term interests of powerful actors. There has been little consideration for either environmental sustainability or local livelihoods due to a combination of factors, including corruption, political patronage, industrial overcapacity, lack of property rights and poor accountability. Any effort to formalize Indonesian logging practices is not likely to improve the situation, if not combined with efforts to address these underlying causes.
The current interpretation of legality in Indonesia’s SVLK system does not take these underlying causes into account. The system is primarily considered a regulatory instrument, with legality interpreted in a narrow way, and with a focus on the traditional extraction and processing sectors (Wiersum and Elands 2013). Within the context of the Voluntary Partnership Agreement (VPA), law enforcement will focus on document based compliance, and not on the manner in which documentation is obtained, which implies a risk of overlooking the root causes of bad forest management. The VPA is thus not likely to spur the wider reforms that are needed (cf. Luttrell et al. 2011).

What are the lessons we can derive from this? Our analysis first and foremost stresses the need for better political representation and downward accountability. Likewise, in the absence of clear and undisputed property rights, long-term investments to improve the sustainability of the Indonesian forestry sector are unlikely to occur. Such fundamental changes will not occur overnight. But there are other, short-term measures that can be considered in order to improve the effectiveness of the VPA to contribute to better forest management. Given the sheer number of small-scale timber businesses in Indonesia and the challenges outlined above, a phased approach towards the SVLK system would allow time to better work out the ways towards formalization. Also, to prevent the SVLK system from pushing small-scale actors further into informality, measures are needed to ensure that their enterprises continue to be viable after formalization, including tax breaks and access to subsidized credit. An important part of this is also to ensure that local logging enterprises will not have to shoulder a double-burden of both official and unofficial taxes, which necessitates improved control mechanisms for monitoring and anti-corruption measures in the logging sector.
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