

Tenure reform in Indonesia

When? What? Why?

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Key messages

- In response to community campaigns and NGO activism, Indonesia's reforms in the forestry sector have incrementally and cumulatively expanded communities' rights to forest resources over the last three decades.
- This has been matched by an expansion in the range of relevant public actors in rights allocation, from forest authorities and affected communities to district governments, NGOs, courts of law and other government agencies.
- The most widely implemented forest tenure reforms are the social forestry schemes where communities are legally granted use and management rights to protection and production forest zones owned by the government. These schemes include: HKm (*hutan kemasyarakatan*/community forest), HTR (*hutan tanaman rakyat*/community plantation forest), and HD (*hutan desa*/village forest). In protection forests, communities are constrained from harvesting timber but are permitted to collect non-timber forest products (NTFPs), while in production zones, participating communities are permitted to grow timber trees and to harvest them.
- The process of obtaining licenses for these different schemes is complex and fragmented. It involves up to five sets of actors at national and subnational levels who handle different parts of the licensing process. The official licensing process is very slow – it takes 2 to 3 years. Between 2010 and 2014, only 320,000 ha area was granted to local communities, which is less than 15% of the 2.75 million ha target set by the Ministry of Environment and Forestry (MOEF) for that period. The MOEF is currently streamlining the process, reducing the steps and technical requirements and the process is expected to take less than a year if there are no complications. Still, communities are pressing for full rights, rather than the partial rights they currently have under these schemes.
- The key challenges that face reform implementation at the community level include: limited community capacity in securing, exercising and defending rights; small budget allocation for the permit obtaining process; and suboptimal benefits from land and forest management due to low access to information, finances, technology and markets. Government staff lack social mobilization and conflict resolution skills and the mind-sets that reflect a paradigm shift in forest management towards greater collaboration, lack of coordination and dialogue between government and NGOs. There is also a lack of integration of the Forest Management Unit (FMU), a government agency, into the social forestry regulations.
- Local leadership is an important factor in the success of social forestry schemes: the genuine interest and commitment of community leaders has helped to advance reform implementation.
- New initiatives that expand community rights are also underway. Constitutional Court Ruling 35 of 2013 recognized the rights of customary communities over their traditional territories.
- The MOEF's mid-term plan (2015–2019) seeks to allocate 12.7 million ha of forestland to local communities. Achievement of this commitment will face similar challenges to those countered in implementing the social forestry schemes.

Introduction

The devolution of rights to forest-adjacent communities has long been recognized by the policy community as a pathway to improving forest governance and creating the incentives required for sustainable forest management. Globally, the trend started in the 1970s when forestry

sector policy reforms granted partial rights to some local communities. Indonesia started to involve local communities in forest development from the mid-1980s but the trend gained momentum when the government replaced Basic Forestry Law No. 5 of 1967 with Forestry Law No. 41 of 1999 and adopted regulations that established various social forestry schemes. These earlier

reforms in community forest tenure were characterized by incremental and cumulative changes in property rights arrangements within State forest zones (*kawasan hutan*), which range from giving usufruct rights to local communities over forestland, sharing of benefits between local communities and forest concession holders, to full community title in customary territories.

While these diverse forms of reform have been underway in Indonesia for more than a decade, the literature on them is scant. This is a brief attempt to fill that gap by providing an overview of the current status of early forest tenure reform, documenting recent initiatives, and drawing lessons to inform the implementation of both earlier and later initiatives.

Trajectories of forest tenure reform in Indonesia

Indonesia's approach to community forest tenure has evolved from merely encouraging community participation in forest management in the 1980s, through legally granting usufruct rights in the 1990s, to granting full ownership rights to some local communities in the 2010s.

In the 1980s, State-owned companies offered benefits to local people for their participation in forest development activities. Many donor-funded programs also supported people's participation in a forest development program (Lyndayati 2002). In 1982, Perhutani, a State Forestry Company that works on Java Island, encouraged local communities to participate in the management of State forests by supporting the establishment of forest farmer's groups. In return for their contribution to forest development (such as tending tree seedlings or fire protection), the company offered local farmers a share of the income from timber harvesting. Perhutani's social forestry program continues to operate up to today. In 1991, the Ministry of Forestry (MOF) enacted a Ministerial Decree on Village Development by Forest Concessionaires, which obligated forest concessions to provide support for local communities in the development of forest villages. Many forest concessions did not comply with the new regulatory provisions (Siscawatfi and Zakaria 2010). They contended that they did not have the skills and capacity to conduct community development programs and argued that the government should deliver community development on their behalf.

Two decrees in the 1990s were pivotal in advancing community rights. Ministerial Decree No. 622/1995 on Guidelines for Community Forestry developed procedures for community forestry establishment. Similarly, Ministerial Decree No. 47/1998 on KDTI (Zones with Special Purpose) recognized the rights of customary communities in Lampung province over *damar* agroforests of Krui (Fay

and de Foresta 1998; Michon et al. 2000). Both decrees were not implemented due to inadequate local participation in program design and development. Furthermore, communities were not interested in getting partial rights (i.e. usufruct rights) and wanted to have full ownership rights.

Most of the forest tenure reforms that granted **usufruct rights**, i.e. rights to manage and use forest products without land ownership rights, to local communities over forests in Indonesia were instituted in the post New Order era (after Suharto was ousted in 1998) in response to community demands for greater governing rights over forestland. Consequently, the Indonesian parliament enacted New Forestry Law No. 41/1999. A number of other laws, regulations, decrees and agreements were passed that elaborated the rights and responsibilities of communities and the procedures for pursuing the rights, implementing reforms and setting up monitoring mechanisms.

Constitutional Court Ruling No. 35/2013 and Joint Regulation No. 79/2014 granted ownership rights of forestland to customary communities and other local communities. It directed the government to keep customary territories outside of the *kawasan hutan*; so customary forests could now attain the status of private forests. Based on the joint regulation, people were entitled to obtain a land title if they had been managing the land for 20 consecutive years or more. Table 1 provides a summary of the laws and regulations that affect the rights of communities living in or adjacent to forests.

Land and forest tenure reforms to date have instituted the following six types of rights arrangements to local communities (Table 2).

Customary forest (i.e. *hutan adat*) is the most significant forest scheme as it recognizes customary territory and offers the most expansive rights over land and forest resources to indigenous peoples and is equated with private land. However, it is still at an early stage of implementation in Indonesia. The other forestry schemes only legally grant use and management rights over forestland but the land ownership remains with the State.

Land and forest tenure types in Indonesia

Land in Indonesia is divided into private land and State land (see Figure 1). Private land is owned by an individual, entity or a group (see Figure 2). State land is the land that is not privately owned. Forest Law No. 41/1999 and Ministerial Regulation No. 26/2005 categorizes State land into forest zones and into an area for other land uses. Forest zones are meant for the establishment and maintenance of permanent forests. Area for other land uses are used for non-forestry purposes such as infrastructure development or settlements.

Table 1. Key forest sector regulations that animate community tenure rights.

When	What	Implications on forest tenure
1999	Law No. 22 on Regional Governance	Provinces and district received authority to prepare their own rules including forest management
1999	Forestry Law No. 41	Cancelled the Basic Forestry Law No. 5/1967 Recentralized the briefly decentralized forest authority to districts Through this law the central government retains the rights to: <ul style="list-style-type: none"> organize and regulate everything associated with forests, the forest estate, and forest products define the forest estate and/or change the status of the forest estate define and regulate legal relationships between people and forests Legal basis for social forestry schemes: the forest management and utilizations permits can be granted to individuals and cooperatives
2007	Government Regulation No. 6/2007 on Forest Use and Forestry Management and Utilization Plan	Elaborates the procedure for community plantation forests (HTR)
2007	Forestry Minister Regulation No. P.23/Menhut-II/2007	On HTR
2011	Constitutional Court Decision No. 45/PUU-IX/2011	Gazettement of the forest estate/zone (<i>kawasan hutan</i>) is mandatory Challenged the existing claims of the MOEF on <i>kawasan hutan</i> covering 70% of the land area of Indonesia
2012	Constitutional Court Decision No. 35/PUU-X/2012	Defines that indigenous forests are private forests and not State forests
2014	Village Law No. 6	Recognizes indigenous villages
2014	Forestry Minister Regulation No. P.88/Menhut-II/2014 on Community Forestry	Revised HKm establishment processes including the zoning of HKm area, social mobilization and facilitation by the government; it also outlines the obligations to the communities
2014	Forestry Minister Regulation No. P.89/Menhut-II/2014 on Village Forest	Establishment and obligations of village forest zone, government facilitation, license granting, forest utilization and logging permit
2014	Joint Regulation No. 79 on Procedures for the Resolution of Land Control in the Forest Zone	Jointly issued by the Minister of Forestry, the Minister of Home Affairs, the Minister of Public Works and the Head of the National Land Agency Grants land rights to the people who have been managing the land for over 20 years
2014	Law No. 23 on Regional Governance	Shifts the power from districts to provinces for issuing permits for mining and logging
2015	National Medium Term Development Plan (2015–2019)	Allocates an area of 12.7 million ha for local people including customary communities
2015	Ministerial Regulation No. 32 on Title Forest	Includes customary forests and on title land of an individual/entity Defines procedure to obtain a license of title forest: can apply if has title from the National Land Agency, the local governments recognize the indigenous peoples and their ancestral land, or the Minister of Environment and Forestry recognizes the existence of title forest

Source: Siscawati et al. In press

Table 2. Different forestry schemes that grant forest rights to communities.

State forest	Private forest
HKm (community forests)	<i>hutan rakyat</i> (smallholder forests)
HTR (community plantations) <i>hutan desa</i> (village forests)	<i>hutan adat</i> (customary forests)
Partnership between State owned companies and local communities (<i>inhutani, perhutani</i>)	

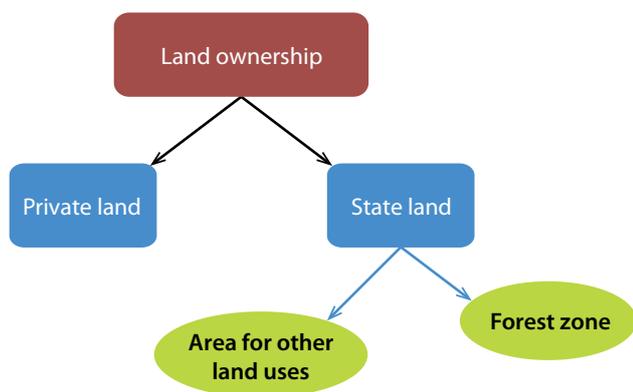


Figure 1. Land ownership in Indonesia.

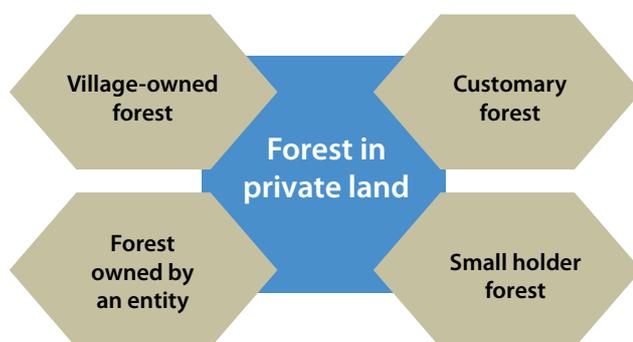


Figure 2. Private forest categories.

Constitutional Court Ruling 35/2013 and Ministerial Regulation No. 32/2015 revised earlier regulations and clarified that forest zones or permanent forest areas are not only State forests but can contain title forests. Title forests include customary forests and forest under private ownership of other individuals/legal entities (Safitri 2015). Forests maintained under an individual's title land are also known as smallholder forests. Village Law No. 6/2014 recognizes the status of villages and customary-based villages (*desa adat*) as legal entities with property rights over their natural assets. The law states that villages can have village-owned forests (*hutan milik desa*).

The most widespread tenure regimes are the various social forestry schemes where government issues management permits to local communities for forests but land ownership remains with the State. These schemes include HKm (community forest), HTR (community plantations) and HD (village forests) (Figure 3). Permits are issued to the respective community institutions and they are required to prepare and implement a forest management plan. While farmers are allowed to benefit from the forestland they manage (e.g. by raising cash crops), they need to plant timber tree species. The key features, legal basis and total area in social forestry schemes that require a permit are summarized in Table 3.

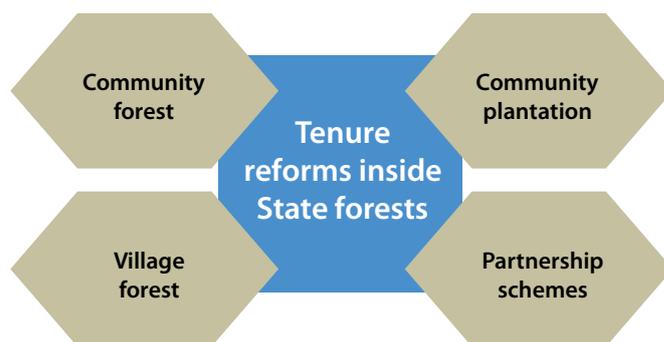


Figure 3. Forest tenure reform regimes on State land.

Partnership schemes authorized by the 1999 reforms also provide some benefits to local communities for their support in forest development and they include:

1. *kemitraan* (a partnership between government-owned forestry company and a local community);
2. *plasma* (a partnership between a private company and a local community);
3. PHBM (*pengelolaan hutan bersama masyarakat*/joint forest management between the State Forestry Agency and the local community).

Current status of formal tenure reforms in Indonesia

The processes for obtaining a social forestry permit and the current status of each social forestry scheme presented above is described in Figure 4.

Community forest (*hutan kemasyarakatan or HKm*)

Under Forestry Law 41/1999, operational procedures for HKm are elaborated in Forest Regulation 6/2007 and Forestry Minister Regulation No. 88/2014. HKm permits (of 35 years, renewable) are given within the State forests that fall under production and protection zones. HKm aims to: (1) rehabilitate State forestland; and (2) achieve community empowerment through community groups.

There are two types of permit for HKm – the management permit (IUP HKm), for protection forest zones where communities are only allowed to harvest NTFPs and the permit for timber business. The later HKm permit is for production forest zones and groups can extract both timber and NTFPs from these areas.

The total area licensed for the IUP HKm permits is 94,372 ha. Farmers' groups in just 13 out of the total of 34 provinces in Indonesia have been issued with a HKm permit to date. Figure 5 shows the distribution of HKm permits at the provincial level.

Table 3. Legal basis and total area under each of the social forestry schemes.

Social forestry scheme	Description	Legal basis	Area (ha)
Community forest (HKm)	State forest that is primarily used for community empowerment, rural institutions form a cooperative, duration 35 years. Main rights granted to local communities include: use and management rights of timber (in production forest zones only) and NTFPs (in production and protection forest zones)	Forest Law 41/1999; Forest Regulations P.88/Menhut-II/2014	94,372
Community plantation (HTR)	State forests used to establish local people's planted forest, duration 35 years. Main rights granted to local communities include: use and management rights for timber production and use and permit is issued only in production forest zones	Forest Regulations P.23/Menhut-II/2007 Forest Regulation 6/2007 Forest Regulation 83/2016	146,324
Village forest	State forests utilized by villages for their prosperity Main rights granted to local communities include: similar to HKm but village institution (village government or customary authority) is the main rights recipient	Forest Law 41/1999 Forest Regulations P.89/Menhut-II/2014	76,924

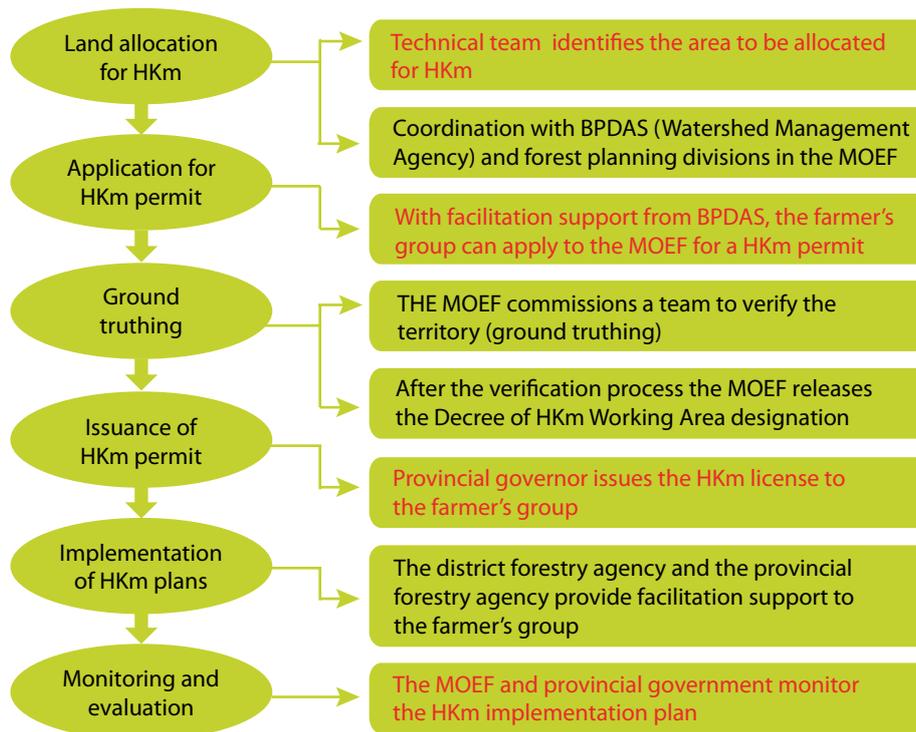


Figure 4. Steps in the process of obtaining a HKm permit.

Note: Processes in red fonts indicate the recent changes.

As HKm permits are usually given for areas where people are already using the State forest zones, a number of factors explain the variation in the total area under HKm in the different provinces of Indonesia. As there was little production forests left in Lampung

that could be allocated to industrial concessions, the only option for retaining State control over land was through social forestry schemes. In fact, many communities in Lampung currently use many designated FMUs.

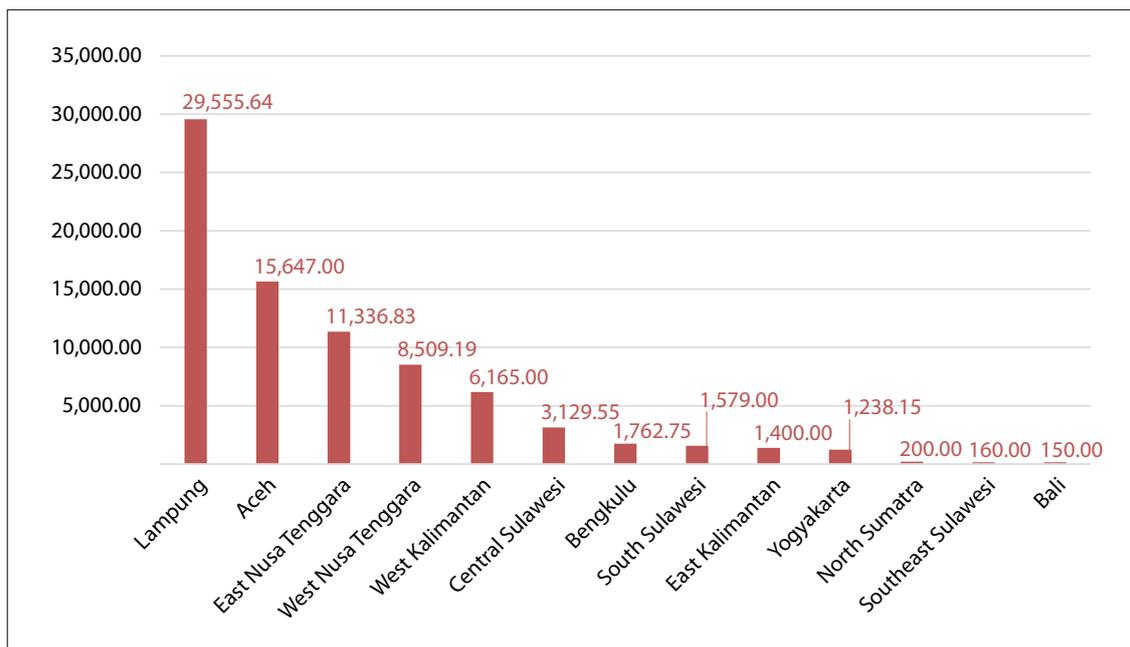


Figure 5. Distribution of HKm area by province.

Source: Ministry of Forestry database in 2013

Village forest (*hutan desa*)

The legal basis for a village forest is Forestry Law 41/1999. Forest Regulation No. 6/2007 and Ministerial Regulation No. 89/2014 elaborate on the purpose, process and institutional arrangements for village forest governance. The main purposes of the village forest are: (1) management and protection of State forestlands which have not been managed by logging companies (in terms of production forests) or government agencies (in terms of protection forest); and (2) State-sponsored community empowerment through village-based institutions. Village forest permits can be issued for State forests categorized as production forest and protection forest. The duration of the permit for the village forest is 35 years. Once the permit is granted, only NTFPs and any other environmental services such as ecotourism can be harnessed from the village forest within the protection forest zone, but timber harvesting is also allowed within production forest zones.

9 out of 34 provinces in Indonesia have been granted village forest permits. Figure 6 shows the area under village forest permits in different provinces.

Community plantation (*hutan tanaman rakyat or HTR*)

Procedures for HTR are outlined in Government Regulation 6/2007 (revised as Government Regulation 3/2008) and in Forestry Minister Regulation 23/2007 (revised as Forest Regulation 83/2016). A HTR aims: (1) to provide materials for timber-based industries; and (2) to develop the welfare

of community groups. The HTR scheme can be applied only in production forest zones within the State forest. Permits can be obtained for 35 years. The community groups can apply for a HTR license (using a similar process as is used for the HKm scheme). The groups can develop forest plantations for timber and can harvest timber.

The total area granted as HTR was far below the target set for the last 5 years (2009–2014). Only 14% of the 5.4 million ha allocated for HTR licensing was realized during 2014.¹ The land allocated for HTR was 719,184.73 ha but the licenses issued were for just 189,857 ha (i.e. 26.49% of the land allocated). The progress in terms of plantations has been minimal; only 7,986.44 ha (i.e. 1.11%) of the target HTR area has been planted. The extremely low number of HTR permits issued to local communities is due to the exceptionally long and complicated licensing process and the limited financial support available for HTR groups to establish plantations.

The licensing of a HKm, village forest or HTR is time-consuming and arduous, which accounts for the slow progress of social forestry program implementation in Indonesia. Once the communities send an application to the district forestry agency, the application passes through the reagent and many other agencies and can take 2–3 years to complete. Not surprisingly, only about 320,000 ha was granted to local communities in the last 5 years (2010–2014), which is less than 15% of the target set by the MOF for the same period (Table 4).

¹ Based on data from MOEF, Indonesia (updated in August 2014)

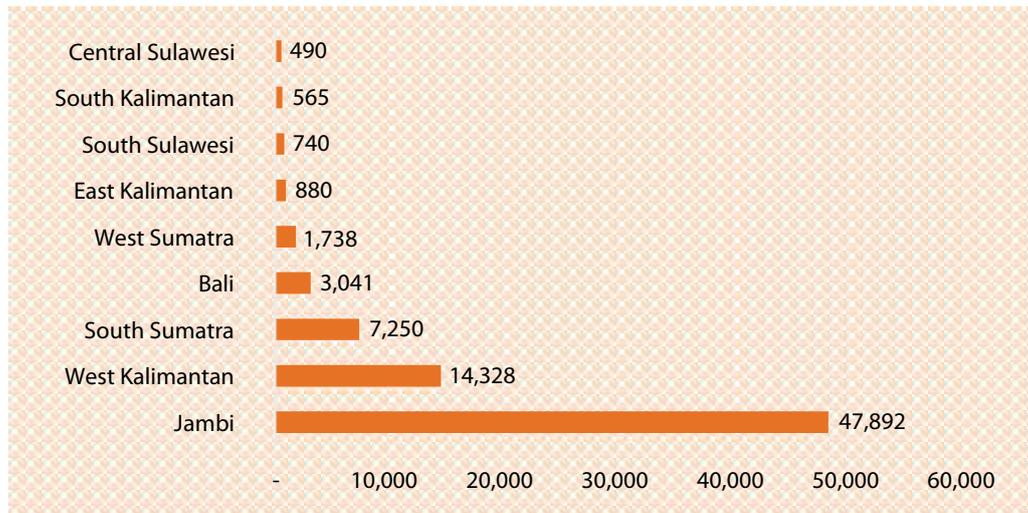


Figure 6. Distribution of village forest in different provinces (ha).

Source: Ministry of Forestry database in 2013

Table 4. Total permits issued and land allocated for different social forestry schemes for the period 2010–2014.

Description	Village forest (ha)	Community forest (ha)	Community plantation (ha)	Total (ha)
Land allocated	340,904	328,452	734,397	1,403,753
Permits issued	76,924	94,372	146,324	317,620
Target (2010–2014)	500,000	2,000,000	250,000	2,750,000

Source: Ministry of Environment and Forestry database in 2015

Partnership schemes (*kemitraan*)

This program is a partnership between a company (State-owned or private) and a local community. It aims to: (1) facilitate collaboration between forest-based companies and community groups in the management of forest resources; and (2) facilitate State-sponsored community empowerment in State forest areas in which government has issued licenses for companies to carry out logging or establish timber plantations. In line with Forestry Law No. 41/1999, Forest Regulation PP No. 6/2007 (revised in 2008 and in 2013) makes it mandatory to reach a benefit-sharing arrangement with local communities. While the companies receive the benefits from timber, the communities get the use rights for NTFPs. All companies are now obliged to implement this program.

Conclusion

The forest tenure reforms in Indonesia were instituted through the 1999 Forestry Law, which granted management rights to communities on State-owned protection or production forest. In protection zones, HKm and village forest schemes were authorized, both of which restricted timber extraction but permitted the harvesting of NTFPs. HTR, *kemitraan* and partnership schemes were targeted in the production forest

zone where communities could plant and harvest timber tree species. All the schemes were intended to support community livelihoods and help communities to manage forest resources. Most of the licenses were issued under HKm programs. However, because the licensing process was long, bureaucratic and convoluted, involving multiple actors at different levels, the targets for areas under these schemes were not reached. Efforts at simplifying the application process are underway and have reduced the length of the process from 2–3 years to one year. Similarly, the revised regulations on social forestry have integrated social forestry programs in provincial level planning. Leadership is an important factor for the success of social forestry schemes (personal communication with Wiratno, 2016); the genuine interest and commitment of community leaders has helped to advance reform implementation.² Still, communities are pressing for full rights rather than the partial rights they currently have under these schemes.

However, additional challenges for the implementation of these social forestry schemes remain – i.e. low community capacity in securing, exercising and defending rights

² Some of these steps have been reduced or simplified and it now takes less than a year to get a permit if the application fully satisfies the requirements and there are no overlapping claims over the boundary.

and limited budgets for the permit obtaining process. The communities, who have secured the permits and have started to implement the land and forest management plans, could harness low benefits from land and forest resources largely due to low access to finances, technology, information and markets.

Recent developments in Indonesia have triggered a demand for expanding community rights beyond use and management to full ownership and for accelerating the pace of tenure reform implementation. These include the implementation of incentive schemes such as REDD+, draft bills on indigenous rights and multi-stakeholder forums on forest and land tenure. These processes are calling for expanding and assuring the rights held by local communities. The constitutional court ruling legitimized the enduring claims of rights by customary communities over their traditional territories. In addition, President Jokowi's election commitments sought to allocate over 9 million ha to local communities. *The National Medium Term Development Plan (2015–2019)* allocates an area of 12.7 million ha for the local people, of which over a third is assigned to customary forests.

The authorization of a FMU under the MOEF provides a grass roots, operational basis for strengthening forest tenure reform implementation. However, there are still enormous challenges in safeguarding community rights. These include a lack of social mobilization and conflict resolution skills by government officials at different levels, a civil servant's mind-set (which is incompatible with the paradigm shift in forest management from top-down control to greater collaboration), a lack of coordination between government and NGOs and a lack of integration of the FMU into social forestry regulations (Banjade et al. 2015). Increasing the efforts and space for deliberation among stakeholders and strengthening community institutions and networking for exercising and defending their rights are key to the success of forest reform implementation.

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