

Locating Rural Communities and Natural Resources in Indonesian Law: Decentralisation and Legal Pluralism in the Lore Lindu Forest Frontier, Central Sulawesi

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Table of Contents

1. Introduction	3
2. Village Governance: Oscillations between Uniformity and regional Diversity	4
3. Policies, Laws and Regulations on the Management of Natural Resources	8
4. Community Conservation Agreements: Legal Basis, Agenda & Practical Obstacles	14
References	19

Abstract

The traditional *open access regime* and *political centralism* under the Suharto Era left local communities without organisational and regulatory structures in the management of natural resources. Recent processes of political decentralisation and local autonomy offer chances for more rural participation and a stronger involvement of local communities in natural resource control. However, processes of effective empowerment and rule creation at the local level are impeded by a series of intervening factors. Thus, the division of authority and responsibility among different village institutions is not conclusively regulated in the state regulations. The devolution of rights related to local resource management remains mainly confined to so-called *customary law communities*, leaving no chances for communities which lack the necessary, state-defined indicators. In contrast to the laws on regional autonomy, the Forestry Law and other sectoral laws are only weakly dedicated to decentralisation. Indonesian policy lacks both, an integrated vision and an integrated legal framework for the management of protected areas. Instead, the sectoral character of the Indonesian law does neither support the establishment of a co-ordinated management plan for the resources surrounding the villages, nor does it offer meaningful guidance for community empowerment. Laws and regulations regulating NRM in *direct* manners offer often less opportunity for local communities to manage their resources autonomously compared with legal devices regulating resource use in *indirect* manners. The room of manoeuvre of the forest margin communities in the Lore Lindu region is further limited by their buffer zone position in regard to the zoning scheme of the National Park.

Introduction

All over the world, tropical rain forests are disappearing at an alarming rate due to illegal logging, delineation of concession areas and farmer encroachment. Indonesian forests are characterised by a high degree of bio-diversity and host a high number of endemic species. Consequently, the Indonesian government is under severe criticism for its policies that allows for excessive extraction and utilisation of forests at the expense of conservation and protected area management. Established in 1995, the “Lore Lindu National Park” (LLNP) in Central Sulawesi has become one of the most prominent conservation areas, representing one of the most unique bio-diversity hot spots in the archipelago. Tropical rain forests provide several ecosystem services which cannot be performed by any other kind of ecosystem. These reach from `local` services such as e.g. erosion protection or clean water provision to `global services` such as e.g. carbon sinks. Global interests in forest conservation are often at odds with socio-economic interests of local people living in forest margin areas. Thus, it often depends on local, community level negotiations which dominant modes of utilisation (conservation, eco-tourism, conversion into agricultural land, agro-forestry schemes etc.) will be adopted and deployed in forest margin areas. Here, the process of political and administrative decentralisation in Indonesia is of primary importance.

In May 1998, after more than three decades of centralist rule under President Suharto’s authoritarian New Order (*Orde Baru*) regime, the Indonesian government passed two basic laws in order to devolve political and economic power from the centre to the regional governments, especially the regencies (*kabupaten*).¹ This pair of laws, the “Law on Regional Autonomy” (UU 22/1999)² and the “Law on Fiscal Decentralisation” (UU 25/1999)³ were shortly followed by the enactment of a new “Forestry Law” (UU 41/1999).⁴ UU 22 and UU 25 were in turn replaced by UU 32 and UU 33 respectively in 2004.⁵ These laws substituted the long established “Law on Village Governance” (UU 5/1979)⁶ and the old “Basic Forestry

¹ In the following, the abbreviation `UU` stands for *undang-undang*, that is a statutory law which has been approved by parliament.

² *Undang-Undang Otonomi Daerah* (‘Laws on Regional Autonomy’), Part 1: UU 22/1999: *Pemerintah Daerah* (‘The Regional Government’), published by Karya Utama, Surabaya 1999: 3-98.

³ *Undang-Undang Otonomi Daerah* (‘Laws on Regional Autonomy’), Part 2: UU 25/1999: *Perimbangan Keuangan antara Pemerintah Pusat dan Daerah* (‘Fiscal Balance between the Central Government and the Regions’): Surabaya 1999: 99-154.

⁴ *Undang-undang 41/1999 tentang Kehutanan* (‘Law 41/1999 on Forestry’). See Salim (2002: 182-260) for the original Indonesian version of the complete law and Wollenberg and Kartodiharjo (2002: 96-109) for an English summary of its most important articles.

⁵ The names of both laws remained identical, just the numbers and years had been changed. See *Undang Undang Otonomi Daerah 2004*, published by Citra Umbara, Bandung 2004.

⁶ *Undang-undang Pemerintahan Desa No. 5/1979* (‘Local Government Act of 1979’), reprinted in Saleh 1980.

Law” (UU 5/1967) which deprived local communities of their self-organising capabilities by establishing a nationally uniform bureaucratic structure in the countryside and by concentrating the full authority over Indonesia’s forest resources in the hands of the state.

Despite the new laws pronounce their commitment to `decentralisation`, the break with the centralist past is less sharp and abrupt than it is generally believed. This holds especially true in regard to conservation laws, which have not been adapted to the new political environment and which continue to exert centralist pressure on the villages. A legal way out of the dilemma may be found in the official acknowledgement as a “Customary Law Community” (*Masyarakat Hukum Adat*) which provides the single legal `slot` for local communities to regain control over their forest resources. Because the traditional principles that relate local communities to the forest are akin to an *open access*-system and because contemporary villages are often multi-ethnic in character, there are almost no chances to make use of the `customary slot` provided by law. Acknowledging the fact that local acceptance and legitimacy of the National Park can only be maintained when local communities become somehow involved in its management, the Park Authority has started to implement a number of “Community Conservation Agreements” (*Kesepakatan Konservasi Masyarakat*), which have been facilitated by *The Nature Conservancy* (TNC).⁷ Given the political and legal framework within which they are enacted however, the legal reliability of these agreements must be rendered as rather low. Besides, effective rule making, monitoring and enforcement are hampered by the sectoral character of the national forest policy which puts conservation areas under direct control of the Ministry of Forestry at the same time it devolves control over protection and production forests to the regions. Thus, villages have to make several agreements with several agencies for the management of certain bundles of an ecosystem which in their perception represents a single forested area.

Village Governance: Oscillations between Uniformity and regional Diversity

In economic terms, the New Order government (1965-1998) has been described as an example of “successful developmental authoritarianism” (McVey 2003: 21). This `authoritarianism` was cushioned in the official doctrine of the `floating mass`, according to which “villagers should not be distracted from the task of economic development by political activity” (Hart

⁷ TNC’s involvement in the Park management precedes the establishment of the National Park Authority (*Balai Taman Nasional Lore Lindu*) in 1997. Besides operating more than 1300 nature sanctuaries in the USA, TNC made agreements for the co-management of nature reserves with several governments in the Southern hemisphere.

1986: 43). Two of the major legal means to promote economic development and political stability simultaneously have been the “Law on Village Governance”(UU 5/1979) and the “Basic Forestry Law” (UU 5/1967). Whereas the first centralised local administration to achieve village-level depoliticisation, the second centralised forest management and control in order to develop Indonesia as an international leader in timber export.

Before 1979, the form and structure of Indonesian villages was highly diverse, reflecting the ethnic and cultural heterogeneity of the archipelago. The purpose of UU 5/1979 was exactly to deconstruct this diversity. Thus, indigenous terms for `village` have been substituted by the Javanese term *desa*. As the law (Art. b) states: “the state of affairs concerning *desa* administration is to be made uniform as much as possible.....in order to strengthen *desa* administration so that we will be more competent to mobilise society in its participation in development” (Kato 1989: 93). The village head was appointed by the district head, thus eroding traditional forms of authority, legitimacy and participation. Most important, the former “Village Social Council”, the *Lembaga Sosial Desa* (LSD), which was headed by a non-governmental leader and which often “constituted a platform from which political struggles could be waged” (Hart 1986: 44), was replaced by the so-called LKMD (*Lembaga Ketahanan Masyarakat Desa* = “Body of the Village Society”). The village head (*kepala desa*) was *ex-officio* made the leader of the LKMD. Other uniform elements of the internal community structure are the prominent role of the village secretary (*sekretaris desa*), the division into several hamlets (*dusun*), and the five leaders (*lima kaur*) of the `functional sections`, such as development, finance etc. Local communities saw their indigenous institutions, including those related to customary conflict resolution, *de facto* abolished by the law.

There is some debate whether UU 5/1979 was replaced by the “Law on Regional Autonomy” (UU 22/1999) in order to please the provinces’ plea for more autonomy and increasing calls for democratisation from civil society, or because `decentralisation` of key government functions was the most appropriate means to deal with the severe currency crisis that hit the country in 1997/98. More important than the motivation of the government however are the legal changes introduced by the passing of the law.⁸ These include that

- existing villages may be broken up into their constituent parts or may be re-united to form locally sound settlements which may be denoted by local terms (Art. 93),

⁸ I am indebted to Bani Susamto and Anastasia Wida from the STORMA research project for helping me in translating parts of the original laws, especially for figuring out the purpose and meaning of the rather cryptic and esoteric article 94 of UU 22/1999.

- villages are allowed to reject government programs which are perceived as inadequate and may form their own village institutions according to local needs (Art. 106),
- the village head is directly elected by the villagers (Art. 95),
- the village head is appointed by and put under control of the newly established “village representative body” (*Badan Perwakilan Desa*, abbr. BPD), the members of which are also directly elected by the villagers (Art. 95, 105).

The BPD forms the basic rural institution within the law. In contrast to the LKMD, which mainly served as a forum to promote government programs, the functions of the BPD are summarized in Art. 104: These are (1) to collect, organize and give voice to the aspirations of the common people, (2) to maintain and foster local custom (*adat*), (3) to explain regional regulations to the people and (4) make village regulations, which means that the BPD is actively involved in legislation. In case of misbehavior of village officials the BPD may send a report to the regency head (*bupati*), with a copy to the head of the county (*camat*). Whereas it is true that in contrast to its predecessor, UU 22/1999 tries to safeguard the election of village councils from undue interference from above and outside., one must keep in mind that powerful people *inside* the village can still determine who participates in the vote and who not.⁹ This links up with the question asked by Bennett (2002: 67): “will the spirit of UU 22/1999 survive its implementation?”

One of the most significant traits of UU 22/1999 and UU 25/1999 is their tendency to grant greater authority to the regency at the expense of the province. Thus, in regard to Art. 106 (creation of village institutions), villages have to maneuver within the confines of the regency regulations. The regencies of Donggala and Poso, in which the National Park is located, have clear stipulations about how an `indigenous` village institution has to look like. Indigenous institutions are confined to the so-called “Customary Council” (*Lembaga Adat*), the function of which is to articulate common aspirations and to provide a conflict resolution platform.¹⁰ Interestingly, in the regulations on `village institutions`, the structure of the customary council is prescribed to include a leader, a secretary, a treasurer and several heads for certain sections.¹¹ Further, the implementation of that structure is the responsibility of the village head, after approved by the BPD. Thus, far from being an organisation capable of counterbalancing state power, the *Lembaga Adat* (LA) is shaped by and positioned below

⁹ By organizing the vote of the BPD via the church meetings, the (Christian) leaders of some villages were quite successful in securing as little participation of Muslim migrants in the vote as possible.

¹⁰ *Peraturan Daerah Kabupaten Donggala No. 13, 2001 tentang Pemberdayaan, Pelestarian dan Pengembangan Adat Istiadat dan Lembaga Adat* (Government Regulation Donggala Regency No.13 on the Empowerment, Resilience and Development of local Customs and the Customary Council).

¹¹ *Peraturan Daerah Kabupaten Donggala No. 14, 2001 tentang Lembaga Kemasyarakatan di Desa* (Government Regulation Donggala Regency No.14 on Village Organisations)

government institutions.¹² Consequently, it consists often of retired village officials. Instead of representing a new village consensus, it rather reflects political networks from the Suharto Era. It is obvious that this kind of `customary empowerment` is linked to the formation of an institutions which mirrors bureaucratic structures and which organises participation in predictable manners. Local aspirations are thus `domesticated` in formal patterns.

In regard to natural resource management, UU 22/1999 remains ambiguous. Art. 7 states that the utilisation of natural resources lies in the hands of the central government, whereas Art. 10 grants the regions the right to manage natural resources autonomously within the confines of their territory (Sembiring and Husbani 1999: 60). Further, whereas the management of production forest (*hutan produksi*) and protection forest (*hutan lindung*) lies within the responsibility of the regencies, the management of conservation forest (*hutan konservasi*) and National Parks on the other hand remains under direct control of the central Ministry of Forestry in Jakarta. Via implementing regulations, regency leaders are allowed to issue limited concession licenses to cooperatives (Dermawan and Resosudarmo 2002: 337).

Since October 2004, the “Law on Regional Autonomy” (UU 22/1999) has been substituted by the new “Decentralization Law” (UU 32/2004) and the “Law on Fiscal Decentralisation” (UU 25/1999) has been transformed into UU 33/2004. In terms of fiscal decentralisation, the share of revenue from the forestry sector allocated to the regions (80%) in comparison to the share allocated to the central government (20%) remained identical with the ratio stipulated in UU 25/1999.¹³ However, it still remains to be seen how much of the paragraphs in UU 22/1999 which foster decentralisation are still existent in the new decentralisation law. As far as we analysed the new version of the law, important functions of the BPD (i.e. legislative functions) have been dropped totally or been limited in scope. Whereas co-operation between the village administration and the BPD is enhanced; control of the administration by the BPD is almost absent in the new version of the law (see UU 32/2004, Art. 202-215, especially Art. 209). On the one hand, the state seems to maintain its “participatory approach” in allowing local variations in village organization and local regulations (UU 32/2004, Art. 211). On the other hand, the BPD (now called *Badan Permusyawaratan Desa* = “village consensual body”) is formed by the traditional principles of “discussion and consent” (*musyawarah dan mufakat*), not anymore by a common vote (UU 32/1999, Art, 210, §1). Whereas according to UU 22/1999 (Art. 104) the BPD was active involved in legislation (*membuat peraturan desa*),

¹² The respective regency regulations for the regency of Poso are to be found in: *Himpunan Daerah Kabupaten Poso, 2001* (‘The Collected Decrees of the Regency of Poso’). Regional regulations do not exist in digital form. Hard copies of the originals of all relevant regency regulations may be obtained from the author.

¹³ UU 33/2004, Art. 14, UU 22/1999, Art.6 respectively.

under UU 32/2004 (Art. 209) its role is merely confined to involvement in implementation (*menetapkan peraturan*).

The promulgation of the new law however, did not lead to a higher legal reliability in natural resource management. The major problem remains that the village administrations and the BPD are expected to implement rules and enforcement procedures for rule breakers who enter the forest. As it is known from various empirical settings, processes of rule creation are intrinsically linked to problems of enforcement and monitoring. Given an overall legal framework that puts conservation areas under the direct control of the central government, villagers have no mandate to monitor the rules they have made. Thus, the cornerstones of participation, decision making and implementation, are dissolved. With no rights to monitor and with no funds for monitoring at hand, villages can neither pay guards nor provide guards on a rotational basis. Therefore, village rules must rely on “mutual control” with every villager prescribed to report infractions of others to the village administration. This policy tends to create increasing distrust among the villagers, because with no well defined “duty” to report (as in the case of patrolling tasks) people will report the misbehaviors of those they dislike but will be “quiet” (*diam*) in case of infractions committed by their fellows.

Among Central Sulawesi NGO’s and village leaders alike much hopes for more local independence in protected area management and more profound participation of rural communities have been raised by Art 9. of UU 32/2004 which states that provinces and regencies may designate “zones with special purposes” (*kawasan khusus*). Elucidation of Art. 9 includes explicitly the designation of National Parks (*taman nasional*) under the umbrella of *kawasan khusus*. Despite the legal inconsistencies with other legislation that puts conservation forests under the direct control of the central government (Dermawan and Resosudarmo 2002: 345), provincial and regency officials are rather reluctant to designate national parks. The reason is that in contrast to production forests, with the exception of eco-tourism, there are only limited chances for revenue generation to be expected from national parks or other conservation areas.

Policies, Laws and Regulations on the Management of Natural Resources

The New Order’s concern with strong government, centrality and stability was not only a reaction towards the traumatic experience of regional and political disintegration in the period from 1948 until 1965, but links up with the “Idea of power in Javanese Culture” (Anderson 1972) according to which power – imagined as something tangible - exists only in limited amounts. In this conception, the central power at the apex of the state represents the unity of

society as a whole so that any dispersion of power poses a fundamental threat not only to the existence of the government, but to the existence of the state itself (see Lindayati 2002: 40). Forest policy under the New Order cannot be seen in isolation from the dominant coherence system which means in practice that resource management sovereignty must remain under the control of the central government. The highest law in Indonesia is the Constitution of 1945 (*Undang Undang Dasar 1945*). Below UUD 45 are – in descending reliability- the *undang-undang*, or Statutory Laws (Acts) which have passed parliament. Most forestry rules however are either so-called Government Regulations (*peraturan pemerintah*, abbr. PP), Presidential Decrees (*Keputusan President*) or Ministerial Decrees (*Surat Keputusan*, abbr. SK). ‘Laws’ are more permanent legal instruments than decrees because the latter are always tied to the individual who issued the decree, so that in can be easily changed by a new position holder. The highest policy statements are codified by the “People’s Consultative Assembly” (*Majelis Perwakilan Rakyat*, abbr. MPR) the stipulations of which are called TAP (*Tatapan*) MPR. Also issued by the MPR are the GBHN (*Garis Besar Haluan Negara*), the “Guidelines of State Policy” which inform the five-year-plans (Sembiring and Husbani 1999: xvii).

Art. 13 of the Basic Forestry Law (UU 5/1967) stresses the need that “the utilisation of natural resources must give the highest utility possible for the welfare of as many people as possible”. In general forest policy under the New Order was governed by the conception of forest “exploitation” (*penguasaan*) rather than “management” (*pengelolaan*). The role of local communities in forest control as envisaged by the law is exceedingly small. Thus, Art. 15 points out that in order to guarantee (effective) forest protection (*perlindungan hutan*), common people are better involved (*diikutsertakan*). Whereas people have a responsibility in protection, they have no say either in management, nor in forest planning. Art. 17 concedes that in principle communities may obtain benefits from the forest, but only “as long as they do not conflict with the objectives of the law as interpreted by the Minister of Forestry”. This rather restrictive forest policy found expression in several government regulations.¹⁴ Thus, PP 21/1970 on “forest exploitation and harvesting rights”¹⁵ allowed local people to collect forest products only as long as they did not disturb the operation of business concessions. PP

¹⁴ I am indebted to the National Park Authority (*Balai Taman Nasional Lore Lindu*) in Palu and to Hedar Laujeng from the “Legal Aid Foundation” YBH (*Yayasan Bantuan Hukum*) for allowing me to make photocopies of all relevant forestry laws and regulations. Quotations of the most relevant regulations are to be found in Salim, H. S. (2003): *Dasar-Dasar Hukum Kehutanan* (The Basic Principles of Forestry Legislation), Sinar Grafika, Jakarta, and in Sembiring, H. and F. Husbani (1999): *Kajian Hukum dan Kebijakan Pengelolaan Kawasan Konservasi di Indonesia* (An Analysis of Conservation Laws and Policies in Indonesia), USAID, Jakarta.

¹⁵ *Peraturan Pemerintah No. 21/1970 tentang Hak Penguasaan Hutan dan Hak Pemungutan Hasil Hutan*

28/1985 on “Forest Protection”¹⁶ centralised forest protection and withdraw communities from responsibility in protection functions. Involvement of forest margin communities in forest protection measures had been reduced to the anticipation of forest fires (Art. 10, §2).

As Lindayati (2002) has shown in more detail, since the mid eighties, the state had changed its repressive policies with the so-called “prosperity approach” as can be seen by the adoption of several social forestry projects, especially in Kalimantan and Sulawesi. A Ministerial Decree from 1993 (SK 251/1993) allowed forest dwelling communities to collect forest products within concession areas and in 1991 the Decree on “Forest Community Development” (*Pembinaan Masyarakat Hutan*) obliged concessionaires to participate actively in village development (ibid: 48). Far from being empowered however, local communities were rather perceived as objects in need of specific guidance and hillside development than as equal partners. Thus, in 1993, the ministries of agriculture, home affairs and transmigration issued a joint decree (SKB “480-Kpts II/1993”) in which shifting cultivators were officially blamed as “destroyers of the forest resource”. The notion of rural communities as people who must be `guided` by the wisdom of the government is also to be felt in the “Act on the Conservation of Biodiversity and Natural Ecosystems” (UU 5/1990).¹⁷ Instead of offering room for empowerment, the Act is coloured by general statements, such as that the “people have a role” (*peran serta rakyat*), that the government must “raise the awareness” (*meningkatkan sadar*) of the people with regard to nature conservation via “extension activities” (*penyuluhan*), or that the people must be “directed” (*diarahkan*) and “set in motion” (*digerakkan*) by government activities (Art 37, §§ 1 and 2). Similarly, the “Environmental Management Act” UU 23/1997 (*Pengelolaan Lingkungan Hidup*) denies any role of indigenous or local knowledge held by forest dwelling people in nature conservation, and is thus squandering a lot of social capital (Sembiring and Husbani 1999: xxii). However, it refers to some important principles in dealing with local people. Thus, Art. 5 (§2) points out to “their right of information” (*hak atas informasi*), and Art. 37 (§1) pronounces their “right to complain and report” (*hak mengadu / melapor*), their right to “class action” (*gugatan perwakilan*) and “strict accountability” (*tanggung jawab mutlak*) on behalf of the government.

It is tempting to make a sharp dividing line between the centralistic forest legislation of the Suharto government and the new “Forestry Law” (UU 41/1999), passed after Suharto’s demise under the new era of “Regional Autonomy” (*Otonomi Daerah*). In fact however, the

¹⁶ *Peraturan Pemerintah No. 28/1985 tentang Perlindungan Hutan*

¹⁷ *Kumpulan Peraturan Perundangan Bidang Konservasi* (A Collection of Laws and Regulations on Conservation). Edited by the Ministry of Forestry and Japan International Cooperation Agency (JICA), Jakarta 2003: 3-38.

new forest law (UU 41/1999) preserved many of the centralist features of its predecessor (UU 5/1967). Within UU 41/1999, community forest (*hutan adat*) is not a distinct category on the same taxonomic level with private forest and state forest, but represents a subaltern category within the national forest area (Art. 1, §6). Consequently, Act No. 41/1999 recognizes only the right to forest management (*pengelolaan*) according to customary principles, but not the right to open forest for conversion into agricultural land. Traditional management practices must not conflict with the state defined function of the forest as “conservation” or “protection forest” (Art.37). A significant improvement may be seen in Art. 71, §1 which allows for legal “class action” in accusations and claims (*gugatan perwakilan*). Paragraph 2 of the same article however restricts this right to situations in which forest management is not in line with the law. The right does thus not apply when local claims are in conflict with state claims.

The devolution of rights related to the management of natural resources remains confined to so-called customary law communities (*masyarakat hukum adat*, abbr. MHA), leaving no chances for communities which either do not qualify as MHA (e.g. multi-ethnic villages or transmigration sites) or which lack the necessary indicators. The required indicators listed in the Forest Law (UU 41/1999, elucidation of Art. 67) are: a legally identifiable social organization (characteristically denoted as *rechtsgemeenschap*), a formal customary law institution, a clearly defined territory regulated by customary law, the presence of traditional *adat* authorities and the collection of forest products to meet day-to-day subsistence needs. Thus, devolution is channeled through a social organization, the features of which are precisely defined by the state. The paradox is that whereas on the one hand UU 22/1999 and UU 32/2004 on “Regional Autonomy” try to abolish the most rigid standardization and streamlining tendencies of the former village law, at the same time the forest law exerts the same pressure to conformity on forest margin communities. The forest law gives the state further the power to revoke the status of MHA. In emphasizing the management capabilities of *adat* institutions, other criteria such as socio-economic security and social stability are not recognized as decisive factors for devolution. The most critical feature attributed to MHA however, is that they must be persistent in time, since generations and without interruptions (Art. 67). Thus, according to the law, there cannot be an “invention” or “adaptation” of *adat*, nor can there be a “revitalization” of “lost” customary principles. Here, the legal situation becomes paradox: It was no one other than the Indonesian government itself which deprived forest dependent communities of their self-governing capability and sanctioning patterns by imposing a uniform, bureaucratic structure in the countryside (UU 5/1979) and by concentrating the full management authority over forest resources in the hands of the state

(UU 5/1967). On one hand, local communities were withdrawn from their traditional role in forest protection by government regulation (PP 28/1985), whereas now they are expected to prove their embeddedness and integration with nature in order to qualify for recognition as MHA. As Campbell points out “by depicting a romanticised version of *adat* as a glorious living tradition of harmony with nature that is fully operative in forest dependent communities, it is easier for government critics to push their equally simplistic view that most customary systems (as static self-perpetuating operating systems) have already broken down” (2002: 115).

The most important implementing regulation of UU 41 are Ministerial Decree SK 677/1998 on the “Right to control Community Forests” (*Hak Penguasaan Hutan Kemasyarakatan*) and government regulation PP 6/1999 about “Timber Harvesting Rights in Production Forests” (*Pengusahaan Hutan dan Pemungutan Hasil Hutan pada Hutan Produksi*). The latter presents a slight improvement in the sense that co-operatives (which can be formed by any MHA according to Art. 37 of UU 41/1999) may also extract timber. Whereas this regulation relates only to production forest, in SK 677/1998 conservation areas are integrated. It further allows for the harvesting of non-timber forest products (NTFP) and timber; requiring also that local communities must form co-operatives which are recognized as the one and only management institution (Wrangham 2002: 30). Thus, the law is ingrained with a twofold conviction that links customary institutions to “to day-to-day subsistence needs” (*pemenuhan kebutuhan sehari-hari*) by UU 41/1999 (Art. 67, § 1a.) and links commercial utilization to the creation of `modern` legal bodies in the form of co-operatives.

Besides the Forestry Law, the Basic Agrarian Law (UU 5/1960, abbr. BAL) deals also with management rights of customary lands (Harsono 2000). Its most important regulation in this regard is the joint decree (SK 5/1999) of the Minister of Agrarian Affairs and the Agrarian Board (*Badan Pertanahan Nasional*, abbr. BPN) on the “Guidelines to resolve Customary Communal Rights Conflicts” (*Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat*). In contrast to the Ministry of Forestry, the BPN accepts community land rights as intrinsic and non-transferable (Harsono 2003: 59). It explicitly allows MHA to lease their lands to the government (Art. 4, §2) and locates the responsibility for recognition as MHA in the hands of the regions without involvement of the central government (SK 5/1999, 3c). Despite the BPN’s commitment to decentralisation, the problem with this is twofold: (1) land under the responsibility of the BPN does not qualify as `forest`, (2) so-called “customary forests” are often secondary forests embedded in cyclical agricultural systems. Thus, they may often perform an integrated part of farmers’ income

strategies (Burkard 2002: 7). Land use forms in customary forests may shift according to needs, with clear assignments of permanent types of land use to fixed units of land being rather the exception than the rule.

Deeply ingrained in the Indonesian legislation, especially the BAL (Art. 5, 16, 65), and an indispensable part of MHA is the notion of *ulayat*, referring to a special relationship between the local community and its “customary territory” (*tanah adat*). The term preferred by Dutch colonial scholars, *beschikkingsrecht*, is usually paraphrased with “right of avail”. In its broadest sense, *ulayat* refers to community-controlled land. Whereas group members have a right to make use of virgin land within the community’s territory, outsiders can only do so after obtaining permission from the community. The regulation of access remains in the hands of a traditional authority who may be either an individual elder or a council of elders. The collective nature of *ulayat* does not mean that individuals cannot hold resources for their own needs. Important is rather the fact that individual rights are defined by their relationship with the rights of the community to which the individual right holder belongs and from which his individual rights are derived. In general the community recognizes an individual’s “preferential right” to a certain piece of land at the same time he is bound by customary restrictions imposed by the community (Evers 1995: 3). The most common restriction in this regard is that land cannot be sold. Perceived in terms of a “delicate balance of rights and restrictions” (Evers), in the *hak ulayat*-conception individual and community rights are complementary and mutually constitutive. In contrast to the “right of ownership” (*hak milik*), which allows for alienation and which can be registered by land titles (e.g. certificates), the “right of avail” is an unwritten “entitlement” based on community consent.

Legally, recognition as MHA and the devolution of management rights remain based on the notion of *hak ulayat*, the existence of which is officially denied by a (still valid) provincial decree from 1993 (SK 529.2/8158/1993). Given the principle of free access to the forest as practised in the past, the communities at the forest margin of LLNP did not develop the idea of community controlled land and – until recently – did not formulate claims to ancestral territories. Traditional rules applied exclusively in terms of ownership of individual plots. Acquired by the pioneer clearer, these plots remained within the family pool through inheritance. Local preoccupation with “private land rights” (as opposed to “communal rights”) was further enhanced via the national land registration in the early seventies when people could register stretches of secondary forest as privately owned “reserve land”. Most cultivated agricultural plots in the area have meanwhile been certified under the National Certification Program “Prona” (*Program Nasional*) in the early and mid nineties. The

PRONA program, in allocating private rights to land, follows the quite plausible idea that lands are worked better, more effectively and more sustainable if those who use them have also tenurial security over them (Burkard 2002, Vivian 1990). These private land rights (*hak milik*) - which are incompatible with the official recognition as MHA - are relevant also under another perspective: In rural areas, it is first of all private land certificates which function as collateral if one wants to borrow money from the bank. Community management rights over forest resources however are intrinsically linked to the recognition as MHA which is incompatible with individual land titles. Thus, at the same time a rural community may be empowered as MHA under UU 41/1999, its individual community members (peasants) may simultaneously be less empowered to control their own agrarian development.

Community Conservation Agreements: Legal Basis, Agendas and Practical Obstacles

Since the declaration of LLNP in 1993, *The Nature Conservancy* (TNC) was actively involved in the management of the park.¹⁸ In principle, the management plan is based on the notion of zoning with different zones subject to certain restrictions, ranging from enclaves, limited use rights of old coffee stands, harvesting rights of non-timber forest products (NTFP) and zones for eco-tourism and research to totally prohibited areas. The adopted pattern mirrors, more or less, the zoning scheme prescribed in UU 5/1990 (§32). Though TNC rejects the idea of the sustainability of indigenous land use systems, which are perceived as insufficient for bio-diversity preservation, it has revised its earlier top-down resource policies in favor of more collaborative management schemes. The core institutional devices of the adopted strategy of *on-site protection* are the “Community Conservation Agreements / CCA” (*kesepakatan konservasi masyarakat*), in which local communities enter into a negotiated arrangement with the Park Authority. In line with TNC’s conservationist orientation, the general content of the CCA is to avoid further encroachments and to reforest open gaps inside the park. Plots already opened within the National Park must be replanted according to a fixed reforestation plan, whereas all types of secondary forests will be preserved and all opened plots close to rivers and slopes have to be abandoned. The reforestation species (teak, resin, candle nut, agathis, eucalyptus etc.) are defined by the natural surrounding, which is divided into various reforestation sites of different extend, topography and vegetation. The CCA allows for a coordinated collection of NTFP’s, fire wood and wood for private construction as

¹⁸ TNC’s involvement in Park management is not confined to Central Sulawesi. Besides operating more than 1300 nature sanctuaries in the USA, TNC made agreements for the co-management of nature reserves with several governments in the Southern hemisphere.

well as the utilisation of old coffee stands, the tapping of *damar*-resin and the utilisation of the newly planted candlenut (*kemiri*) trees.

Because there is no single law or regulation which grants the Balai TN the right to devolve use rights to local communities; in search for a legal legitimisation of the CCA it seemed more promising to rely on various UU's and TAP's having no direct relationship with the forest in general (and the National Park in particular) than relying on forestry regulations which are either of low legal reliability or which have preserved the centralist character of their predecessors. In facilitating conservation agreements for five pilot-villages in Napu, TNC asked for the help of two legal experts in order to create a legally sound base which can be used as a future framework for all villages surrounding LLNP. Unfortunately, the major governor decree regulating land use from 1993, which declared all forest areas in Central Sulawesi as state land (*swapraja*) and which strongly rejects the existence of community land in the province, has not been dismissed so far. However, there may be some legal ways out of the dilemma. The BAL (UU 5/1960) offered local communities two ways of obtaining rights over land: The "recognition" of customary rights (*pengakuan atas hak adat*) and the "conferring" (*pemberian hak atas tanah*) of rights over land formerly controlled by the state. Whereas it is usually the former which has become the focus of the regional NGO discourse, the latter is much less known, albeit it is much more appropriate for the Central Sulawesi situation. Further, the experts make some (remarkably) short references to UU 41/1999. Instead, the major legal means of devolution of resources quoted are:

- TAP No. IX 2001 on "Agrarian Reform and NRM" (*Pembaruan Agraria dan Pengelolaan Sumber Daya alam*): Art.5 §1 states that the management, ownership status and use of land must be ordered anew with a just land reform that acknowledges more clearly the ownership rights of the common people. The same paragraph refers also to the need to provide transitional justice as a means to establish social stability during the transition from centralist state to regional autonomy.
- TAP III 2000 on "Origins of Law and Legal Hierarchy" (*Sumber Hukum dan Tata Urutan Perundangan-Undangan*): abolished regulations tied to individual rule makers, such as the diverse decrees as a legal source at the same time it placed the parliament resolution (TAP) at the top of the legal hierarchy; just below the basic constitution. Both tendencies could strengthen legal reliability in the future and put an end to the continuous struggle between conflicting decrees from various ministries, esp. the Agrarian and Forest Ministries.

- UU 25/2000 on “National Development” (*Propenas*): Art 10 states that regulations on resource use must include access of *adat*-communities and (other) local communities.
- UU 39/1999 about “Human Rights” (*Hak Asasi Manusia*) declares local rights over resources as a part of the basic human rights; and emphasises the governmental responsibilities to local people, incl. community land rights which are portrayed as being natural rights (Art.6, §1,2).
- UU 10/92 on “Population Development and Family Welfare” (*Perkembangan Kependudukan Pembangunan Keluarga Sejahtera*): Art. 6 proclaims the right to the beneficial use of territory that constitutes a “traditional customary inheritance” (*wilayah warisan adat*) and fits perfectly with the local situation, where claims to natural resources are unavoidable, but where the recognition of “customary land” inside the National Park seems almost impossible to achieve. The notion of a “traditional customary inheritance” offers much more “room for manoeuvre” than the rather narrow-minded and limited notions of *ulayat* and *tanah adat*.

Interestingly, five out of seven legal sources used by the law experts to legitimate the agreements have no direct relationship with NRM. Rather, access to and management of natural resources appears as a function of other political targets. There is no quotation at all of UU 5/1990 on “Conservation of Bio-Diversity and Natural Ecosystems”. This is because laws related to NRM and forestry offer less opportunities for local communities to manage their resources autonomously as it is the case with other legal devices regulating regional economy, family welfare and national development. In other words: In devolving authority in NRM to local communities, laws regulating resource use in indirect manners are much more relevant than laws regulating NRM in direct manners (however, there are often no implementing regulations for the laws). Further, most forest policy issued until 2000 is not in the form of laws (UU) and parliament resolutions (TAP), but in the form of government regulations (PP), ministerial decrees (SK) and Director-General decisions (Kpts) which are actually not “laws” in the real sense, but products of the executive. Especially the SK and Kpts, which according to our listing make up almost 80% of all legal devices related to NRM, must be perceived as a rather weak legal instrument, because they are always tied to the individual who made the decrees and can easily be changed by a new position holder. Because there is no single law or regulation which grants the Park Authority the right to devolve use rights to local communities, in search for a legal base of the CCA it seemed more promising to rely on various UU’s and TAP’s having no direct relationship with the forest in general (and the

National Park in particular) than relying on forestry regulations which are either of low legal reliability or which have preserved the centralist character of their predecessors.

The local situation is even more complicated because most of the claimed areas are now located inside the National Park, a legal category which in the past offered only a very limited scope of action for participation of villagers. Inside the zoning scheme of UU 5/1990 the “utilisation zone” (*zona pemanfaatan*) is restricted to eco-tourism only (because villagers have not been informed about the zonation, they equated “utilisation” with “conversion”); whereas usage of the “primary forest zone” (*zona rimba*) is limited to scientific research. The situation for local communities improved with Kpts DJ-IV/2000 which established the legal base for the creation of a traditional utilisation zone (*zona pemanfaatan tradisional*) in National Parks. The Kpts however leaves the most relevant question unanswered: which kind of traditional utilisation is allowed and what actually constitute a “traditional usage”?

In order to safeguard a better supervision and co-ordination of the CCA, TNC established a separate “Village Conservation Council” (*Lembaga Konservasi Desa*, abbr. LKD) at the village level. Guided by the principle of co-management, the LKD is constituted by one member of all major village institutions, one official park-ranger and “other” people who are perceived as relevant (TNC 2002). Paragraph 21 of the agreements summarizes the functions of the LKD as follows:

- To socialize (*mensosialisasikan*) the conservation agreement to the related society,
- To carry out participatory planning (*perencanaan partisipatif*) with the Park-Authority,
- To supervise the implementation (*mengawasi pelaksanaan*) of the agreement,
- To evaluate (*mengevaluasi pelaksanaan*) the conservation agreement,
- To report the evaluation results (*melaporkan hasil evaluasi*) to the village head,
- To provide an umbrella for communication (*mewadahi komunikasi*) between (local) society and the Park Authority.

Whereas the LKD is concerned with the implementation of the CCA on the village level, TNC envisaged that conflicts between villages or problems, which cannot be solved by the LKD alone, are to be handled by a corresponding “County Conservation Council” (*Lembaga Konservasi Kecamatan*, abbr. LKK). However, the LKK never did materialize and was substituted by the establishment of the so-called “Buffer Zone Forum” (*Forum Wilayah Penyangga = FWP*), facilitated by the ADB-sponsored “Central Sulawesi Integrated Area

Development and Conservation Project” (CSIADCP).¹⁹ In contrast to other facilitating NGOs and institutions in the research region which tend to treat villages as islands unto themselves, TNC does not assume that the local (village) level is most important. Instead, the crucial role of vertical and horizontal “cross-scale inter-linkages” (Berkes 2002), “intermediate” levels of organization such as the *kecamatan*-counties and the “nesting” of organizations located at various levels has been taken into account from the beginning of the facilitating process. Unfortunately, TNC’s far-sightedness to transcend institutional boundaries in establishing the LKD was not reflected in the perception of the forest resource as an integrated ecosystem:

- Given TNC’s strong concern with the National Park as a legal entity and the integrity of its borders, the CCA is only valid for the forested landscape encapsulated by the Park. Thus, after several villages signed the CCA, people refrained from encroachment into the protected area, at the same time deforestation increased significantly in the areas designed as protection and production forest.
- When the LKD started to plant candlenut trees in order to demarcate the Park border, several conflicts arose with owners of adjacent plots. These conflicts however, could not be settled because the village head – who is still often the *de facto* conflict resolution institution – was not involved in the activities of the LKD.
- Irrespective of the CCA facilitated by TNC, the CSIADCP-project has launched its own agreements in the villages called “Customary Community Conservation Agreements”, CCCA (*Kesepakatan Konservasi Masyarakat Adat*). CCCA are not involved in reforestation, but focus on watershed management. In contrast to the CCA however, CCCA cover watersheds in all (legal) kinds of forest, this is LLNP, protection forest and production forest.

In order to simplify the situation and to reduce (legal) confusion, several village heads and BPD members proposed to drop references to CCA and CCCA in dealing with community members. Instead they planned to enter the agreed upon rules and sanctions of both agreements into the common village rules (*peraturan desa*) in order to equip the villagers with a single locally defined legal source. This practical approach, born out of day-to-day “grass-roots”-experience, could not be realized because of the different spheres of control

¹⁹ Here, the implementation of the CCA reveals something of the “conservation business” in Central Sulawesi. Although the watershed management is included in the CCA, the CSIADCP project facilitated the signing of a separate watershed management agreement called *Kesepakatan Konservasi Masyarakat Adat* in the villages. Despite its reference to *adat*, the agreement means the realisation of government regulation PP 31 / 2001, § 27 and fulfils major obligations of the conservation law UU 5/1990. After TNC established a co-ordinating organisation at the county level (LKK), CSIADCP established a similar organisation in form of the FWP at the same level. In order to avoid competition between the two organisations, TNC was forced to abandon the LKK as a supervising institution with the FWP being the exclusive organisation at the county level. CSIADCP in turn abandoned its plans to install a watershed management organisation on the village level.

which put the LLNP under the jurisdiction of the Ministry of Forestry and other categories of forest under control of the regencies. Officials of the regional Park Authority in Palu confirmed that the National Park is “national”, not “communal” and that village rules under UU 32/2004 can only regulate forest managed by the regency, not conservation areas which are *de jure* excluded from decentralisation. Far from being confined to the ministries in the capital, sectoral legislation led by particular interests becomes directly felt on the ground level. The development of an overarching Natural Resource Management Act becomes one of the highest priorities if a co-evolutionary equilibrium between Indonesia’s diversity-rich communities and natural resources is to be achieved.

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