



COMPARATIVE STUDY

On Rights Recognition and Permits Procedures in Forest areas*
for Communities and Companies

BY. ANDIKO

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**On Rights Recognition and Permits Procedures in Forest areas*
for Communities and Companies**

** for forest resources and forest area utilization*

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Glossary

AMDAL	:	Analisis Mengenai Dampak Lingkungan [Environmental Impact Assessment]
APL	:	Areal Penggunaan Lain [Other Land Use]
BPDAS-PS	:	Bina Pengelolaan Daerah Aliran Sungai dan Perhutanan Sosial [Development of Watershed Management and Social Forestry]
BUMN	:	Badan Usaha Milik Negara [State-owned Enterprises]
BUMS	:	Badan Usaha Milik Swasta [Privately Owned Enterprises]
CSO	:	Civil Society Organization
DITJEN	:	Direktorat Jenderal [Directorate General]
DKI Jakarta	:	Daerah Khusus Ibukota Jakarta [Jakarta capitale city]
DR	:	Dana Reboisasi [Reforestation Fund]
HD	:	Hutan Desa [Village Forest]
HGU	:	Hak Guna Usaha [Cultivation/Land Use Rights]
HKm	:	Hutan Kemasyarakatan [Community Forestry]
HPHD	:	Hak Pengelolaan Hutan Desa [Forest Village Management Rights]
HPK	:	Hutan Produksi Konversi [Production Forest Conversion]
HTI	:	Hutan Tanaman Industri [Industrial Forest Plantation]
ICW	:	Indonesia Corruption Watch
IDR	:	Indonesian Rupiah
IIUPHHK	:	Iuran Izin Usaha Pemanfaatan Hasil Hutan Kayu [Timber Use Permit Fee]
IIUPHHK-HD	:	Iuran Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Desa [Forest Village Timber Use Permit Fee]
IIUPHHK-Hkm	:	Iuran Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Kemasyarakatan [Community Forestry Timber Use Permit Fee]
IIUPHHK-HTR	:	Iuran Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Tanaman Rakyat [Community Plantation Timber Permit Fee]
IIUPHHK-RE	:	Iuran Izin Usaha Pemanfaatan Hasil Hutan Kayu Restorasi Ekosistem [Ecosystem Restoration Timber Use Permit Fee]
IUP	:	Izin Usaha Perkebunan [Plantation Business Permit]
IUP-B	:	Izin Usaha Perkebunan Budidaya [Cultivating Plantation Business Permit]
IUP-P	:	Izin Usaha Perkebunan Pengelolaan [Management Plantation Business Permit]
IUPHHK-HA	:	Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Alam [Business Permit for Use of Natural Timber]
IUPHHK-HD	:	Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Desa [Forest Village Timber Use Permit Fee]
IUPHHK-Hkm	:	Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Kemasyarakatan [Community Forestry Timber Use Permit Fee]
IUPHHK-HTI	:	Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Tanaman Industri [Industrial Forest Plantation Timber Use Permit]
IUPHHK-RE	:	Izin Usaha Pemanfaatan Hasil Hutan Kayu Restorasi Ekosistem

IUPHKm	: Izin Usaha Pemanfaatan Hutan Kemasyarakatan [Use Permit for Community Forestry]
IUP-P	: Izin Usaha Perkebunan Pengelolaan [Plantation Management Permit]
KLHK	: Kementerian Lingkungan Hidup dan Kehutanan [Ministry of Environment and Forestry/MoEF]
KPA	: Konsorsium Pembaruan Agraria [Agrarian Reform Consortium]
KPH	: Kesatuan Pengelolaan Hutan [Forest Management Unit]
KTP	: Kartu Tanda Penduduk [Identity Card]
LSM	: Lembaga Swadaya Masyarakat [NGO Non-Governmental Organization]
NPWP	: Nomor Pokok Wajib Pajak [Tax ID Number]
MHA	: Masyarakat Hukum Adat [Indigenous Peoples]
PERDA	: Peraturan Daerah [Local/Regional Regulation]
Pokja PPS	: Kelompok Kerja Percepatan Perhutanan Sosial [Working Group to Accelerate Social Forestry]
PNBP	: Penerimaan Negara Bukan Pajak [Non-tax State Revenue]
PNT	: Penggantian Nilai Tegakan [Timber Replacement Value]
PSDH	: Provisi Sumber Daya Hutan [Forest Resource Provision]
PROLEGDA	: Penyusunan Program Legislasi Daerah [Preparation of Local Legislation Program]
PSKL	: Perhutanan Sosial dan Kemitraan Lingkungan [Social Forestry and Environmental Partnership]
RAPERDA	: Rancangan Peraturan Daerah [Draft of Local/Regional Regulation]
RE	: Restorasi Ekosistem [Ecosystem Restoration]
RLPS	: Rehabilitasi Lahan dan Perhutanan Sosial [Land Rehabilitation and Social Forestry]
RO	: Rencana Operasional [Operational Plan]
RU	: Rencana Umum [General Plan]
SK	: Surat Keputusan [Governmental Decree]
SKPD	: Satuan Kerja Perangkat Daerah [Regional Work Units]
THPB	: Tebang Habis dengan Permudaan Buatan [Clear Cutting with Artificial Regeneration]
UKL	: Upaya Pengelolaan Lingkungan [Environmental Management]
UPL	: Upaya Pemantauan Lingkungan [Environmental Monitoring]
UU	: Undang-Undang [Laws]

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Comparative Study On Rights Recognition and Permits Procedures in Forest areas For Communities and Companies

I FORWARD

I. Background

Indonesia is a developing country that is rich in natural resources, and consequently the Indonesian government continues its efforts to improve models of natural resources use. According to Article 33 of the Constitution of 1945, models employed for use of natural resources must serve the purpose of prosperity for the people of Indonesia.

Forest Law No. 41 of 1999 categorizes forests based on functions; i.e. Conservation Forests, Protected Forests and Production Forests. Accordingly, access to forest utilization may be granted to individuals, cooperatives, State-owned enterprises, and private companies, in the form of permits to perform activities of area utilization, use of environmental services, utilization of forest timber and non-timber and harvesting timber and non-timber.¹

In addition to the positive effects generated by the Forest Law No. 41 (1999), forest management has also had a negative impact on forest sustainability and has created numerous conflicts. According to the data from the Ministry of Environment and Forests, in 2014 out of a total of 124 million hectares of land designated as forest land, 48% of said land currently does not constitute forest in the real sense (KLHK, 2014).

Meanwhile, according to KPA's data recorded at the year-end of 2016, at least 450 agrarian conflicts have taken place throughout 2016, covering an area of 1,265,027 hectares and involving 86,745 households spread across the various provinces in Indonesia. This marks a significant increase over the previous year, the figures have almost doubled the 252 agrarian conflicts recorded in 2015. On average, every day agrarian conflicts occurred within an area of 7,756 hectares that was disputed. In other words, communities lost about nineteen times the area of DKI Jakarta Province.

Looking at the different sectors contributing to the total area of 1,265,027 hectares in conflict, the plantation sector ranks first with 601,680 hectares. Followed by the forestry sector, covering 450,215 hectares; the property sector covering an area of 104,379 hectares; the oil and gas sector with an area of 43,882 hectares; the infrastructures sector covering an area of 35,824 hectares; the mining sector with 27,393 hectares; and the coastal sector with an area of 1,706 hectares, and finally agriculture, with an area of 5 hectares. There has been a two-fold increase from the previous year in conflict related to the plantation sector.²

The root cause of conflicts over natural resources and agrarian issues usually stems from inequality of land tenure and control over natural resources. This inequality causes uncertainty concerning the 'rules' set forth by the relevant authorities. Therefore, this study attempts to present a comparison of the rights recognition and permit procedures for the

¹ Government Regulation No. 6 year 2007 and Government Regulation No. 3 year 2008.

² <http://www.kpa.or.id/news/blog/kpa-launching-catatan-akhir-tahun-2016/> retrieved 20 January 2017

utilization of natural resources, specifically forests, for companies and communities.

II. Identifying the problems

Access to the utilization of natural resources for all parties must be given in a fair and equitable manner as often it has been demonstrated that imbalances between parties in accessing space results in the emergence of environmental and social issues. Based on that idea, this study tries to answer the following questions:

1. Regarding the rights recognition and permit process for access and utilization of natural resources, how does the procedure differ for private enterprises compared to communities?
2. In terms of natural resources utilization, what is the proportion of total land in forest area allocated for private enterprises compared to that allocated for communities?

This study was originally conceived to investigate the implementation of regulations related to Social Forestry (Forest Village & Community Forestry), however upon start-up of this study the government passed a new regulation on 7 November 2016, namely the Ministry of Environment and Forestry Regulation No. P.83/ MENLHK/SETJEN/KUM.110/2016 on Social Forestry. This new regulation embraces the spirit of change towards simplification, acceleration and transparency in the permit process for social forestry, however as it is still new, this regulation has yet to be implemented in the field. Therefore, the cases used as examples for Village Forests and Community Forestry (HKM) schemes in this study are based on the old regulation.

III. Objective

The objective of this study is to understand the differences in practice as experienced by the business world compared with the experiences of communities, namely farmer organizations, villagers and indigenous peoples, in securing their rights and maintaining access to lands and forests.

IV. Methodology

This research method uses the comparative research method approach. According to Nazir (2005: 58), comparative research is a form of descriptive study to find answers about the fundamental cause and effect by analyzing the factors that generate the occurrence or the emergence of a particular phenomenon. The object compared in this study is about differences in the rights recognition and permits procedures for utilization of forests and lands as experienced by companies or privately owned enterprises and communities, namely farmer organizations, local communities/villages and Indigenous Peoples. The division of the two groups being compared is a representative of the principal parties involved in agrarian and natural resources conflicts.³

Comparisons in this study are related to rights recognition and use permits procedures for Industrial Forest Plantation Permits, Ecosystem Restoration Permits, Palm Oil Plantations Permits, Community Forestry Permits, Village Forest Permits and Recognition of Rights

³ Huma, in 2013, using HuMaWin documentation system, identified the parties labeled communal. Indigenous Peoples and local communities were deliberately differentiated to explain the differences in historical claims related to land conflicts. While farmers' groups were identified as the parties related with the company through contractual relationships. The third party identified are the victims of the 224 conflicts recorded. Private enterprise / corporations were named as having the highest frequency of conflicts with 158 recorded conflicts, see "Outlook Konflik Sumber Daya Alam dan Agraria Tahun 2013" ["Outlook of Natural Resources and Agrarian Conflicts Year 2013"] Huma, 2014.

over Indigenous Forests.

The data collected can be divided into two groups, namely primary data and secondary data. Primary data was collected based on reports originating from organizations experienced in assisting communities to access social forestry, while secondary data collection was collected through tracing of regulatory policy documents and correspondence archives.

V. Scope

The focus of this study is an analysis of the granting of natural resources use permits to private enterprises in the form of Industrial Plantation Forest Permits, Ecosystem Restoration Permits, Oil Palm Plantation Permits, as well as natural resources utilization permits given to the communities in the form of Community Forestry, Village Forest, and Rights Recognition over Indigenous Forests.

The various indicators or factors analyzed in the rights recognition and permits processes under the scope of this study are as follows: 1. Pre-conditions to determine the legal subjects eligible for permits and rights recognition; 2. The stages in the procedure of obtaining permits and rights recognition; 3. Agencies or authorities that must be passed to obtain permits and rights recognition; 4. The costs that may be incurred in obtaining permits and rights recognition; 5. The length of time in obtaining permits and rights recognition; 6. The period of validity of permits and rights granted; 7. The parties responsible for supervision and control of permit and rights holders and; 8. The forest area superficals allocated to companies and communities throughout Indonesia under the various schemes compared.

This brief study delved into thematic studies conducted by ASM Law Office for Industrial Forest Plantations and Palm Oil Plantations, Mangara Silalahi (Burung Indonesia) for Business Permit Utilization of Timber-Ecosystem Restoration (IUPHHK-RE) and field experience from Akar Foundations for the process of Community Forestry Utilization Permits, and from Scale Up Riau for the process of Village Forest Permits. As for Indigenous Forests, ASM Law Office conducted a study based on in-depth interviews with the Epistema Institute represented by Malik, and HUMA represented by Dahniar Andriani.

VI. Writing Framework

The following topics form the framework for this brief study

1. Requirements for recognition as legal subject for obtaining permits and rights recognition,
2. The number of stages in the permit and rights recognition processes,
3. The number of agencies involved and must be passed in obtaining a permit and rights recognition,
4. The total costs involved in obtaining a permit and rights recognition,
5. The amount of time required in obtaining a permit and rights recognition,
6. Period of validity of permits and rights granted,
7. The number of agencies entitled to supervise, and
8. The forest area superficals allocated to corporations and communities.

II DISCUSSION

This section will present a comparison of the permit and rights recognition procedures between companies and communities focusing on the following issues: 1) requirements for recognition as a legal subject for obtaining permits and rights recognition, 2) stages of the permit and rights recognition processes, 3) number of agencies involved and must be passed in obtaining a permit and rights recognition, 4) total costs involved in obtaining a permit and rights recognition, 5) amount of time required in obtaining a permit and rights recognition, 6) period of validity of permits and rights granted 7) then umber of agencies with supervision authority, and 8) the forest area allocated to the corporations and the communities.

1. Preconditions for Recognition as Legal Subject

Pre-conditions for recognition as a 'Legal Subject' are related to the institutional form legally required by regulations for obtaining such permits and rights, as well as related administrative or other requirements attached to acquire such recognition. Below is a comparison of the stipulated requirements.

Table 1.1 shows that the sufficient pre-condition for private enterprises engaged in palm oil plantations, industrial forest plantation and ecosystem restoration to be recognized as a legal subject, to complete the administrative requirements in the form of company documents in accordance with the type of business conducted as stipulated in the Law on Limited Liability Company No. 40 of 2007.

Business capitalization is not limited to Indonesian investors but is also available to foreign investors. The self-interests of the company is that of well-planned, effective and efficient management in accordance with the interests of the investors, with the obligation to obey and submit to the stipulated regulations in effect.

In order for the permit procedures to be available to the public when applying for community forestry and village forest permits, the applicants must qualify as Indonesian citizens who live in and around forest zones, be a community with a communal based social system whose livelihood depends on the forest and whose activities can affect the forest ecosystem. The permit application by the community can be done as a group in the form of a group of farmers, farmer cooperative/organization/association, as a village and as a group of Indigenous Peoples.

Table 1.1 Preconditions for Recognition as a Legal Subject prior to Application for Permits and Rights Recognition

IUP (Plantation Permit) Palm Oil	Industrial Forest Plantation (HTI)	Ecosystem Restoration (RE)	Community Forestry (Hkm)	Village Forest (HD)	Indigenous Forest (Hutan Adat)
<p>Form of Corporations with the requirements ;</p> <ol style="list-style-type: none"> Form of Institutional Private Owned Enterprises of Indonesia Deed of Incorporation and recent changes listed in Kemenkumham The capital ownership composition Designation of Members of the Board and the Business Sector of the Company Tax ID Number [NPWP] Place of Business Permit 	<p>Form of Institutional Private Owned Enterprises of Indonesia, State-Owned Enterprises, Regional Owned Enterprises, Individual Cooperation</p> <p>Requirements for the Company:</p> <ol style="list-style-type: none"> Deed of Incorporation and recent changes listed in Kemenkumham Trading Permit Tax ID Number [NPWP] Bank References The statement of willingness to open a branch office in the work area Map of candidate Locations Technical Proposal Financial Statements 	<p>Form of Institutional Private Owned Enterprises of Indonesia, State-Owned Enterprises, Regional Owned Enterprises, Individual Cooperation</p> <p>Requirements for the Company:</p> <ol style="list-style-type: none"> Deed of Incorporation and recent changes listed in Kemenkumham Trade Permit Tax ID Number [NPWP] Bank References The statement of willingness to open a branch office in the work area Map of candidate Locations Technical Proposal Financial Statement 	<p>Individuals or local communities with the condition;</p> <ol style="list-style-type: none"> Identity Card (ID) Domicile and livelihood in forest zones Having a social community and livelihood that depends on forests Their activities may affect forest ecosystems Known by the village head In the institutional form as group of farmers or farmer organizations <p>registered as a legal entity in the District/ City Forestry Extension Agency.⁴</p>	<p>A community unit with the following requirements:</p> <ol style="list-style-type: none"> Consists of Indonesian Citizens Domicile and livelihood in forest zones Having a social community and livelihood that depends on forests Their activities may affect forest ecosystems In the form of a legal community unit Having boundaries Authority to regulate and manage the interests of the village Based on ancestral origins and local customs recognized and respected by the Government of the Republic of Indonesia Self-contained village institutions registered as a legal entity in the District/ City Forestry Extension Agency.⁵ 	<p>Indigenous Peoples or Customary Law Community with the requirements:</p> <ol style="list-style-type: none"> It has been recognized by the local government through local regulations. Evidence of a Customary Law Community must meet the following criteria: <ol style="list-style-type: none"> In the form of Community Reside in a certain geographic area Has ties to the ancestral origins Has a strong relationship with the environment Bounded to a value system that determines the economic, political, social and legal interactions. Some or all of the indigenous territory is forested Make an affidavit to establish their communal land as indigenous forest

⁴ The Law No. 23 2014 on Local Government states that each institution, group, or organization that receives grants from the government should be incorporated.

⁵ Ibid

The Village Forest should be formed from a legal community unit with long standing boundaries that are recognized and respected by the government of the Republic of Indonesia. Verification and demarcation of the territory is not an easy matter as conflicts of interest and sectoral centralism often lead to overlapping claims between village territory and forest zones, especially for forest areas previously encumbered by third party use permits or other determined management rights.

Indigenous Forests may be granted to Indigenous Peoples and Customary Law Communities with the following requirements; 1) Recognition by the local government through regional legal products; 2) Some or all of the indigenous territory is forested; and 3) Creating an affidavit to establish their communal land as indigenous forest. A Customary Law Community must meet the following criteria: a) In the form of a Community Group; b) Settled in a defined geographic area; c) Have ties at the origin of the ancestors; d) Have a strong relationship with the environment; and e) Bound to a value system that determines their economic, political, social and legal systems.

Indigenous Peoples have to formally assert their existence through the issuance of a regulation by the local parliament or a Regent decree (referred to as regional legal product). The process of obtaining regional legal products is not simple. For example, the Kajang community of South Sulawesi whose rights over their forest have just been recognized through the Determination of Indigenous Forest Decree from the Minister of Environment and Forestry SK 6746 / MENLHK-PSKL/KUM.1/12/2016,⁶ waited two years to only receive their legal status, as a preliminary step to be able to claim their customary forest. The process of recognition as Indigenous Peoples or customary law communities through regional legal products is highly dependent on the willingness of local leaders in both the executive and legislative institutions.⁷

Organizations in the form of communities and groups also face a range of constraints due to the diverse interests of individuals within the indigenous communities. A number of community meetings are necessary in finding common ground and achieving sustainable forest management agreements independently by the community as a whole. This was the case, for instance, where communities were accompanied by non-governmental organizations such as Scale-Up in Riau for Village Forest and Akar Foundation in Bengkulu for Community Forestry.

2. Stages in rights Recognition and Permits Processes

Each forest and land utilization permit or right passes through certain stages within the process. Such processes are established by a variety of related regulations as detailed in the following table:

⁶ <http://www.mongabay.co.id/2015/11/18/dua-tahun-molor-perda-masyarakat-adat-ammatoa-kajang-akhirnya-disahkan/>

⁷ Interview with Huma and Epistema 16 February 2017

Table 1.2 Stages in Obtaining Permits and Rights Recognition

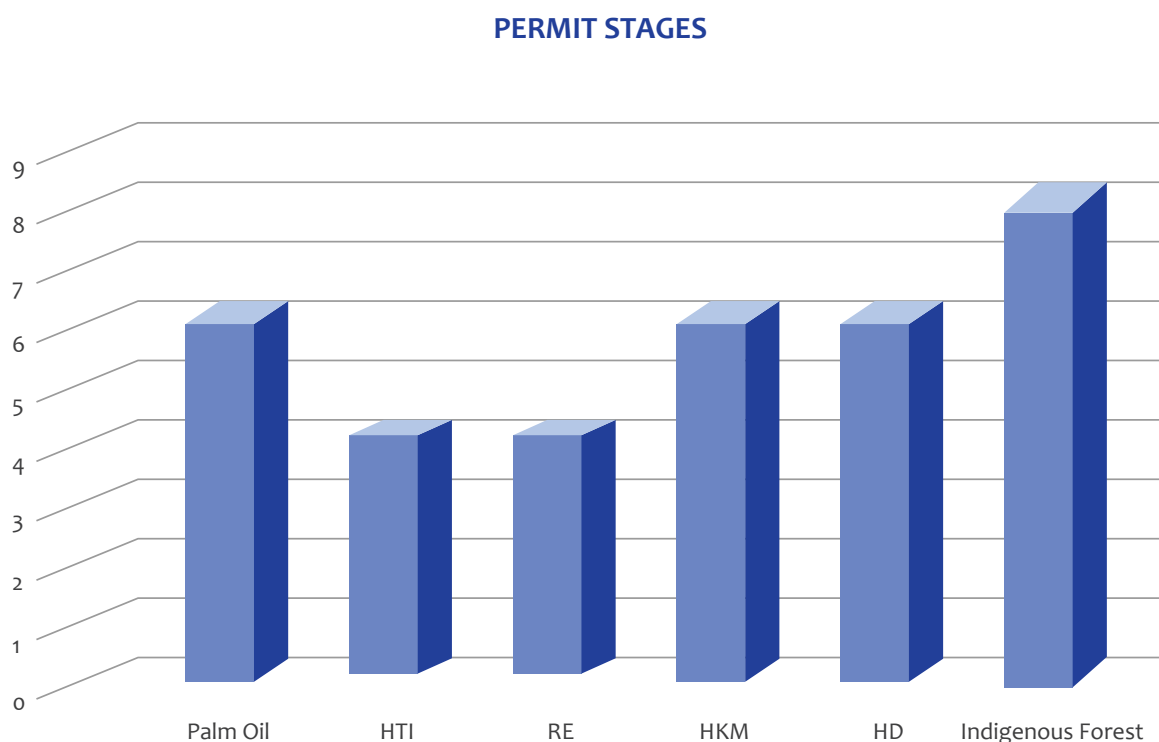
IUP (Plantation Permit) Palm Oil	Industrial Forest Plantation (HTI)	Ecosystem Restoration (RE)	Community Forestry (Hkm)	Village Forest (HD)	Indigenous Forest (Hutan Adat)
<ol style="list-style-type: none"> 1. Location Permit 2. Land Acquisition, preparation and determination of the EIA or UKL-UPL and its Environmental Permit 3. Request for forest release to MoEF for areas in production forest conversion (HPK), and macro suitability petition recommendation to the regent / governor 4. Plantation Business Permit IUP-B/IUP-P/IUP Decision 5. Timber Utilization Permit / IPK 6. HGU Certificate 	<ol style="list-style-type: none"> 1. Request IUPHHK-HTI 2. Granting Principle permit 3. Preparation of the EIA [AMDAL] or UKL-UPL and the Environmental Permit (IL) and make the geographic coordinates of prospective acreage 4. Decision IUPHHK-HTI 	<ol style="list-style-type: none"> 1. Request IUPHHK-RE 2. Granting Principle permit 3. Preparation of the EIA [AMDAL] or UKL-UPL and the Environmental Permit (IL) and make the geographic coordinates of prospective acreage 4. Decision IUPHHK-RE 	<ol style="list-style-type: none"> 1. Request IUPHkm to the regent or governor 2. Proposed determination of the work area by a regent or governor to KLHK (MoEF) 3. Verification and validation of the proposed work area by verification team of KLHK 4. Determination of Hkm Working Area 5. Granting IUPHkm 6. Granting IUPHHK-Hkm 	<ol style="list-style-type: none"> 1. Request HPHD 2. Proposed determination of working area of Village Forest by the regent or governor to KLHK (MoEF) 3. Verification and proposed work area Village Forest by verification team of KLHK 4. Determination of the work area formed 5. Granting HPHD 6. Granting IUPHHK-HD 	<ol style="list-style-type: none"> A. Through the Regional Regulation as 1. Regional Legal Products for the Recognition of Indigenous People or Land Rights includes: <ol style="list-style-type: none"> 2. Strengthening indigenous peoples and their organization 3. Mapping Indigenous Territory including the land usage 4. Proposed draft recognition of Indigenous Peoples on legislative agenda 5. Discussion of draft 6. Issuance of Bylaw on Recognition of Indigenous Peoples 7. Application for Determination of Indigenous Forests to KLHK 8. Verification and Validation by KLHK 9. Determination of Indigenous Forests by the Director General on behalf of Minister KLHK B. Through the Decree of the Head of Region as Regional Legal Products for the Recognition of Indigenous People or Land Rights includes: <ol style="list-style-type: none"> 1. Strengthening indigenous peoples and their organization 2. Mapping Indigenous Territory including the land usage 3. Application for Recognition of Indigenous Peoples to the Local Government 4. Verification and validation of Indigenous Peoples by the Committee of Indigenous People 5. Issuance of Local Government Decree on the Recognition of Indigenous Peoples 6. Application for Determination of Indigenous Forests to KLHK 7. Verification and Validation by KLHK 8. Determination of Indigenous Forests by the Director General on behalf of Minister KLHK

Based on a comparison between communities and private enterprises, there is a striking difference in the number of stages involved for permits and rights recognition, especially when compared with the stages required for Indigenous Forests recognition. The process for Indigenous Forests must pass through 8 (eight) stages which includes the recognition of the status of indigenous people through legislation or through decree by the regional head. Meanwhile the permit process for Industrial Forest Plantations or Ecosystem restoration must pass through just 4 stages.

For palm oil plantations, the company has to go through 6 major steps. However, in practice, if a company has already obtained its Plantation Business Permit / IUP, it is allowed to start business activity.

For businesses related to Industrial Forest Plantations and Ecosystem Restoration, the company will go through four stages in obtaining a permit. There is ease in monitoring the permit process in the case of companies (and applicants with Internet capability) because every stage of the process can be monitored Online at the Permit Information Services Unit of the Ministry of Environment and Forests (<http://lpp.dephut.go.id/media.php>).

Figure 1.1 Stages in the Permit Process for Palm Oil Plantation, Industrial Forest Plantation, Ecosystem Restoration, Community Forestry, Village Forest and Indigenous Forest



Regarding the stages of permit procedures for Community Forestry, Village Forest and Indigenous Forest, on-line monitoring mechanism, while available, is still in the testing phase (<http://pskl.menlhk.go.id/akps>), which makes it difficult to monitor the implementation of stages at community level. In addition, there is no alternative mechanism for such monitoring process available to people who do not have Internet access.

The experience of Akar Foundation in accompanying the Forest Community / HKm process in Bengkulu, demonstrates that considerable capacity and energy are required for communities to obtain such permits. This issue was also expressed by Agus Budhi Prasetyo,⁸ namely :

1. The process for determination of HKm working areas and IUPHKm last much longer than the specified time.
2. The mapping process is centralized while a map of the proposed HKm location is required to obtain the IUPHKm.
3. HKm is a policy aimed at granting Community Forestry management rights to groups that are not actually culture based.
4. Based on the existing rules, HKm should be facilitated by the government, but in practice in the field HKm is facilitated by NGOs with funding from donors.
5. The high requirements that must be met in preparing the General Plan (RU) and Operational Plan (RO) becomes an obstacle for the group after getting IUPHKm.

Scale Up experienced problems in the Village Forest proposal process due to overlapping claims based on permits granted in the area, although the community had a claim to tenure in the same areas. The communities proposed these areas as Village Forests because they have long been utilizing these area for their daily needs.

The area proposed by the community with assistance by Scale Up apparently had another permit holder, however no information was obtained by the community on the existence of other permits. Only later did the community discover the existence of third party's permits in the area proposed as a Village Forest in a reply letter issued by the Siak District Department of Forestry and Plantation who rejected the proposal and asked the villagers to renew the Village Forest claim, as it overlaps with permits/decrees previously issued by the Ministry of Forestry.

The rule that requires IUPHKm or HPHD may only be given on unencumbered state forest is very discriminatory, especially considering the number of cases where permits have been granted for HTI, RE, or IUP regardless of the local communities existence in the same area that have historically been used for their livelihood.

Regarding Indigenous Forest, in accordance with Article 67 of the Forestry Law, first requirement is the affirmation of the existence of Indigenous Peoples within local regulations. However, the Minister of Environment and Forestry Decree Number: P.32 / Menlhk-Sekretariat/2015 on Forests Rights, that also regulates Indigenous Forests, requires Indigenous Peoples to be recognized by regional legal products.

Regional Legal Products in its provisions, has a broader scope than Local Regulations, as specified by Article 67 on Forestry Law. Included in the Regional Legal Products, among others, are Regional Regulations, Regional Head Regulations or Regional Head Decrees. Therefore, there is an on-going debate about the basic rules that can be accepted by KLHK to establish Indigenous Forests for Indigenous Peoples. The current situation has been that KLHK can only accept Local Regulations as the basis for the recognition of Indigenous Peoples who will receive the recognition of Indigenous Forests, especially in the area of State Forest, while the Decree of the Head of the Region is only acceptable if the claimed Indigenous Forest is located in Other Use Areas (Areal Penggunaan Lain APL).⁹

⁸ <http://bp2sdmk.dephut.go.id/emagazine/index.php/seluruh-artikel/14-hutan-kemasyarakatan-HkM.html>

⁹ Interviews with Epistema and Huma 16 February 2017

Meanwhile, regional legal products regarding the recognition of Indigenous Peoples, as a pre-condition to the Indigenous Forest recognition, has a number of challenges, as expressed by Yance Arizona¹⁰ namely :

1. Regional legal products are a prerequisite for determination of Indigenous Forests, especially in conflict resolution, but the structural root causes of agrarian conflict are often associated with decisions of the central government, such as ministerial decrees on determination of forest zones, permits, lease rights and other concessions.
2. The process of these legal products formation is more politically nuanced than a merely administrative process, and because in the vortex of interests of local politicians there is sometimes a lack of adherence to the concept of public service neutrality.

3. Number of Agencies Encountered in the Rights Recognition and Permits Processes

The number of agency's levels encountered in the permit and rights recognition process is similar for the company and the community. Both will be in contact with the various agencies at the district, provincial and central levels.

The following table is an overview of the bureaucratic structures that must be passed in each permit and rights recognition process based on legislation. But when examined more deeply, the stated amount tends to grow due to the layers of bureaucracy that exist at every stage within bureaucratic structures generally, as seen in the regulations detailed below.

Based on the side table, the acquisition of Palm Oil Permits must pass at least 12 major government agencies, and for the acquisition of the Industrial Forest Permit, at least eight government agencies at local level and other bureaucracies in the Ministry of Forestry. This amount is somewhat similar with bureaucracies that must be passed by Ecosystem Restoration Permits. The process is however simplified, in the case of Palm Oil Plantations, where the plantation area is located in an APL area and in just one province, as the process only involves agencies at the level of local government and the provincial government, hence the central government level is avoided.

In practice, the problems encountered by companies in the permit issuance include the lengthy process involved, multiple levels of bureaucracy and uncertainty as to the time when the permit is to be issued. The negative impact of this situation experienced by forestry based companies was recognized by the Government and in September 2015 the Ministry of Environment and Forestry deregulated and simplified the permitting process.¹¹

¹⁰ Arizona Yance, SH, MH., Pj. Executive Director of the Epistema Institute "Refleksi Pendampingan Pembentukan Produk Hukum Daerah mengenai Masyarakat Adat dan Wilayah Adat", Papers submitted in Workshop "Menyusun Strategi dan Gerakan Bersama Resolusi Konflik Agraria di Kawasan Hutan" (Develop Strategy and Conflict-Joint Resolution Agrarian Movement in Forest Zones) (Learning from Multi-party Experiences) organized by Sajogyo Institute, Cico Resort, Bogor, 10-11 June 2016.

¹¹ <http://www.mongabay.co.id/2015/09/30/perizinan-di-sektor-kehutanan-dan-kawasan-industri-jadi-lebih-mudah-kabar-baik-atau/>

Table 1.3 Number of Agencies Encountered in Obtaining Permits and Rights Recognition

IUP (Plantation Permit) Palm Oil	Industrial Forest Plantation (HTI)	Ecosystem Restoration (RE)	Community Forestry (Hkm)	Village Forest (HD)	Indigenous Forest
a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Plantation Office 4. District Forestry Office 5. District/City Environmental Impact Management Agency 6. The National Land Agency 7. Provincial Plantation Agency 8. Provincial Forestry Agency 9. Provincial Environmental Impact Management Agency 10. The Regional Office of the National Land Agency 11. District Government 12. Provincial Government b. Agencies at Central Level: Ministry of Environment and Forestry (For Release from Forest Area decree if the location of the plantation is within the conversion forest)	a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Forestry Agency 4. District / City Environmental Impact Management Agency 5. Provincial Forestry Agency 6. Provincial Environmental Impact Management Agency 7. District Government 8. Provincial Government b. Agencies at Central Level: Ministry of Environment and Forestry	a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Forestry Agency 4. District / City Environmental Impact Management Agency 5. Provincial Forestry Service 6. Provincial Environmental Impact Control Agency 7. District Government 8. Provincial Government b. Agencies at Central Level: Ministry of Environment and Forestry	a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Forestry Office 4. District Forestry Bureau 5. District Local Government Secretary 6. Related Regional Work Units (SKPD) 7. Regent 8. BPKH (in Protected Forest Zones) 9. Provincial Forestry Service 10. Governors; and 11. Regency or the Provincial Parliament (if the legal recognition product is a local regulation) b. Agencies at Central Level: 1. The Ministry of Environment and Forestry 2. Presidential Staff Office in the case of Indigenous Forests Pandumaan Sipituhuta	a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Forestry Office 4. District Forestry Bureau 5. District Local Government Secretary 6. Related Regional Work Units (SKPD) 7. Regent 8. BPKH (in Protected Forest Zones) 9. Provincial Forestry Service 10. Governors; and 11. Regency or the Provincial Parliament (if the legal recognition product is a local regulation) b. Agencies at Central Level: 1. The Ministry of Environment and Forestry 2. Presidential Staff Office in the case of Indigenous Forests Pandumaan Sipituhuta	a. Agencies at Local Level: 1. Village Government 2. Municipal Government 3. District Forestry Office 4. District Forestry Bureau 5. District Local Government Secretary 6. Related Regional Work Units (SKPD) 7. Regent 8. BPKH (in Protected Forest Zones) 9. Provincial Forestry Service 10. Governors; and 11. Regency or the Provincial Parliament (if the legal recognition product is a local regulation) b. Agencies at Central Level: 1. The Ministry of Environment and Forestry 2. Presidential Staff Office in the case of Indigenous Forests Pandumaan Sipituhuta

Table 1.4 Deregulation and Simplification of Permits for Forestry Sector Investment

Deregulation of Permit To Facilitate Investments in the Forestry Sector	Simplification of 14 Permit Types into 6:
<ol style="list-style-type: none"> 1. Permit Borrow and Use of Forest Zone Exploration Phase 2. Permit Borrow and Use of Forest Zone Stages of Production Operations 3. Business Permit for Use of Natural Timber (IUPHHK-HA) 4. Industrial Forest Plantation Timber Use Permit (IUPHHK-HTI) 5. Timber Use in Ecosystem Restoration Forest Permit (IUPHHK-RE) 6. Extension of Business Permit for Use of Natural Timber 7. Permit Primary Industry Timber Forest Product above 6,000 m³ / year 8. Permit Expansion of Industry Business Primary Permit for Timber Forest Product over 6000 m³ / year 9. Eco tourism Provision of Facility Business Permit 10. Services Utilization for Eco tourism Permit 11. Permits to Use Water and Energy from Water 12. Permits to Use Geothermal 13. Permit for Conservation Institution 	<ol style="list-style-type: none"> 1. Permit Borrow and Use of Forest Zone by simplifying permit process by changing Permenhut P.9 / Menhut-II / 2015, simplified in the permit without Principle permit. Terms strict, and completed in 12 to 15 days. 2. Release of Forest Zone permit by streamlining the release process with change of Regulation P.33 / Menhut-II / 2010 on Procedures for Release of Production forest that can be Converted, Jo. P.28 / Menhut-II / 2014. Permit simplification as for borrow and use permit. 3. Timber Utilization Business Permit by simplifying permit process by changing Permen LHK P.9 / Menlhk-II / 2015, with a time frame reduction to a maximum of 15 working days into decree or rejection. 4. Forest Product Primary Industry Permit by simplifying permit process by changing Permen LHK P.13 / Menlhk-II / 2015. 5. Utilization Permit for Environmental Services in Protected Areas by simplifying permit process 6. Permit for Conservation Institution by simplifying permit process.

The number of agencies' levels involved in the permit process for communities is similar to that of private enterprise. Both will need to deal with regulatory agencies at the district, provincial and central government levels. In fact, according to Kemitraan Organization's records, the permit system still relies on a burdensome bureaucratic mechanism. When broken down, the bureaucracy for permits and determination of the working area of Community Forestry and Village Forests in the Ministry of Forestry consists of three phases; pre-verification, verification, and post-verification. In the stage of pre-verification, the proposed document must pass at least eleven desks in two directorate generals (DG BPDAS-PS and DG Planning). Meanwhile, the post-verification stage of the permit process must go through eighteen desks, scattered among the Directorate General RLPS, Land Planning, Bureau of Legal Affairs, the Secretary General and the Minister of Forestry. Thus the process for permit and determination of the working area of Community Forestry and Village Forests must cross at least 29 desks scattered across four level one echelons institutions and a minister.¹²

Based on the Akar Foundation's experiences, to process a permit for Community Forestry (HKm) they have to deal with ten stages and institutional bureaucracies ranging from the local to the central level in the Ministry of Environment and Forestry. This number expands due to inter-bureaucracy complexity at every stage. Meanwhile, the experience of Scale Up in assisting communities to obtain Village Forest approval stalled at the district level, because the land being applied for was encumbered by overlapping permits priorly issued by the Ministry of Forestry and the absence of district level spatial planning.

Regarding the Indigenous Forest, there are two major phases involving a number of agencies and government institutions. In the first stage, the Indigenous Peoples community must go

¹² Kemitraan Policy Paper No. 4/2011

through the bureaucratic procedures for recognition as an entity of Indigenous Peoples. This process is done through formulation of the Regional Regulation or Decree of the Regional Head. The second stage is obtaining the recognition of the Indigenous Forest. Rights recognition over an Indigenous Forest was granted for the first time at the end of 2016. Since then, recognition in KLHK procedure is evolving and has been heavily influenced by non-technical factors and negotiation. A number of agencies and institutions that must be faced are often not those with direct authority in the administration of the recognition of Indigenous Forests. For example, for the case of Indigenous Forest of Kemenyan Pandumaan in North Sumatra, the applicants had to engage in lengthy discussions with the Office of the Presidential Staff, who technically have nothing to do with the administrative process for recognition of Indigenous Forests.

4. Cost Incurred in the Rights Recognition and Permits Process

The permit process costs must be paid by the permit applicant. For applicants seeking a HTI Permit (IUPHHK-HTI), the regulation provides that the permit fees charged are a non-tax revenue form of fee (PNBP) for business permit for timber utilization (IUPHHK) with the amount determined in accordance with the legislation and informed to the applicant at the integrated permit counter.¹³ Timber Forest Product Utilization Permit in Forest Plantations with Artificial Regeneration Systems (THPB) fee per permit per hectare per year is USD \$ 19 (IDR 250.00).¹⁴ Meanwhile, for Ecosystem Restoration Permit, (IUPHHK-RE), the fee on permits for businesses engaged in utilization of timber forest products through Ecosystem Restoration (IUPHHK-RE) by region is: a). Sumatera, Sulawesi and Papua, USD \$ 0.14 (IDR 1,900), per permit per hectare per year, b) Kalimantan and Maluku Islands, namely USD \$ 0.19 (IDR 2,500), per permit per hectare per year, and c) the Nusa Tenggara region USD \$ 0.14 (IDR 1,500), per permit per hectare per year.¹⁵

Procedures associated with the release of forest land for Palm Oil Plantations in areas that are within the area of Converted Production Forest is free of charge. But if there is standing timber, the applicant must procure a timber cutting permit and pay the Stand Replacement Value (PNT) of the standing timber, which is one of the obligations other than the Forest Resource Provision (PSDH) and the Reforestation Fund (DR). Stand Replacement Value is determined by the formula of 100% times the benchmark price.¹⁶

Information on costs incurred for exploitation of natural resources permits procedures is limited. In theory, all the formalities, both for companies and communities, are largely free of charge. But unofficial costs in the form of bribery frequently are incurred. Private investors have a greater financial capacity compared to communities, allowing businesses easier access to permits on utilization of natural resources.

There is some information related to the cost of easing access for permits in Palm Oil Plantations. First, in the case of PT Hudaya Inti Plantation / PT Cipta Cakra Murdaya in Buol, the Court revealed the value of bribes for permits for Palm Oil Plantations covering an area of 4,500 hectares in one agency (District / Regent) to be 1 billion IDR (USD \$ 75,350) or ± IDR 220,000 (USD \$ 17) / ha. Also, ICW Research in West Kalimantan indicated the value of bribes for Palm Oil Plantations permits reached 2.6 million IDR to 5 million

¹³ Regulation of the Minister of Forestry of the Republic of Indonesia Article Number: No.P.31 / Menhut-II / 2014 on the Procedures for Granting and Extension of the work area Utilization Permit of Timber Forest Products in Natural Forests, Utilization Permit of Timber Forest Ecosystem Restoration or Permit Utilization of Wood Industrial Plantation forest in Production forest.

¹⁴ Indonesian Government Regulation No. 12 Year 2014 about the Type and Tariff for Non-Tax Revenues Applicable within the Ministry of Forestry.

¹⁵ Ibid

¹⁶ Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.62 / Menlhk-Sekretariat / 2015 About Timber Utilization Permits

IDR per hectare, which could reach up to 7.5 million IDR per hectare (about USD 580) until the deliverance of Land Use permit/HGU.

Related to community access to forest management, permit costs such as Timber Forest Products Utilization in Community Forest Plantation Permit Fee (IUPHHKHTR), Timber Forest Products Utilization in Community Forestry Permit Fee (IUPHHK-HKm), Timber Forest Products Utilization in Village Forest Permit Fee (IUPHHK-HD) is IDR 2,600 per hectare per permit.¹⁷

Based on the provisions mentioned above, permit fees for utilization of forest timber products are higher for communities than for businesses, but communities have to pay these fees only once at the beginning. However financial capacity of communities is much lower than for companies.

According to the regulations, there is no official charge for the process of the permit. In practice however, before communities can process permits for either IUPHHK Community Forestry or IUPHHK Village Forest, there are costs involved in the preparation process prior to the granting of management rights over Community Forestry or Village Forest. For Community Forestry, cost disbursed by the Akar Foundation in the preparation phase of the permit application was around IDR 150,000 / ha / month. As for the Village Forest, permit application preparation costs covered by Scale Up for Penyengat Village was around IDR 400 million for an area of 16,000 hectares.

Regarding Indigenous Forests, communities are not charged to obtain rights over their Indigenous Forests in accordance with legal provisions. On the contrary, for the utilization of timber and non-timber forest products, the Ministry of Forestry and local governments must provide incentives in the form of exemptions from timber taxes and fees payments for environmental services.¹⁸

In practice, the cost required for assisting an Indigenous Peoples community in the recognition process is substantial, including the process of preparation of administrative documents, lobbying and mobilization to push for rights recognition. However, organizations involved in such assistance cannot accurately estimate the overall cost incurred in preparation phase, considering that such assistance is a fluid element potentially requiring years of work. For example, in the case of the Indigenous Kajang Community, starting from the indigenous community recognition legal process up to the granting of rights over the indigenous forest, it required about 5 years of supporting work, and a longer time was needed in the case of the Pandumaan Sipitu Huta Community.

5. Duration of Rights Recognition and Permits Processes

Regulations stipulate the permit time frame for both private enterprises and communities applying for forest management, forest utilization and plantation permits. However, there is always a gap between the stated duration of time and the actual time elapsed before finalization of the permit process. The table below is a summary of the duration of the permit and rights recognition process, both as stated in the regulations and in practice:

¹⁷ Indonesian Government Regulation No. 12 Year 2014 about the Type and Tariff for Non-Tax Revenues Applicable within the Ministry of Forestry.

¹⁸ Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.32 / Menlhk-Sekretariat / 2015 About Forest Rights

Table 1.5 Duration of Permits and Rights Recognition Processes

No	Activity	Based on Regulations	In Practice
1	Palm Oil Plantation	Formally based on Regulation ± 280 Days.	In a number of cases, duration is as long as 4 years.
2	Industrial Plantation Forest (HTI)	329 working days based on Forestry Ministry Regulations P.31/Menhut-II/2014	In many cases, the process requires 1.5 to 2 years time.
3	Ecosystem Restoration ¹⁹	329 working days based on Forestry Ministry Regulations P.31/Menhut-II/2014	PT REKI, who sought a permit prior to establishment of Regulation P.31/Menhut-II/2014 spent around 4 years in the permit process.
4	Community Forestry (HKm)	<ul style="list-style-type: none"> According to Forestry Ministry regulation P.88/Menhut-II/2014 determination of work area HKm, 90 working days by the Forestry Ministry starting from receipt of application from the regent/ mayor. IUPHKM publication, maximum 90 working days from determination of HKm work area. IUPHHK HKM publication is 48 working days from receipt of application. 	In the case of HKm in Bengkulu province, 6 years elapsed in the processing of all the needed permits.
5	Forest Village	<ul style="list-style-type: none"> Ministry Regulation No. P.89/ Menhut-II/2014 on Village Forests establishes the time frame for determination of Village Forests up to 90 working days and handling of HPHD in the Forestry Ministry as 90 days from the receipt of the request from the regent / mayor. IUPHHK-HD application to the Governor, maximum 48 days 	<ul style="list-style-type: none"> In the case of the Penyengat Village permit application, the stage for local government recommendation took 1 year resulting in refusal of the needed recommendation. In the case of permits for the Segamai Village and Serapung Village it took 3 years to reach the stage of the working area determination of the Village Forest.

6	Indigenous Forest	<ul style="list-style-type: none"> The period of time in the permitting process that begins from the recognition of indigenous community existence by local governments up to the stage of verification and validation by the Ministry of Environment and Forests is not determined exactly in the rules regarding the determination of Indigenous Forests. Indigenous Forest determination process in the Ministry of Environment and Forestry done within 14 working days from the results of verification and validation completed. 	<ul style="list-style-type: none"> In the case of Kasepuhan Indigenous Forests, time required was approximately 15 years for preparation of indigenous peoples status and the establishment of indigenous forest. In the case of Ammatoa Kajang Indigenous Forests, approximately 4 years required in the process of local regulation issuance until the establishment of indigenous forest, not including the time needed for the internal preparation of indigenous peoples.¹⁸
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The above table gives an idea of the inconsistencies between the duration stated in regulations and the actual time required. While in practice this situation causes a number of practical problems for the applicants, businesses have the capacity to pressure the government to simplify and shorten the duration of the permit process. However, communities who have a limited capacity stand the chance of losing their application for forest management permits.

In cases of Social Forestry and Indigenous Forests, many non-technical factors can affect the process and make the duration longer than stated in the regulations, especially in cases where in the proposed areas, permits have previously been granted to companies.

In the case of Indigenous Forest of Pandumaan Sipitu Huta in North Sumatra, the proposed area is a region previously encumbered with a land use permit held by PT. Toba Pulp Lestari. As a result, it took time to remove the area under business permit by revising the company's Annual Work Plan (RKT), along with a map of their area.

This case is also unique: the ministerial decree recognizing the existence of the Indigenous Forests provides a new basis for claiming territorial rights for Indigenous Peoples; however, even though the area in this case was released from PT. TPL concession, the existence of the Indigenous Pandumaaan Community has not yet been acknowledged in local regulations. As a result, the Indigenous Pandumaaan Community will require a longer time than other indigenous communities to obtain recognition of their right to their Indigenous Forests.

6. Period of Validity for Rights and Permits

The period of validity for permits and rights is the period where permits are given for management or utilization of the forest zone. The following table compares the period of validity for various permits and rights.

¹⁹ Application procedures IUPHHK-HTI and IUPHHK-RE is set in the same regulations, namely the Minister of Forestry Regulation No. No.P.31 / Menhut-II / 2014

²⁰ Interview with Huma and Epistema on 16 February 2017

Table 1.6 Period of Validity for Permits and Rights granted

No	Activity	Permit or Right Validity Period
1	Palm Oil Plantation Business	<ul style="list-style-type: none"> 35 years initially with a single extension of 25 years.
2	Industrial Forest Plantation	<ul style="list-style-type: none"> 60 years initially with a single extension of 35 years.
3	Ecosystem Restoration	<ul style="list-style-type: none"> 100 years without extension.
4	Community Forestry	<ul style="list-style-type: none"> 35 years with possibility for extension, however there is no clarification as to the maximum number of extensions.
5	Village Forest	<ul style="list-style-type: none"> 35 years with possibility for extension, however there is no clarification as to the maximum number of extensions.
6	Indigenous Forest	<ul style="list-style-type: none"> As long as there is the existence of indigenous peoples on the territory.

The validity period of the permits granted to businesses is longer than that specified for communities, even though the permits are for similar purposes. Companies engaged in the Industrial Forest Plantations business obtain a permit with a validity period of 60 years, and 100 years are granted to the companies engaged in Ecosystem Restoration. In comparison, the validity period for communities is only 35 years, even though the obligation of monitoring and evaluation is the same, i.e. once a year and once every five years.

When an Indigenous Forest is recognized, government policies set the validity period of indigenous forest management to be without limitation in time, as long as there are indigenous peoples on the territory designated as indigenous forest. Regulations allow the government to provide compensation without negating the existence of Indigenous Peoples if ever the government has other priorities for Indigenous Forests in the future. However, such a requirement essentially stating that no indigenous people equals no Indigenous Forests obviously opens up the possibility for the denial of recognition of indigenous groups in order to deny establishment of Indigenous Forests.

7. Supervision and Control of Rights and Permit Holders

Supervision and control of permit and right holders is very important for achieving the purpose of the permit or right. The following government institutions have responsibility to provide supervision or control at different levels and in accordance with their authority.

Table 1.7 Supervision and Control of Permit and Rights Holders

No	Activity	Supervisory Authority
1	Palm Oil Plantation Business	<ul style="list-style-type: none"> Regent Governor Ministry of Agriculture
2	Industrial Forest Plantation	<ul style="list-style-type: none"> Ministry of Environment and Forestry
3	Ecosystem Restoration	<ul style="list-style-type: none"> Ministry of Environment and Forestry

4	Community Forestry	<ul style="list-style-type: none"> • Regent • Governor • Ministry of Environment and Forestry
5	Forest Village	<ul style="list-style-type: none"> • Regent • Governor • Ministry of Environment and Forestry
6	Indigenous Forest	<ul style="list-style-type: none"> • Regent • Governor • Ministry of Environment and Forestry

The Ministry of Environment and Forestry handles supervision and control over companies engaged in the Timber and Ecosystem Restoration business, while companies engaged in Palm Oil Plantations business are supervised by the District and Provincial Government, as well as the Ministry of Agriculture. As for communities engaged in Community Forestry and Village Forests, District and Provincial Government, as well as the Ministry of Environment and Forestry are in charge of supervision and control.

However, there was a bit of confusion with the issuance of the new Law on Regional Autonomy (Law No. 23 2014 about the Regional Government) that shifted authority over forestry from the district to the provincial government. The important question is who will then provide supervision and control for the communities holding permits on social forestry schemes and rights over indigenous forest, as the process based on experience, is entirely in the hands of the central government. The district as the nearest administrative unit no longer has forestry supervisory authority. If the authority is given to the Forest Management Unit (FMU), the only scheme available is the partnership scheme that is granted on State Forest (and not suitable for Indigenous forests which are outside of State Forest).

8. Superficies of Natural Resources / Forests granted to Companies and Communities

Referring to data circulating on forest tenure, many parties question the high inequality of tenure and control over forest area, considering superficies allocated respectively to companies and communities. The table below gives an overview of the extent of this inequality.

Table 1.8 Comparison of the Superficials of Areas Allocated to Companies (for HTI and IUPHHK, IUPHHK--RE, HPK Converted to Plantations) and Communities (for Community Forestry, Village Forests and Indigenous Forests) - based on 2015 data²¹

	Nationally			
	Timber Use permits for Industrial Forest Plantations and Ecosystem Restoration (IUPHHK-HTI and IUPHHK-RE)	Production Forest conversion for Industrial Plantations (HPK)	Area established for Community and Village Forests (HKm and HD)	Indigenous Forests established by Regional Government ²²
Land area (Hectares)	11,259,047	6,598,751	1,372,154	15,577

²¹ Reference data used are from Ministry of Environment and Forests Statistics in 2015, and the figures taken are the national figures and figures from the province of Jambi. Jambi Province was sampled because the area contains all types of forest utilization permits.

Percentage of total allocation	58.50 %	34.29%	7.13%	0.08%
	Jambi Province			
	Timber Use permits for Industrial Forest Plantations and Ecosystem Restoration (IUPHHK-HTI and IUPHHK-RE)	Production Forest conversion for Industrial Plantations (HPK)	Area established for Community and Village Forests (HKm and HD)	Indigenous Forests established by Regional Government ²³
Land area (Hectares)	779,707	366,925	88,683	9,458
Percentage of total allocation	62.64%	29.48%	7.12%	0.76%

Compared with corporations, the area received by communities is very small. As shown in the above table, the determination of Community and Village forests (HKm and HD) work area nationally is only 1,372,154 hectares or 7.13% of total forest areas allocated. The same percentage is observed in Jambi Province, with HKm and HD working area accounting for only 88,683 hectares or 7.12% of forest area allocations in the province.

Compared with the total use area received by companies nationally, the area for industrial forest plantations and ecosystem restoration (HTI and RE) alone is 11,259,047 ha, or 58.50% of total forest area allocations under consideration. If we add forest converted to Industrial Plantations, the total percentage of allocated area going to corporate is close to 93%. In the province of Jambi alone, companies use an area of 1,146,632 hectares or 92.12% of total area allocated in forest area, while communities benefit from less than 8% of total forest area allocated.

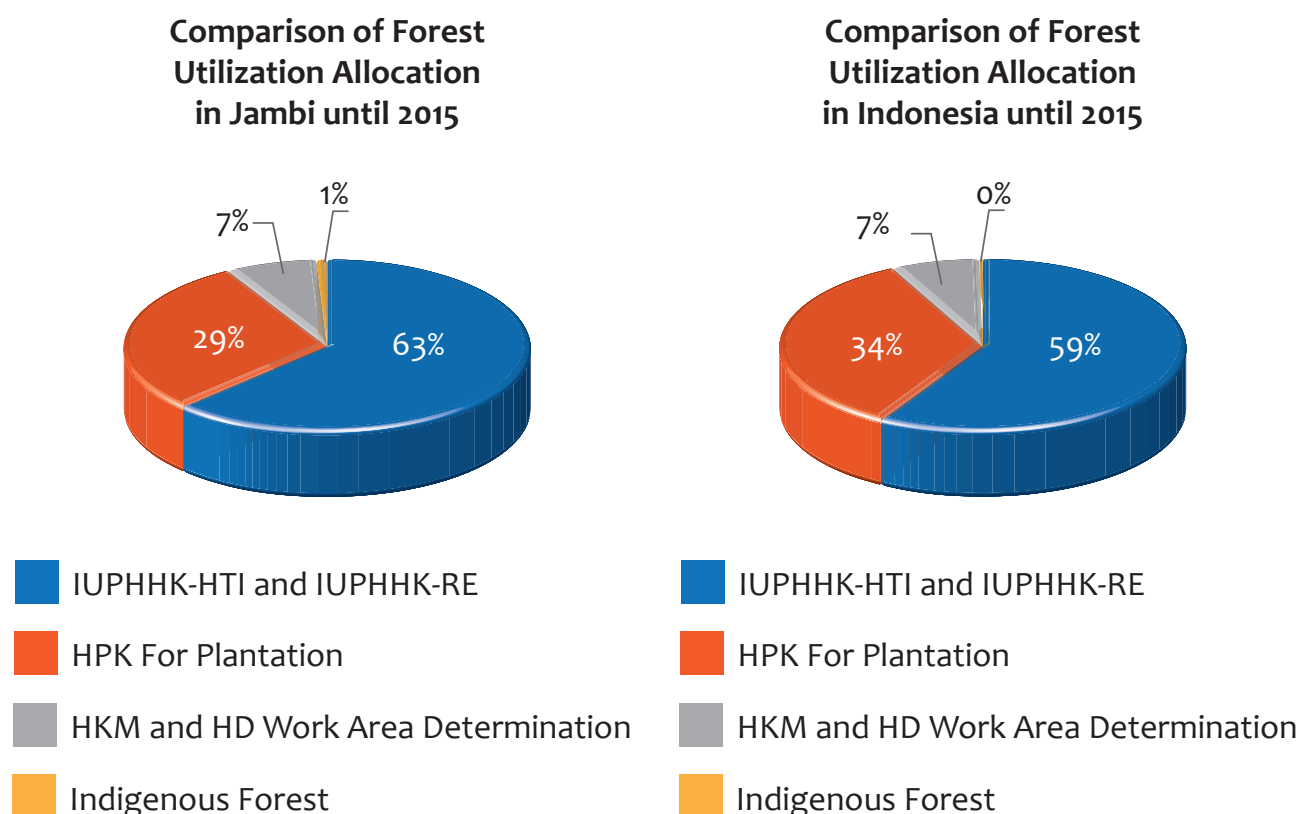
In 2015, for Indigenous Forests, the area that has been allocated or set is much smaller with an area of 15,577 ha or 0.08% of forest area allocations nationally. Additionally, this area is still in the form of the determination by local governments either through local regulations or regional head decrees, and has not received Ministry of Environment and Forestry (MoEF) validation and recognition. For example, in Jambi Province the determination of Indigenous Forests through regional legal products is only 9,458 ha or 0.76% of all forestry permits described in the table above.

22 Arizona Yance, SH, MH., Pj. Executive Director of the Epistema Institute "Refleksi Pendampingan Pembentukan Produk Hukum Daerah mengenai Masyarakat Adat dan Wilayah Adat", Papers submitted in Workshop "Menyusun Strategi dan Gerakan Bersama Resolusi Konflik Agraria di Kawasan Hutan" (Develop Joint Strategy and Movement for Agrarian Conflicts Resolution in Forest Zone) (Learning from Multi-party Experiences) organized by Sajogyo Institute, Cico Resort, Bogor, 10-11 June 2016.

23 Appendix listing Indigenous Forests of Jambi province is taken from page <http://infokehutanan.jambiprov.go.id/?v=pr&id=384> Jambi Provincial Forestry Information Center, download date 09/12/2016

The following graphic illustrates the inequality in land tenure and control over forest area: l over forest area:

Figure 1.2 Chart: Comparison of Areas Allocated for Industrial Forest Plantations (IUPHHK-HTI), Ecosystem Restoration (IUPHHK-RE), Forests Converted to Industrial Plantations (HPK), Community Forestry (HKm), Village Forests (HD) and Indigenous Forests in Indonesia Nationally and in Jambi Province until 2015



The Epistema Institute reported (2016) an increase in indigenous areas being recognized through local legal products, from 15,199.16 hectares before the Constitutional Court Decision No 35 issued in 2013 to 213,541.01 hectares until end of 2016. In other words, there is addition of 197,541.85 hectares in the last three years or 65,847.28 hectares on annual average. A further improvement occurred at the national level when the Ministry of Environment and Forestry issued Decrees recognizing nine indigenous forests with a total area of 11,440 hectares, delivered in an announcement by the President at the State Palace on December 30, 2016.²⁴ However, the total superficies remain very small, as detailed in table below.

²⁴ Arizona, Yance, Malik, Irene Lucy Ishimura, 2017. Legal Recognition for Indigenous People: Regional and National Legal Products Trends Post Constitutional Court Decision 35 / PUU-X / 2012. [Pengakuan Hukum Terhadap Masyarakat Adat : Tren Produk Hukum Daerah Dan Nasional Pasca Putusan MK. 35/PUU-X/2012.] Outlook Epistema 2017, Jakarta: Epistema Institute.

Table 1.9 Indigenous Forests recognized by the Ministry of Environment and Forestry end of 2016

No	Name	Number	Total Area (Hectares)		
			Designated	Established	Reserved
1	Bukit Sembahyang and Padun Gelanggang.	SK. 6737/MENLHK-PSKL/KUM.1/12/2016	± 39 Ha		
2	Bukit Tinggi	SK. 6738/MENLHK-PSKL/KUM.1/12/2016	± 41 Ha		
3	Tigo Luhah Permenti Yang Berenam	SK. 6739/MENLHK-PSKL/KUM.1/12/2016	± 276 Ha		
4	Tigo Luhah Kemantan	SK. 6740/MENLHK-PSKL/KUM.1/12/2016	± 452 Ha		
5	Marga Serampas	SK. 6745/MENLHK-PSKL/KUM.1/12/2016	± 106 Ha	± 24 Ha	
6	Ammatoa Kajang	SK. 6746/MENLHK-PSKL/KUM.1/12/2016		± 313.99 Ha	
7	Wanaposangke	SK. 6747/MENLHK-PSKL/KUM.1/12/2016		± 4,660 Ha	
8	Kasepuhan Karang	SK. 6748/MENLHK-PSKL/KUM.1/12/2016		± 462 Ha	
9	Hutan Kemenyan Tombak Haminjon Masyarakat Adat Desa Pandumaan-Sipituhuta Silsilah Marga Marbun Lumban Gaol	SK Menteri LHK No. SK.923/Menlhk/Sekjen/HPL.0/12/2016 tanggal 21 Desember 2016			± 5,172 Ha
		TOTAL	914 Ha	± 5,459.99 Ha	± 5,172 Ha

The area recognized by MoEF as Indigenous Forests in Jambi province is only 938 ha, with 914 ha actually originating from outside forest area (other land use or APL).

III SUMMARY

A forest utilization permit is a document that must be obtained for the purpose of activities based on forest resources usage, either by companies or by communities, except for the Indigenous Forests that are established based on land rights and the recognition as Indigenous Peoples.

Within the permitting process of forest utilization by companies and communities, as well as the process of rights determination over Indigenous Forests for Indigenous Peoples, there are inequalities in the amount of efforts required in fulfillment of respective procedures, monitoring of the process progresses, and in completing the various obligatory steps. One reason is that legislators have not taken into consideration the differences in capacity and capability between companies and communities. Certainly, to obtain a permit for utilization of forests robe granted rights over Indigenous Forests, a community cannot follow the process independently, but must receive assistance.

The table below presents a variety of inequalities and gaps between companies and communities in the process of obtaining control or tenure rights over forest area.

Table 1.10 Summary comparing Treatment of Companies and Communities in Rights Recognition and Permit Procedures

	COMPANIES	COMMUNITIES
Recognition as Legal Subject	<ul style="list-style-type: none"> Registration through an administrative process 	<ul style="list-style-type: none"> For Indigenous Forests, applicants have to go through a heavy and political legislative process.
Number of Stages and Procedure	<ul style="list-style-type: none"> Often granted regardless of the local communities existence in the same area historically used for their livelihood. Relatively more transparent (can be monitored on-line). Trend towards simplification of the process reflected in the many deregulation packages issued by the government. 	<ul style="list-style-type: none"> Can only be granted on area proved "Clean and Clear", meaning free of third party claim. Not yet transparent, but on-line monitoring mechanism being tested at http://pskl.menlhk.go.id/akps Lack of alternative for those without internet access. In practice, external support required (by CSO) to go through the process.

Number of Agencies/ Levels involved	<ul style="list-style-type: none"> Both communities and companies have to deal with district, provincial and central level authorities. However palm oil companies having a plantation in other land use area within a province will only have to deal with district and provincial authorities. 	<ul style="list-style-type: none"> Number of governmental instances communities have to interact with is not too different from companies. However Village Forest and Community Forest have to go through 29 desks spread over 4 agencies of 1st echelon or ministry level. No facility for community who have always to deal with district, provincial and central authorities.
Cost of Process	<ul style="list-style-type: none"> Very strong financial capacity to meet all sorts of costs including "unofficial fees" (alias bribery) – up to USD 600/ha for palm oil. Permit fees lower for companies (IDR 250 to 1,500 - 2,500 / ha / year based on region) 	<ul style="list-style-type: none"> Do not have the financial capability Depends very much on financing assisted through supporting organizations (CSO) for mapping... Permit fees higher for communities (IDR 2,600 / ha) paid only once, however with lower financial capacity.
Duration of the Process	<ul style="list-style-type: none"> Be able to start activities before completing the entire permit process(palm oil plantation company can begin operations after obtaining Plantation Business Permit/IUP although not yet have Land Use Rights/HGU) The company has the ability to pressure the government to simplify and shorten the permit process. In practice up to 4 years for (Ecosystem Restoration and palm oil) 	<ul style="list-style-type: none"> Must complete all stages of the permit process before starting utilization activities. With limited capacity, often lose the opportunity to obtain forest management permits. In practice, it takes 6 years to obtain community forest and 15 years for adat forest (with the active assistance of CSO!).

The validity of a permit/right	<ul style="list-style-type: none"> The permit term is very long (60 years for Industrial Forest Plantations/HTI and 100 years Ecosystem Restoration/RE) There are clear regulations about number of extensions. 	<ul style="list-style-type: none"> A relatively short period of time (35 years for Village/HD and Community/HKm Forests) There are no clear regulations about how many times the permit can be extended. Only based on the five year evaluation. Validity period for Indigenous Forests is relative to the existence of Indigenous Peoples on the land. Such existence is asserted through the local regulation or decree recognizing the existence of the Indigenous People in question, which is vulnerable to political climate fluctuations.
Supervision and Control	<ul style="list-style-type: none"> HTI and RE Permit supervision and control is done by Ministry of Environment and Forestry (KLHK). For IUP that is included in other land use (outside of forest area), local government supervises and controls. 	<ul style="list-style-type: none"> Involves the Regent, the Governor and the Minister. There is confusion in the latest regulation on the Social Forestry (Permen LHK No. P.83 / 2016). According to the regulation the monitoring authority is Pokja PPS or the Head of KPH, even though the KPH authority is in the State Forest, while the Indigenous Forest is no longer part of the State forest.
Forest area granted until 2015	<ul style="list-style-type: none"> Almost 93% of the forest allocations researched in this study are for companies (HTI and RE area± 11,259,047 ha, and forest area converted for plantations± 6,598,751 ha) 	<ul style="list-style-type: none"> Only ± 7% of the forest allocations researched in this study are for communities (HD and HKm area± 1,372,154ha Indigenous Forest recognized by local government± 15,577 ha) 2016 Indigenous Forests recognized by Ministry of Environment and Forestry± 11,545,99 ha

Over time, the government begins to realize the need to address the inequality over tenure, both in terms of legal framework substance as well as in the enforcement practice. Implementation of ongoing improvements need to be monitored and accompanied so that they are reflected at the field level.

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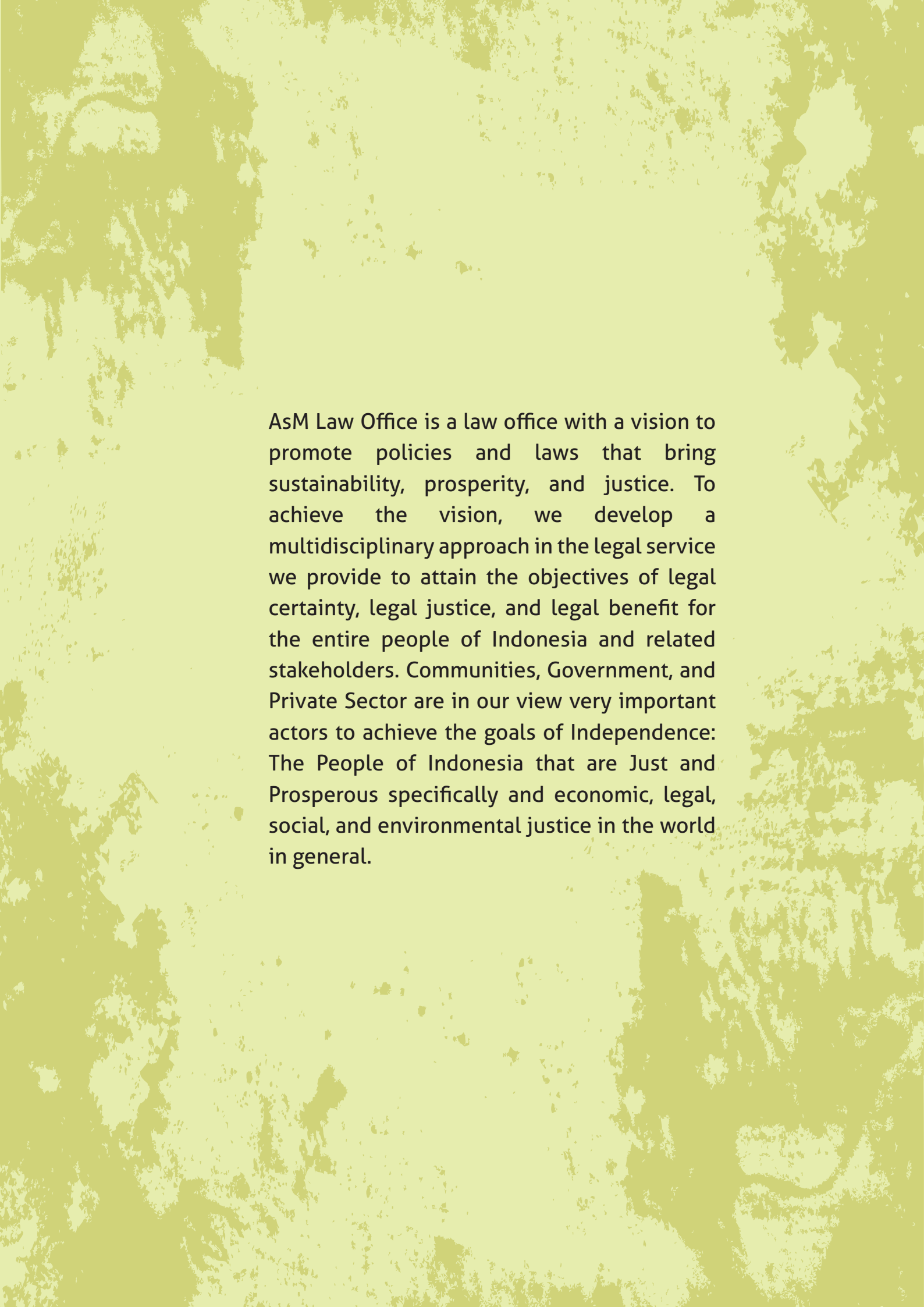
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Interviews

Interview with Epistema Institute

Interview with HUMA



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