

## CHAPTER 7

# **CLOSER TO PEOPLE AND TREES: WILL DECENTRALIZATION WORK FOR THE PEOPLE AND THE FORESTS OF INDONESIA?**

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## Summary

For over 30 years, Indonesia's central government controlled its forests, the third largest area of tropical forests in the world. Driven by serious political, administrative, and economic demands for reforms, the central government has begun to decentralize, transferring new powers to the district and municipal levels. Decentralization in the forestry sector has included transferring income from permits, logging and reforestation fees, as well as the right for these lower levels of government to issue logging permits. This sudden, new access to Indonesia's lucrative timber market has led local peoples and governments to rush to take advantage of a resource to which they previously had little right. The result has included the proliferation of permits with little regard for the effect on forest resources. Large areas, including some protected areas, are being destroyed and threatened with conversion to other uses. Local peoples, however, appear not to have been the ones receiving the primary benefits; they have been taken instead by those who have the required capital for permits and logging.

## Introduction

Indonesia is an archipelago with 17,000 islands that spread over an area of 1.9 million square kilometers. It is a country characterized by large geographical, economic, and social disparities, particularly between the island of Java and the Outer islands.<sup>1</sup> About 60 percent of the 210 million population live on Java, though it comprises only 7 percent of the country's land area. In the year 2000, Java accounted for more than half of the national GDP and the capital city of Jakarta, 15 percent [*Economist Intelligence Unit, 2002*]. Located on Java, the central government has played a dominant political and administrative role throughout most of the country's history [*MacAndrews, 1986:9*].

Following Indonesia's 1997/98 economic and political crisis, there were widespread demands, both in Jakarta and in regions, for political, administrative, and economic reforms, which Indonesians frequently refer to as *reformasi*.<sup>2</sup> In Jakarta people focused on bringing the fallen New Order Government's leadership and cronies to trial for corruption and on the formulation of new laws allowing for democratic and other reforms. For the regions, the fall of the previous regime and *reformasi* have meant that citizens are now able to express their long-felt objection to policies biased in favor of Java that created a large gap in their respective development [*Ferrazzi,*

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<sup>1</sup> Large disparities in many aspects have almost exclusively differentiated the island of Java from the other islands, which are commonly referred to as Outer islands, the largest being Sumatera, Kalimantan, Sulawesi and Papua.

<sup>2</sup> Regions in general refer to areas outside the capital city of Jakarta, where the central government operates. Regions as specified in the 1999 decentralization laws pertinent to the focus of this paper refer explicitly to provinces (the first tier of local government directly below the central government), districts, and municipalities (rural and urban areas, respectively, as the second tier of local governments).

2000:108]. All over the country, people demanded a greater role in managing their local affairs [Ahmad and Hofman, 2000:1]. In particular, resource-rich regions demanded a greater share of proceeds from natural resources produced there [Kantaprawira, 2002:12; Kompas, 1998a,b,c,d]. The resource-rich provinces of Papua, Aceh, and Riau threatened to secede from the Republic [Kompas, 1998e].

The inability of the centralized governance system to respond to the economic and political crisis raised serious questions regarding its effectiveness [Rasyid, 2002:1]. Increased autonomy in decision-making and a more just distribution of resources were now perceived as crucial to prevent national disintegration, hence decentralization became the alternative [Van Zorge Report, 1999:4]. In November 1998, the People's Consultative Assembly, the highest authority of the state, held a special session resulting in a statement of principles for the 'Organization of Regional Autonomy, Equitable Arrangements, Division and Utilization of National Resources, and Balanced Finance of the Central and Regional Government in the Context of the Unitary State of the Republic of Indonesia'.<sup>3</sup> With great haste and little public debate, the House of Representatives passed two decentralization laws in April 1999, Law No. 22/1999 on Regional Governance and Law 25/1999 on the Balance of Funds, both of which were signed in May by then President Habibie. These two laws were to come into effect on January 1, 2001.

The passage of these decentralization laws marked the beginning of a fundamental political and administrative transformation of Indonesia.<sup>4</sup> They legislate the devolution of a wide range of public service functions, the strengthening of elected local legislative assemblies, and the financial and economic empowerment of the regions. They also stipulate the transfer of natural resource management authority to regions, albeit with ambiguities and contradictions, and increase the regions' share of natural resource revenues. Later that same year, a new forestry law was introduced, however, that tended to maintain forest decision-making authority at the center.

Proponents of decentralization argue that it is good for natural resource management, since it can incorporate local knowledge about the diverse resource base. By bringing decision-makers physically closer to citizens, public access is improved, thereby promoting a greater sense of ownership of rules about resource use that should result in an increased willingness to abide by them [Carney, 1995:2]. In contrast, distant state authorities face significant constraints in allocating resource use rights effectively, leading to overexploitation and disadvantages for the poorest sectors [Carney and Farrington, 1998:14].

Decentralization, however, also has several shortcomings. Non-local groups may have better appreciation for long-term or large-scale concerns, such as conservation [Lutz and Caldecott, 1996:2]. Decentralization may hinder efforts for equitable distribution of benefits of high-value natural resources such as forests, since it increases the likelihood of elite domination [Carney, 1995:5]. Many countries around the world have adopted some form of decentralized governance [Agrawal and Ribot, 1999:473]. Yet the outcomes vary among countries and regions, and, particularly in the context of natural resource management there is limited evidence that decentralization has benefited forests and the people who depend on them [Kaimowitz et al.,

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<sup>3</sup> Decree of the People's Consultative Assembly of the Republic of Indonesia No.XV/1998.

<sup>4</sup> In the Indonesian context, decentralization is commonly referred to as regional autonomy; these terms are often used interchangeably.

1998:45]. This article examines this question in the context of Indonesia's recent efforts to decentralize forestry authority.

A number of variables are likely to determine the outcomes of decentralization. Crook and Sverrisson suggest factors such as the variations in administrative and financial resource allocation systems and in relations between central and local governments, configurations of local economic, political, and social structures, and the length of time decentralization has been implemented [Crook and Sverrisson, 2001: 2-5]. Local governments need four elements for successful democratic decentralization: adequate power, financial resources, administrative capacity, and reliable accountability mechanisms. The last of these—ensuring both the accountability of elected politicians to citizens, and of bureaucrats to elected politicians—is identified as the most important [Manor, 1999:55; Piriou-Sall, 1998:12]. Governments' different political motivations for decentralizing also affect outcomes [Crook and Sverrisson, 2001:2]. In addition, historical legacies shape present-day politics and social dynamics, and can either facilitate or impede decentralization [Manor, 1999: 58-9]. All these factors have played a role in shaping the process of forest sector decentralization in Indonesia.

Indonesia's decentralization laws promised a significant shift in decision-making authority over natural resources to local governments, but their implementation has been challenging. Legislation was formulated with insufficient preparation and planning [Alm et al., 2001:87], resulting in inconsistencies and ambiguities within and among different laws and regulations. Inconsistencies between decentralization laws and sectoral laws, such as the forestry law, as well as the regions' accumulated historical frustrations and distrust of the center's real intentions in the devolution of authority, have given rise to conflicts among different tiers of government.

At the same time, a substantially increased percentage of income from lucrative forest resources has been transferred to lower-level governments, as well as the right to allocate forest harvesting rights. These changes have occurred as a result of the broad political and economic reforms that increased the authority of local governments in general and decreased the power of provincial governments, while the central government scrambles to maintain its own authority and legitimacy. Although it may be too early to draw firm conclusions from these still-recent changes, the results so far indicate a substantial increase in logging with little regard for environmental consequences as local people and governments take advantage of new income-generating opportunities. This increase is likely to lead to forest deterioration and conversion, as well as, in some ways, increased benefits to local peoples.

At the same time, local authorities have only limited downward accountability to the population—the popular vote is restricted to the election of a political party, rather than individual candidates. And while local people have benefited to some degree from new access to forest resources, the primary benefits have not gone to those who need it most.

The Indonesian case highlights the importance of downward accountability as well as the appropriate balance of powers between central and local authorities in decentralization [World Bank, 2000:112]. It underlines the dangers of a substantial and abrupt loss of central authority [Prud'homme, 1995: 213-9], and raises important issues regarding historical and national context and the insecurity of change in the generation of outcomes.

This article describes the broad dynamics of decentralization's early stages in Indonesia, focusing on some of the major trends that began to emerge at the district level, and explores the initial impacts of decentralization on forests and local communities. The following section summarizes the recent decentralization reforms. The next section briefly reviews forest management prior to the reforms. The article then examines how forestry decentralization has unfolded, focusing particularly on key district level dynamics and the relationship between the Ministry of Forestry and local governments. Finally, it identifies some of the preliminary outcomes of the process to date. This is followed by the conclusions.

A substantial part of this analysis is based on the findings of CIFOR (Center for International Forestry Research) research on decentralization and the administration of policies affecting forests in Indonesia, conducted in collaboration with Institut Pertanian Bogor, University of Adelaide, Murdoch University, and Australian National University, and on preliminary findings of research on the same topic in collaboration with Universitas Tanjungpura, Universitas Hasanuddin, and Brandeis University. Fieldwork was conducted in nine districts in 2000 and three districts in 2001. Updates and revisions of this article were done while the author is affiliated with the School of Resources, Environment, and Society at the Australian National University (ANU).<sup>5</sup>

### **Current Decentralization Reforms**

Given Indonesia's diversity, a unitary state, with centralized power and decision-making authority, was for a long time considered the appropriate form of government for maintaining national unity and integration [*Malo, 1995*]. Indonesia has several times attempted to decentralize, but, until very recently, implementation was limited to a shift of administrative responsibilities rather than the transfer of political or decision-making power and authority to locally elected representatives [*Devas, 1997:361*].

The 1999 decentralization laws restructured the political and organizational arrangements of the regional governments, their relationship with the center, and established a new framework for the intergovernmental fiscal system.

#### *Law 22/1999 on Regional Governance*

Two sections of the law on Regional Governance are pertinent to our discussion of natural resource decentralization. Article 7 transfers the authority over all sectors of governance except those considered strategic—such as foreign affairs, the judiciary, security and defense, monetary and fiscal matters, and 'authority in other sectors'—to regions. 'Authority in other sectors' is explained further as including natural resource use and conservation. However, article 10 of the same law appears to contradict this, stating that 'regions have the authority to manage national resources within their jurisdictions and are responsible for maintaining the environment according to law'. Consequently, these articles easily invite a variety of interpretations.

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<sup>5</sup> The opinions and interpretations expressed in this paper are those of the author and do not necessarily represent the official policy or position of CIFOR or ANU.

One important change provided by the decentralization framework has been the ‘downgrading’ of the provinces and the ‘upgrading’ of districts/municipalities. First, power and resource transfers from the center are aimed at districts and municipalities as opposed to the provinces. Although many argue that district-level capacity is lower [Van Zorge Report, 2000a:5; Kompas, 1998f], the common justification for this decision is that, being closer to the people, district and municipal governments are best placed to make decisions and provide public services in line with the people’s needs and aspirations [McLeod, 2000:30; Usman, 2001:4]. At the time, increasing power to the provinces was perceived as encouraging separatist tendencies and, hence, as a threat to national unity [Usman, 2001:4], while this was unlikely from the smaller and weaker districts [Van Zorge Report, 2000a:5]<sup>6</sup>. Moreover, increasing provincial power is perceived as too similar to federalism [Van Zorge Report, 2000a:5, 1999], a concept that was promoted by the Dutch shortly after independence in an attempt to maintain control over parts of Indonesia, and is therefore unpopular to many Indonesians.

Second, there is no longer a hierarchical relationship between the provinces and districts/municipalities. Whereas previously district or municipality heads reported to their respective governors, they are now directly accountable to local legislative assemblies. This is a marked difference from the past centralized era and has changed the relationship between provincial and district officials.

Another important aspect of the law is that it separates local legislative and executive powers, thus effectively boosting the power of local legislatures. Local legislative assemblies now elect the district head or *bupati* who is, accordingly, responsible to the legislative assembly (district Dewan Perwakilan Rakyat or DPRD).<sup>7</sup> Previously DPRDs were part of the executive body of regional governments and were subordinate to the executive [CSIS, 2001:8]. Their major functions are no longer merely to ‘endorse’ regional legislation but to produce it together with regional governments and providing the checks and balances to control and monitor regional governments. The *bupati* is also required to work with the DPRD in the planning of district budgets.

In theory, real power should ultimately rest with citizens through their representatives. But Indonesia has a proportional representation system to elect members of the legislative assemblies at national, provincial, district and municipal levels. As stated earlier, under this system, constituents vote only for political parties. Thus members of the assembly represent political parties that have secured a sufficient number of electoral votes and may not necessarily secure their own position due to their skills or knowledge of local affairs.

#### *Law 25/1999 on the Fiscal Balance between the Central Government and the Regions*

This Fiscal Balance law provides the legal framework for building regional financial capacity to carry out tasks associated with regional autonomy. It establishes the major components of

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<sup>6</sup> Note, however, that the size of district and municipal governments in terms of their populations and areas vary widely. Their populations range from 24,000 to 4,1 million people (Esden, 2002). Some districts cover vast areas. For example, of the districts pertinent to our discussion, Kapuas district in Central Kalimantan has an area of 34,800 square kilometers while the district of Malinau in East Kalimantan comprises 42,000 square kilometers. As of February 2003, there are 32 provinces and 410 local governments, consisting of 324 districts and 86 municipalities (GTZ, 2003)

<sup>7</sup> Since November 2002, plans for direct elections of regional heads (i.e., governors, *bupatis*, and mayors) have emerged (GTZ, 2002).

regional revenue sources, reorganizes the system of central government fiscal transfers, and structures revenue sharing from natural resource exploitation.

Decentralization has thus not only expanded districts' regulatory functions and political authority, but also the responsibility and opportunity to meet their budgetary and development needs that are not sufficiently covered by central transfers. In response to this new opportunity, immediately after the decentralization laws were passed, the regions began to calculate expected government transfers, particularly concerning revenue-sharing arrangements, and to look for innovative ways to raise revenues locally. As we will see below, local government financial concerns are key to the way in which decentralization has proceeded.

### *Central State Relations with Provincial and Local Institutions*

The implementation of decentralization depends to a great extent on the relationship between the central government and local institutions. This is shaped by two factors. First, the new legal power structures have changed the relationship between state and local institutions, as well as between provincial and district institutions. Second, the historic failure of the central government to devolve power has left the regions with lingering distrust of such promises [Suharyo, 2000].

The regions' distrust of the process was documented in the early stages of decentralization. In 2000, many district and provincial officials expressed skepticism with references to regional autonomy as 'half-hearted autonomy', criticism of the laws as false promises, or statements like 'the central government continues to hold the head of the snake and will only give us the tail' [Potter and Badcock, 2001:16; Casson, 2001b:26].

The provinces have demonstrated resistance to the present configuration of regional autonomy, since handing over power to district governments in effect bypassed provincial governments. Resistance from the provinces is not without reason. Several districts and municipalities have shown a tendency to disobey or ignore provincial government instructions [Kompas, 2002b; Kompas, 2001f]. In addition, many government positions at the provincial level were abolished as a result of decentralization.

The provincial government association reportedly requested that the House of Representatives and the central government amend the two regional autonomy laws, particularly regarding the elimination of the hierarchical relationship between provincial and district and municipal governments [Kompas, 2001f]. Discussions among central government authorities regarding plans to amend the laws are ongoing.

### **Forest Management in Indonesia**

Approximately 120 of the 190 million hectares of Indonesia's land area are officially classified as forest estate, that is, under the legal control of the Ministry of Forestry. The forest estate is further classified into production forests, for timber production (57 million hectares); conservation and protection forests (55 million hectares); and conversion forests, for conversion to non-forestry uses such as plantations and agriculture (8 million hectares) [FWI/GFW, 2001]. Not all of these areas are actually forested: estimates range from 89 to 98 million hectares

[*FWI/GFW, 2001:17*]. From 1985 to 1997, the annual deforestation rate was estimated at 1.7 million hectares [*Holmes, 2002:v*].

For many years these forests have made substantial contributions to national and local economies, and to the livelihoods of forest communities. In 2002, though significantly lower than preceding years, the export value of forestry products was US\$5 billion, or 12 percent of the value of non-oil and gas exports [*Bank Indonesia, 2003*]. The industry provides direct employment for approximately 2.5 million workers and indirect employment for 1.5 million others [*Sarjono, 2002*]. An estimated 30 million people depend on forests for their livelihood [*FWI/GFW, 2001:3*].

Prior to 1967, most of Indonesia's natural forests were in effect controlled and managed by forest dwellers, and logging was limited to small-scale activities supplying local timber markets [*Ross, 2001:165*].<sup>8</sup> Decentralization of government forestry institutions in 1957 had granted forest management authority to provinces. Provincial bureaucrats were then accountable to the governor, rather than to the forestry department in Jakarta. The Basic Agrarian Law of 1960, recognizing customary property in so far as it did not conflict with national interests, further weakened the forestry department's power [*Ross, 2001:165*].

When the New Order government came to power in 1966, the country urgently needed new sources of revenue to resolve its economic crisis. Its vast forests were seen as an untapped resource that could be utilized for this purpose. In 1967, the government adopted the Basic Forestry Law, which placed all of Indonesia's forests under central government authority. For several years, however, provincial governors retained the power to grant concessions of up to 10,000 hectares, district heads up to 5,000 hectares, and subdistrict heads up to 100 hectares, while the forestry department awarded concessions for areas over 10,000 hectares [*Ross, 2001:173; Magenda, 1991:78*]. In 1970, the forestry department set a new minimum concession size of 50,000 hectares, effectively revoking regional and local government authority to grant licences [*Ross, 2001:174*]. From that time, the forest department granted large-scale forest exploitation rights, or *Hak Pengusahaan Hutan* (HPH), covering tens of thousands and hundred of thousands of hectares to domestic private and state-owned logging companies. These HPH activities, through the imposition of fees such as concession rights levies, royalties, and reforestation funds, have been an important source of government income.

Over the years, New Order government policies resulted in the concentration of forest industries into a few large conglomerates, and logging concessions became a form of patronage bestowed to secure the financial and political interests of state elites. Meanwhile, forest dwellers, who had depended on forests for generations, were systematically marginalized [*Fay and Sirait, 2002:126; Potter, 1991:180*].

### **Forest Management Under Decentralization**

The current decentralization process again brought about significant changes in forest management, including the way in which logging activities are carried out and the emergence of

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<sup>8</sup> Discussion of Indonesia's forests in this article refers mostly to the forests of the Outer Islands, that is, those outside Java. Java has only small remnants of natural forest; most of Java's forests are teak plantations.



local government timber-licensing schemes. It needs to be noted, however, that some of these trends predate decentralization legislation, and were associated with the broader atmosphere of *reformasi*.

### *Legal Framework for Forestry Decentralization*

As explained above, Law 22 provided the basis for transferring power over forest resources to regions, but with contradictions and ambiguities that easily allowed for multiple interpretations. Like other Indonesian laws, the law itself is broad, further requiring an implementing regulation,<sup>9</sup> which, unfortunately, was not ready until a year later, in part due to conflicting interests.

Complicating matters further, a new forestry law (Law 41/1999) was passed in September 1999 to replace the 1967 Basic Forestry Law. This new law does not mention the transfer of forest authority to regions, implying that it remains with the Ministry of Forestry. As a result, local governments have based their actions on their interpretation of Law 22. The Ministry of Forestry, on the other hand, clings to its power by relying on the new forestry law.

Power struggles in several sectors led to intense negotiations between the Minister of Regional Autonomy and sectoral representatives in the preparation of the implementing regulation of Law 22 [Van Zorge Report, 2000b:12]. The Ministry of Forestry strongly resisted surrendering authority, arguing that districts lack the capacity to manage Indonesia's forests [Van Zorge Report, 2000a:6].

In May 2000, the government finally passed the much-awaited regulation.<sup>10</sup> Interestingly, though expected to clarify Law 22's ambiguities, it failed to explicitly clarify district responsibilities. Instead, it specified only the powers and responsibilities of the central and provincial governments. Implicitly, therefore, it assumes that all other authorities beyond those mentioned in the regulation lie with district governments.

The regulation gave the Ministry of Forestry a number of important powers that reaffirm its policymaking role in forest management, particularly in setting criteria and standards. This includes classifying forest areas and changing their status and functions; setting criteria and standards for tariffs on forest use license fees, royalties, and reforestation funds; setting criteria and standards for licensing forest area use; and setting standards for the management of forest products, including planning the management, use, maintenance, rehabilitation, and control of forest areas, and for natural resource conservation in forests and plantations. Provinces are given authority over forestry issues affecting more than one district within the province. It is presumed, therefore, that the responsibilities of districts/municipalities are limited to day-to-day forest management functions.

Previously, however, the Ministry of Forestry had promoted other policies as part of the '*reformasi* package', ostensibly to respond to demands for a more just and equitable distribution

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<sup>9</sup> Indonesian Laws are usually written in a general form, such that their implementation depends on subsequent government regulations. These implementing regulations are further developed by ministerial decisions to determine exactly how they are to be implemented.

<sup>10</sup> Government Regulation No. 25/2000.

of forest benefits. In January 1999, a few months prior to the introduction of the decentralization laws, the government issued a regulation concerning forest exploitation (Government Regulation No.6/1999), and the Ministry of Forestry issued its implementing regulation (Ministerial Decision 310/1999). This legislation granted district governments the authority to issue small-scale timber concession licenses to cooperatives, individuals, or corporations owned by Indonesian citizens for areas of up to 100 hectares within conversion forests and production forests slated for reclassification to other uses. It did not allow for their issuance in areas where large-scale concession permits (HPH) had already been granted. This legislation has been a key source of contention between the Ministry and local governments, as we will see below.

Other important legislation includes the Ministerial Decree on the Criteria and Standards of the Licensing of Forest Products and the Harvesting of Forest Products in Natural Production Forests. The Forestry Ministry issued this decree towards the end of November 2000, about one month before the formal implementation of regional autonomy was effectively to begin. It granted district leaders the authority to issue concession licenses, within their jurisdiction, for areas up to 50 thousand hectares, governors to issue licenses that crosscut two or more districts, and the central government to issue licenses over areas crossing provincial boundaries.

### *Forest Revenue Sharing*

Many local governments believe that the successful implementation of decentralization will depend on their ability to raise local revenues to support themselves as autonomous areas [McCarthy, 2001a:7; Usman, 2001:6-7]. The discussion of forestry issues, therefore, has evolved in this context.

Briefly, district incomes are composed principally of locally generated revenues, balance of funds or central government transfers, regional loans, and other sources. The central government transfers most relevant to our discussion include the local share of natural resource revenues and the specific allocation funds, which, with regard to forestry, are composed of reforestation funds.

Of the new transfer provisions above, the implementation of natural resource revenue sharing has been one of the most contentious issues, particularly for resource-rich regions. This is hardly surprising, since these arrangements allowed natural resource-rich regions to enjoy a substantial portion of their riches—particularly of oil, gas, and forests—for the first time in thirty years.

With regard to forestry fees, 30 percent of the revenue from the forest concession rights levy was previously retained by the central government, while the remainder was distributed to the provincial governments. Now only twenty percent is retained by the center and sixteen percent is distributed to the provincial governments, while sixty-four percent goes to the producing district. Similarly, twenty percent of the forest royalties is now retained by the center and eighty percent distributed to the regions—the province receives sixteen percent, the producing district thirty-two percent, and the remaining thirty-two percent is distributed equally among the other districts within the province. Previously, revenue from forest royalties was divided as follows: thirty percent to the provincial governments, fifteen percent to districts, forty percent for national forestry development, and fifteen percent for regional forestry development.<sup>11</sup> The new arrangement for reforestation fees is forty percent for producing regions—the distribution

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<sup>11</sup> Presidential Decree 67/1998.

among producing district, province, and the remainder of the districts in the province not specified—and sixty percent for the central government.

Several forest-rich districts were unhappy with the new formulae for revenue distribution and sought to secure a larger portion [*Alqadrie et al., 2002:(3)29-30; Casson, 2001b:15; Barr et al., 2001:11*]. Alqadrie et al. reported that Kapuas Hulu district of West Kalimantan delayed the transfer of timber-related payments collected within its jurisdiction in an attempt to demand a greater share [*Alqadrie et al., 2002: (3)30-31*]. This occurred despite the fact that the Ministry of Forestry and the governor of West Kalimantan issued specific procedural directives to submit these payments on time, directly to the central government.

The most lucrative forestry revenues, the reforestation funds, have also been a source of dispute between districts and the central government, and between districts and provinces. To access these funds, each district must submit proposals for approval by the province [*Potter and Badcock, 2001:42*].

The transparency of calculations and transfer procedures are as important to the districts as the predetermined formulae of their share. Districts must keep track of all payments associated with timber produced within their jurisdictions to ensure that they receive their proper share. The timing of transfers—such as the delayed distribution of reforestation funds in 2001 [*Kompas, 2001a*—has also raised concerns, because it affects districts’ cash flow [*Kompas, 2001d*].

### **New district timber regimes: Emphasis on economic considerations<sup>12</sup>**

With decentralization, local governments perceive that the generation of substantial local revenue is necessary not only to finance their development priorities, but also to maintain their independence from central government [*Saad, 2001:10*]. Immediately after parliament approved the decentralization laws, months before they legally took effect, many districts passed regulations aimed at increasing local revenue.

Particularly in forest-rich districts, local governments have sought to generate cash by applying new timber-related fees, such as taxes and levies on forest products transported through their jurisdictions. To support this effort, local governments lobbied the central government to revise the 1997 taxation law that prohibited regions from levying taxes (including taxes on timber and forest products).<sup>13</sup> The new law was passed in December 2000.<sup>14</sup> Some districts, however, applied these new levies on forest products even before the new law was introduced [*McCarthy, 2001b:8-9*].

One of the most appealing income-generating opportunities was that presented by the small-scale (up to 100 hectare) logging licenses mentioned earlier. When this legislation was passed, district

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<sup>12</sup> Elements of the following sections were drawn from Resosudarmo, I.A.P., 2003, ‘Shifting Power to the Periphery: The Impact of Decentralization on Forest and Forest People’, in Aspinall, E. and G. Fealy (eds.), *Local Power and Politics in Indonesia: Decentralisation and Democratisation*, Singapore: ISEAS, pp.230-44.

<sup>13</sup> Law No.18/1997.

<sup>14</sup> Law No.34/2000.

leaders immediately seized the opportunity to allocate large numbers of these licenses. In practice, however, many of the areas licensed have fallen within the boundaries of centrally-issued HPHs, thereby threatening their operations [*Universitas Cenderawasih, 2002; Barr et al., 2001:19; Casson, 2001a:16; KK-PKD Kutai Barat, 2001:48; Suparna, 2001:167*]. The Indonesian Forest Concessionaire Association, the body representing the large logging companies, lobbied at both the national and provincial levels to halt the extensive allocation of these small-scale permits [*Barr et al., 2001:23*].

In response, in September 1999, the Ministry of Forestry requested the governors' assistance to suspend the further issuance of these permits. But district officials did not comply. By that time, the decentralization laws had been approved, and although they were not yet in force, they allowed for the interpretation that the position of the district leader vis-à-vis the governor had changed; district leaders were not required to comply with the governor's instructions because they were no longer the governor's subordinates. In April 2000, as districts still refused to stop issuing small-scale logging licenses, the Ministry of Forestry issued a decree suspending the Ministerial Decision that had given the district governments this authority.<sup>15</sup> Several district governments, however, ignored the decision, arguing that they retained the right to issue these permits because only the ministerial decision was repealed, while Government Regulation 6/1999, which has higher authority than a ministerial decision, was still in force [*McCarthy, 2001b:10-11*]. Other districts argued that small-scale logging ensured that local people directly benefit from forest resources [*Casson, 2001a:17*]. Typically, local legislative assemblies fully supported the issuance of district licenses [*McCarthy, 2001b:11*].

The environmental implications of these small-scale logging licenses are not insignificant, particularly in terms of the area logged and the volume of timber removed. By July 2000, the district of Kapuas had granted sixty small-scale logging permits [*McCarthy, 2001b:11*]. In December 2000 the district of Kutai Barat in East Kalimantan had issued 622 similar licences [*KK-PKD Kutai Barat, 2001:43*]. The timber harvest from the 409 licenses issued by Sintang district of West Kalimantan was estimated at 1.2 million cubic meters [*Witular, 2003c*]. Moreover, the case of Malinau district illustrates that, in practice, one 'small-scale' permit could extend far beyond the 100-hectare limit specified by the decree. In addition, the short, one-year duration of these permits means a high rate of forest removal, as new permits need to be granted when they expire.

Many of the new small-scale permits were issued prior to the establishment of a regulatory agency at the district level [*Barr et al., 2001:17*]. Districts also generally lacked the capacity to monitor the implementation of licenses [*Alqadrie et al., 2002; Barr et al., 2001:17; Casson, 2001a:16*], which were not infrequently granted without the necessary field inspection [*Barr et al., 2001:36*], resulting in inappropriate assignments. Moreover, there are indications that the approval of permits has been based on informal incentives, rather than environmental and social considerations [*Alqadrie et al., 2002: (4)10; Barr et al., 2001:19; Mc Carthy, 2001b:13; Kompas, 2001b*].

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<sup>15</sup> It is unclear why the Ministry of Forestry, at the same time it was trying to repeal the small-scale measure, issued the 50,000-hectare regulation mentioned earlier. At least until recently, though, the small-scale concessions had generated more serious problems, and were the focus of the research presented here.

While there are variations in the types of fees and royalties imposed on these small-scale logging activities, they generate substantial revenues for district governments. District governments have introduced new fees on small-scale licenses, including ‘third party contribution’—a one time fee, usually based on the size of the concession—or a ‘retribution’ fee based on volume of timber harvested. For example, Kapuas district raised US\$37,500 in just one month after it applied retribution fees on timber [McCarthy, 2001b:9].<sup>16</sup> By August 2000, small-scale logging activities in Kutai Barat district had generated more than US\$30,000 for the district [Casson, 2001a:16]. In the same year, third party contributions from similar activities in Berau district, East Kalimantan, had generated US\$400,000, or half of the district’s GDP for that year [Casson and Obidzinski, 2002:2141].

Some aspects of the new district timber regime have directly or indirectly encouraged illegal logging [Casson and Obidzinski, 2002:2138]. For example, some districts issued regulations validating timber harvested outside the formal forestry regime. Instead of auctioning confiscated timber, as was done previously, district governments simply imposed fees. Hence timber can be transported out of a district and traded legally provided that those involved pay the corresponding central government and district fees [McCarthy, 2001a:26]. Such regulations in effect ‘legalize’ illegal timber. In this case, local governments appear to be particularly interested in the revenues generated from timber, rather than where or how it was harvested.

Moreover, the districts’ poor monitoring capacity has encouraged logging in areas outside those delineated by the permits. It has been reported that some small-scale permit holders start by logging areas outside the boundaries of their permits, with the intention of saving their designated areas ‘for later’ [Alqadrie et al., 2002, (3)39]. It has also been common for small-scale licensees to provide documentation for the transport and trade of logs cut illegally by others, claiming that the logs originated in their own concession areas [Alqadrie et al., 2002: (3)40].

### **The Challenge of Maintaining Conservation and Protected areas**

One of the most urgent challenges of forest management today concerns the maintenance of conservation and protected areas, particularly given the widespread increase of illegal logging, defined here as the harvesting of timber in violation of the law. Other threats include increased pressures to reclassify protected areas to other uses and conversion to small-scale agriculture. Many of Indonesia’s national parks and protected forests are experiencing serious levels of encroachment in one form or another [Kurniawan, 2003a,b; *The Jakarta Post*, 2003a; Alqadrie et al., 2002: (5)1; *Media Indonesia*, 2002; Soetarto et al., 2001:64-5, *Kompas* 2001c].

The decentralization laws place the responsibility for both the management and financing of conservation areas with the central government (i.e, the Ministry of Forestry). Since the beginning of *reformasi*, however, the government has been unable to enforce controls as it did during the New Order period [Casson and Obidzinski, 2002:2136; Potter and Badcock, 2001:39]. The military are now reluctant to exert control for fear of being accused of authoritarianism and becoming the target of community violence [Soehartono, 2001:42]. In addition, the economic crisis resulted in a huge decline in government budget allocations for the

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<sup>16</sup> One US\$ is equivalent to about 8,000 rupiah.

management of protected and conservation areas [Merrill et al., 2001:39]. At the same time, the crisis has forced many people to find alternative sources of livelihood and, hence, to turn to forests. Together, these circumstances stimulated an increase in illegal logging and protected area encroachment. Although these problems may not be associated exclusively with decentralization, their escalation and the penetration of the last remaining good forests demonstrate the urgency of addressing this issue under decentralization.

The central government's capacity to manage and secure protected and conservation forests has been regarded as far from adequate, yet it is being increasingly stretched. The lack of personnel and supporting infrastructure limit the government's ability to carry out efficient monitoring and enforcement [Wardojo, 2001:5]. For example, in Betung Kerihun National Park of West Kalimantan, one park personnel attends to 27,580 hectares [Merrill et al., 2001:44]. These difficulties are aggravated by the way illegal logging activities are carried out: through violent opposition to whoever stands in the way [Potter and Badcock, 2001:38].

Under decentralization, the issue of conservation and protected areas must also ultimately be placed in the context of opportunities for local revenue generation. Some districts have issued small-scale logging permits in protected areas [Barr et al., 2001:36; Kompas, 2001b], and district-licensed logging operations have reportedly 'spilled over' into protected forests [Kompas, 2002a]. Districts perceive conservation areas as a lost revenue opportunity [Wardojo, 2001:7]; Sembiring, 2001:28], and there are indications that some are tempted to convert them to other uses. At least two districts with vast conservation forests have suggested that they be compensated by the central government if they are to maintain them [Kompas, 2003; Kaltim Post, 2003; Equator, 2000].

Nevertheless, there are also a few encouraging examples. The provincial DPRD of West Sumatera, for example, has suggested that they reject a coal mining permit application in the Kerinci Seblat National Park for environmental reasons [The Jakarta Post, 2001]. Jambi province in Sumatera has taken a firm stand towards supporting the maintenance and expansion of Bukit Tiga Puluh National Park [Kompas, 2001e]. Provincial and local governments have also shown some desire for greater authority over these areas [Sembiring, 2001:28; Soetarto et al., 2001:65], though this is limited to management aspects with prospects for financial gain, such as tourism [Barr et al., 2001:12,39; Billa, 2001; Soetarto et al., 2001:67-8].

### **Power Struggles between the Ministry of Forestry and Local Governments**

The Ministry of Forestry has not been particularly content with local developments. It has persevered, unsuccessfully, in its attempt to halt the issuance of district logging licenses through repeated warning and threats and the revocation of, ironically, its own earlier policies. Rather than reaching a successful resolution, the tug-of-war between the Ministry of Forestry and local governments that began from the outset of decentralization remains intense.

As suggested by the provisions of the Ministry of Forestry's November 2000 decree (see above), local governments were actually authorized to grant not only small-scale licenses, but also medium and large-scale ones. Realizing the consequences, the Ministry of Forestry revoked this decree in February 2002, in a desperate effort to halt the proliferation of local timber licenses. As

with the small-scale licenses, however, the regions ignored the new decree. In October 2002, the Ministry of Forestry issued a circular to governors, district leaders, and heads of municipalities requesting them to stop issuing such licenses and report all those already issued to the Ministry. In June 2002, three years after the passage of the new forestry law, the government produced its implementing regulation, which swings authority for forests back to the center.<sup>17</sup> For example, it states that the Minister of Forestry has sole authority to issue large-scale HPHs, on the recommendation of lower levels of government.<sup>18</sup> The head of the association of district governments responded that the regions are strongly opposed to the regulation [APHI, 2002:12; Syaekani, 2002].

Confusion over the hierarchy of laws and regulations has accentuated the conflict between the ministry and local governments. For example, one decree issued by the People's Consultative Assembly in 2000 explaining the hierarchy of Indonesian laws and regulations had made no mention of ministerial decrees, providing a loophole for district leaders to ignore them.<sup>19</sup>

As of January 2003, the Ministry of Forestry estimated that the total area of logging concessions granted through local government license schemes had reached 2 million hectares [Witular, 2003b], including both small-scale and medium-scale licenses [Jakarta Post, 2003b]. The province of Papua is reported to have granted medium and large-scale logging concessions to 44 private firms covering an area of 11.8 million hectares [Witular, 2003a].

The Ministry of Forestry acknowledges that it is losing authority over forests: local governments now reject its orders and regulations [Witular, 2003b], and the ministry has no power over them. Administratively, districts are not subordinate to the Ministry of Forestry, but rather to the Ministry of Home Affairs. Meanwhile, the Ministry of Forestry's efforts to gain the Ministry of Home Affairs' approval to impose actions on 'defiant' local governments have not been successful [Witular, 2003 c]. The relationship between the Ministry of Forestry and the Ministry of Home Affairs is beyond the scope of this analysis and requires further examination.

### **Will Decentralization Work for Forests and for Local Communities?**

The general tendency of district governments under decentralization, at least in the first few years, has been to secure short-term economic gains with inadequate attention to long-term environmental, social, and economic considerations. Few district officials demonstrate concern over the ecological consequences of forest over-exploitation [McCarthy, 2001a:16]. Moreover, it appears that the regional governments' enthusiasm to earn as much as income as possible from forest resources has not been accompanied by an eagerness to invest a share of the benefits in forests. Little attention, for example, has been given to forest rehabilitation or reforestation [Casson, 2001a:16].

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<sup>17</sup> Government Regulation No. 34/2002.

<sup>18</sup> Many of the provisions of Government Regulation No. 34/2002 will be specified in ministerial decisions to be issued by the Minister of Forestry, suggesting further opportunities for the ministry to consolidate its interests.

<sup>19</sup> Decree of the People's Consultative Assembly of the Republic of Indonesia (MPR) No. III/2000 stated that MPR decrees stand immediately below the Constitution in Indonesia's legal hierarchy, followed by laws (*undang-undang*), government regulations replacing laws (*peraturan pemerintah pengganti undang-undang*), government regulations (*peraturan pemerintah*), and regional regulations (*peraturan daerah*).

While the effects of decentralized forest management on forests tend to be undesirable, the preliminary implications for local communities are mixed. One of the district officials' main arguments in favor of allocating large numbers of small-scale logging permits is that they give local communities greater opportunity to benefit from forests—benefits that previously went mainly to outsiders [McCarthy, 2001b:12; Casson, 2001a:16].

So far, however, current dynamics indicate that communities have not been the primary beneficiaries. Typically, licenses are granted to local individuals, community groups and village cooperatives, but as they usually lack the required capital and expertise, they have had to collaborate with 'partners' or investors, either local or even foreign (such as Malaysian) firms or entrepreneurs [Alqadrie et al., 2002: (3)34-35; Barr et al., 2001:18], and in some cases large-scale HPH holders [McCarthy, 2001b:13].

In many Kalimantan districts, for example, though the formal licensing fees are relatively low, informal costs are very high, adding up to US\$3,000-7,500 to obtain a permit [Alqadrie et al., 2002: (4)28; McCarthy, 2001b:13; Barr et al., 2001:19]. In Berau, unofficial contributions to the district office for a 100-hectares area add up to US\$1,500 [Casson and Obidzinski, 2002:2141]. McCarthy estimates that the total cost of logging a 100-hectare area amounts to at least USD\$12,000 [McCarthy, 2001b:13], well beyond the reach of most local people. Despite the stated purpose of the new small-scale license regime, these high costs limit the actual involvement of local people in logging. Rather, local communities living in and around forest areas participate in these concessions by providing forest areas for logging and receiving fees, usually based on the volume of timber harvested [Casson and Obidzinski, 2002:2142].

Though local communities receive some income from these arrangements, most of the profits accrue to the capital provider and other actors [McCarthy, 2001b:13]. At the local government level, the main beneficiaries are the district office and the district forestry office [Casson and Obidzinski, 2002:2142]. Also, communities are vulnerable to companies' abuse of their contractual agreements with regard to small-scale licenses. They often fail to employ locals in logging operations as promised, or to assist communities in replanting cleared land with cash crops [Casson and Obidzinski, 2002:2141; Barr et al., 2001:30-31].

The prospect of economic gains from small-scale logging has intensified conflicts among local individuals and communities, such as disputes over village borders [Universitas Cenderawasih, 2002; Barr et al., 2001:33; KK-PKD Kutai Barat, 2001; Rhee, 2000:37]. Moreover, because these gains have been primarily captured by local elites with strong political or economic connections [Barr et al., 2001a:39; McCarthy, 2001a:27, 2001b:16], a gap has emerged between those who can and cannot take advantage of the opportunities offered by decentralization and the new small-scale licensing regime.

The decentralization process in the forest sector has, however, had some positive effects for local people. Compared with the New Order period, they now enjoy greater access to forest resources. Not only is there increased formal recognition of communities [Rhee, 2000:36], but also—at least in the short term—communities can expect to gain some direct income from logging activities in local forests. While the income generated may be meager, it is probably more than before [Casson and Obidzinski, 2002:2142].



## Conclusion

The decentralization process in Indonesia, particularly in the forestry sector, is facing tremendous challenges. The pace of change has been incredibly rapid, with *de facto* decentralization occurring more quickly than *de jure* decentralization. Impelled by *reformasi*, the weakening of the existing legal order and future promises of autonomy, decentralization on the ground began before the January 2001 date set for the implementation of autonomy laws, and long before the necessary supporting regulations were in place.

In practice, then, decentralization, fostered by local policies and initiatives more than by central government dictates, has been disorderly. A number of interconnected factors have contributed to this. First, part of the problem is the confusion and uncertainty stemming from inconsistencies and legal contradictions within the decentralization framework, between decentralization laws and sectoral laws (in this case the forestry law), and regarding the relative authority of certain regulations in the legal hierarchy. Laws and regulations were formulated too hastily and with little public involvement. Consequently, the legal framework leaves room for multiple interpretations, and local governments have justified their actions based on their own analysis.

Second, the central government's motivations, by decentralizing at a time of political instability while struggling with its declining legitimacy, have played a role in spawning local actions that infringe on national legislation and policies and foster what traditionally have been considered illegal activities.

Third, decades of historical neglect of the Outer islands' development, through forest-extraction policies in which benefits primarily accrued to non-local actors, have resulted in deep resentment of central government policies. Furthermore, the rhetoric and failures of earlier decentralization attempts have sowed the seeds of local distrust in the devolution of power and resources. This distrust has increased due to the center's ongoing demonstrated reluctance to hand over power in the current process. This has motivated 'opportunity-grabbing' behavior on the part of local governments and communities, who fear losing them in the future.

What we have seen, therefore, at least in the first few years of implementation, is a decentralization process that has led district governments to emphasize economic interests, particularly in forest-rich areas. Meanwhile, the Ministry of Forestry is losing control over forest resources in terms of its ability both to assign forest use or exploitation and to protect it. Clearly a more appropriate and, most importantly, legitimate balance of power between the center and the local levels of government is needed to ensure resource protection.

Local governments now effectively have more power and authority, but a critical element providing the checks and balances for exercising this power is missing. While district leaders are now accountable to district assemblies, assembly members are accountable to their political parties but not directly to constituents. There is no institutionalized mechanism in place to ensure that district governments use their power and authority in ways that benefit citizens.

The choice to decentralize to districts rather than provinces was based, in part, on the argument that decisions made closer to the people would respond better to citizens' needs and aspirations.

Even so, however, Indonesian districts, particularly those of the Outer islands, may cover vast geographical areas with disperse and remote populations. In addition, transportation and communication infrastructures are often rudimentary or non-existent, hindering meaningful information sharing and interaction between decision-makers located in the district centers and citizens—another obstacle to downward accountability and real citizen participation in decision-making.

Concerns about district level capacity are also relevant and have clearly had an effect in the forestry sector. Logging concessions have been allocated with minimal control or monitoring mechanisms in place, leading to unsustainable practices. Scale issues are also important: the need to make some decisions based on environmental considerations that cross administrative boundaries suggests that provincial authority over a wider territory may be necessary and appropriate.

Decentralization has provided greater opportunities for local communities to engage in timber-related activities, enabling them to gain some benefits from this resource. Nevertheless, most of the benefits appear to accrue to other actors, including local elites. A segment of the local population—those who are in less of a position to take advantage of these opportunities—risks being left behind.

Under decentralization, Indonesian forests have been put to a difficult test. Though it is too early to establish definitive outcomes, since the dynamics are continually changing, there are early signs both that the process has thus far followed a desirable route on the one hand, and a path that needs to be much improved on the other. A greater portion of forest riches is now retained and enjoyed at the source, and local leaders are now making their own decisions regarding forests. Nevertheless, this new power and authority has been exercised primarily in ways that encourage short-term exploitation over long-term sustainability. Future efforts must seek mechanisms to strengthen the gains while minimizing and discouraging the losses.

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