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DEUTSCHE ZUSAMMENARBEIT

Implemented by:

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

In cooperation with:



Supporting Forest Conflict Resolution in Indonesia through Mediation

Experiences from multi-stakeholder processes at national and local levels in Kalimantan

Background – forests and land-use conflicts in Indonesia

Indonesia is a country with more than 17,500 islands and over 250 million people with very diverse ethnicities and cultures. More than 120 million hectares of forest land make it the third largest area of tropical forest worldwide, being home to 10% of global species. Forestry makes up about one per cent of the gross domestic product. Yet the management of forests is facing many challenges. Especially the pressure from other land use forms competing with forestry, such as the mining, agriculture or plantation sectors, raises questions on sustainable economic development and the achievement of Indonesia's climate change goals. This has resulted in high deforestation rates of about 0.6 million hectares annually (2013/2014), intensified through forest fires (only in 2015 nearly two million hectares of forest were destroyed by fire).



Forest and land conflicts have come to a head in Indonesia in recent years. More than 20% of the forest area is affected, mostly due to disputed permits for mining, industrial tree crop plantations or oil palm plantations. Many interrelated factors contribute to these conflicts, such as legal uncertainty caused by contradictory or overlapping jurisdictions; weak law enforcement; uncoordinated (and often illegal) permitting and licensing procedures; widespread corruption; and the rising global demand for land, food, renewable energy, infrastructure, and conservation.

Most of Indonesia's forests are state owned. It was just in 2012 that a Constitutional Court decision (35/2012) overturned the classical understanding of forest. Since then it is possible to define forest area as "Customary Forest", owned by indigenous communities, and so exclude it from the state owned forest area. This opens the way for Indigenous Peoples to claim their forest rights. However, the progress of actual transfer of forest ownership rights to communities is still slow.



Addressing conflict resolution

Since 2013, the global GIZ Forest Governance Programme (FGP) and the bilateral German-Indonesian Forests and Climate Change Programme (FORCLIME) have been working together in Indonesia, on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), to improve forest governance at the local level and strengthen access of local or customary communities to forest resources. The two GIZ programmes cooperate with the Indonesian multi-stakeholder platform Working Group on Forest Land Tenure (WGT) and the Ministry of Environment and Forestry on the mapping of customary forest, land use rights and related conflicts, as well as the development of innovative mechanisms for conflict resolution at local level in Berau and Kapuas Hulu districts in Kalimantan.



Figure 1: Project area

Within this cooperation several results have already been achieved, which support the solution of forest conflicts:

- A study on the institutional and legal set-up for forest conflict resolution in Indonesia was conducted through a team of consultants¹ between March and December 2015. It involved literature research, interviews and workshops with key stakeholders in two of FOCLIME's pilot districts, Kapuas Hulu and Berau (in Kalimantan), as well as in Jakarta. The study not only focused on creating a better understanding of the legal and institutional set up, but also developed a mechanism for effective conflict resolution at the district level.
- Land tenure assessments were realized in several Forest Management Units across Indonesia for providing comprehensive information and data on current and potential conflicts among stakeholders. These assessments are the basis for conflict mediation and resolution.



¹ The team was made up of an international expert from GOPA, Germany, responsible for the institutional analysis, and a national expert from WGT, Indonesia, who conducted the legal analysis.

- Capacity development for government staff, private sector and civil society has been conducted in Jakarta, as well as in Berau and Kapuas Hulu districts. Trainings focused mainly on land tenure analysis instruments, participatory mapping and mediation of conflicts related to forests and land.
- The collaboration supported mediation of specific land use conflicts in Kapuas Hulu and Berau. A conflict in Kapuas Hulu concerning administrative village boundaries was successfully resolved through mediation, facilitated by WGT. In Berau, a Memorandum of Understanding between four village communities and a state timber company was signed to develop a “partnership scheme” inside the Forest Management Unit area.
- Guidelines, pocket books and lessons learned of mediation and conflict assessment were prepared and published. Some of the published practices are already applied by the in-house training centres of the Ministry of Environment and Forestry.
- Input to the formulation or improvement of national regulations and laws on conflict resolution was provided. In collaboration with the Ministry of Environment and Forestry, WGT was involved in formulating a new Ministry Regulation on Conflict Handling.



The institutional and legal set-up for forest conflict resolution in Indonesia

Only after the fall of the Suharto Government in 1998, authority for forest management in Indonesia shifted from national to district level. This recentralization process was the first opportunity for district governments to participate in and take control over forest management. However, implementation was challenged by a struggle on property rights and legal uncertainties. Thus in 2014 then President Yudhoyono signed and issued the national law number 23, which will lead to partial recentralization of governance structures as from 2017 onwards responsibility for forest management will lay with provincial governments. These drastic governance changes over the last decades, combined with highly sectorial oriented ministries, resulted in many overlapping regulations, including responsibilities for conflict resolution.

Many change processes to improve forest governance have been initiated in Indonesia during the last years. In addition to the Constitutional Court Decision Number 35/2012 on “Customary Forests”, they include for example the “One Map Policy” as an effort to establish a single, nationally consistent map base with a common geo-referencing system for gazetted forest area and other forms of land use. This map shall be used by all agencies and levels of government to clarify rights and reduce conflicts. Furthermore, existing laws are reviewed with the purpose to reduce unnecessary complexity and confusion in the legal framework. New laws are being passed on transparency, conflict resolution, agrarian reform, natural resource management, and civil service reform. However, regarding the management of conflicts in particular, there are still a





lot of different regulations in place. These regulations are sometimes overlapping or even contradictory, as are the institutional functions and responsibilities. To understand the institutional set-up it is necessary to separately review the national as well as the sub-national level.

THE NATIONAL LEVEL

There are two major authorities regulating land rights: The Ministry of Environment and Forestry has the authority over forest land, while the National Land Agency (BPN) is controlling the remaining land, classified as non-forest areas. Several institutions under of the Ministry of Environment and Forestry as well as under the Ministry of Agrarian Affairs and Spatial Planning) have been given the mandate to resolve forest and land conflicts. However, such institutions are often short-lived and only very few initiatives reached the level of implementation. Another particular point of concern is the lack of coordination among the different national agencies responsible for forestry and land use policy, given that many forest boundaries are disputed, or are at least are legally ambiguous, and span over different types of land. Resolution of such conflicts requires a concerted effort by different agencies and sectors. In 2015, the Indonesian Government established the Directorate General of Social Forestry and Environmental Partnerships under the Ministry of Environment and Forestry. The Directorate shall be the lead national actor in the implementation of forest conflict resolution.

National and international non-governmental organisations (NGOs) are active on the national level, too. They offer advocacy for policy and legal reform, analysis and documentation of disputes as well as practical conflict resolution services. The latter mostly consists of facilitation and mediation between companies and local communities. Independent conflict resolution services are still limited, but are provided by for example the Impartial Mediators Network (IMN) as a specialized mediation expert network with members from civil society, government and private sector, or by the Working Group on Forest Land Tenure (WGT). The private sector only lately came into action as the large timber, pulp and paper, and agricultural plantation companies started to make corporate commitments.

THE SUB-NATIONAL LEVEL

At the sub-national level the legal basis for forest conflict resolution is equally thin, only very few district regulations have been enacted so far. In the two districts of Berau and Kapuas Hulu, the study has found mainly three government institutions with the task of resolving land and forestry conflicts. These institutions have been initiated top-down by national legislation and not by district or provincial authorities directly. A district-based representation of the MoEF Directorate General for Social Forestry and Environmental Partnerships, however, has not yet been established. Although there are district-specific variations, reflecting local policies, real bottom-up approaches for conflict resolution do not exist. Also, there is no institution for district-wide coordination of all conflicts from the forestry and land sector. Staff recruited for conflict resolution in the two districts has usually limited knowledge, experience and skills on collaborative conflict resolution and is largely underfunded to fulfil the assigned tasks.

SUMMARY OF MAIN OBSERVATIONS

Indonesia is in the midst of a transition towards a new national political administration, with a massive restructuring in the newly merged Ministry of Environment and Forestry and the announcement of the new autonomous law recentralizing authority and power over forest management from district to province level. This presents a challenging and rapidly changing policy and institutional context. There are hopes and expectations about the orientation of the newly elected government, but the situation involves a great deal of uncertainty, and considerable speculation about the changes that lie ahead. On the one side, this uncertainty presents a significant challenge in offering specific recommendations, on the other side it is an opportune time to discuss new initiatives and concepts as an input to important choices to be made in the future.

In the Indonesian land and forestry sector, practical conflict resolution is still in an early stage. Although many laws have been passed and many institutions were temporarily created, very few initiatives have reached implementation level. Given the great disparity in capacity between Jakarta and the rest of Indonesia, the very few and mostly Jakarta based mediators are sent for ad-hoc, short and limited conflict interventions into the field. There is an obvious lack of qualified, experienced mediators and organizations working on multi-party mediation in natural resources management in the field. Addressing these key issues will require human capacity development for both individuals and organisations, as well as measures to enable the legal and political framework needed for successful resolution of forest and land conflicts in Indonesia. The study recommends a step wise, bottom-up approach to build the capacity and strengthen the overall system for land and forest conflict resolution.



The proposed mechanism for enhanced forest conflict resolution

To overcome the shortcomings in the current institutional and legal set-up, the above-mentioned study proposes the establishment of a mechanism for enhanced forest conflict resolution at district level. This mechanism centres on a multi-stakeholder mediation team, attached to a conflict handling desk, with the tasks of (1) providing conflict assessments and mediation services, and (2) effectively coordinating conflict resolution activities across sectors, and with the provincial and the national level. The establishment of such a “conflict resolution desk” as shown in Figure 2 is build on the principle of ‘subsidiarity’ to allow management of conflicts at the most immediate level consistent with their solution (national, provincial and district). The effective functioning of such a linked system would allow the national and provincial level to request conflict assessments and mediation services from district-based mediators, while the district level could request and receive assistance from the provincial or national level. Thus, strengthening capacities at sub-national level and linking the conflict resolution system provides synergies and opportunities to handle more conflict cases in the future with greater chances of success and lower costs. In addition, documented lessons learned from conflict resolution processes can be used for long-term conflict preventive policy, legal and institutional reforms.



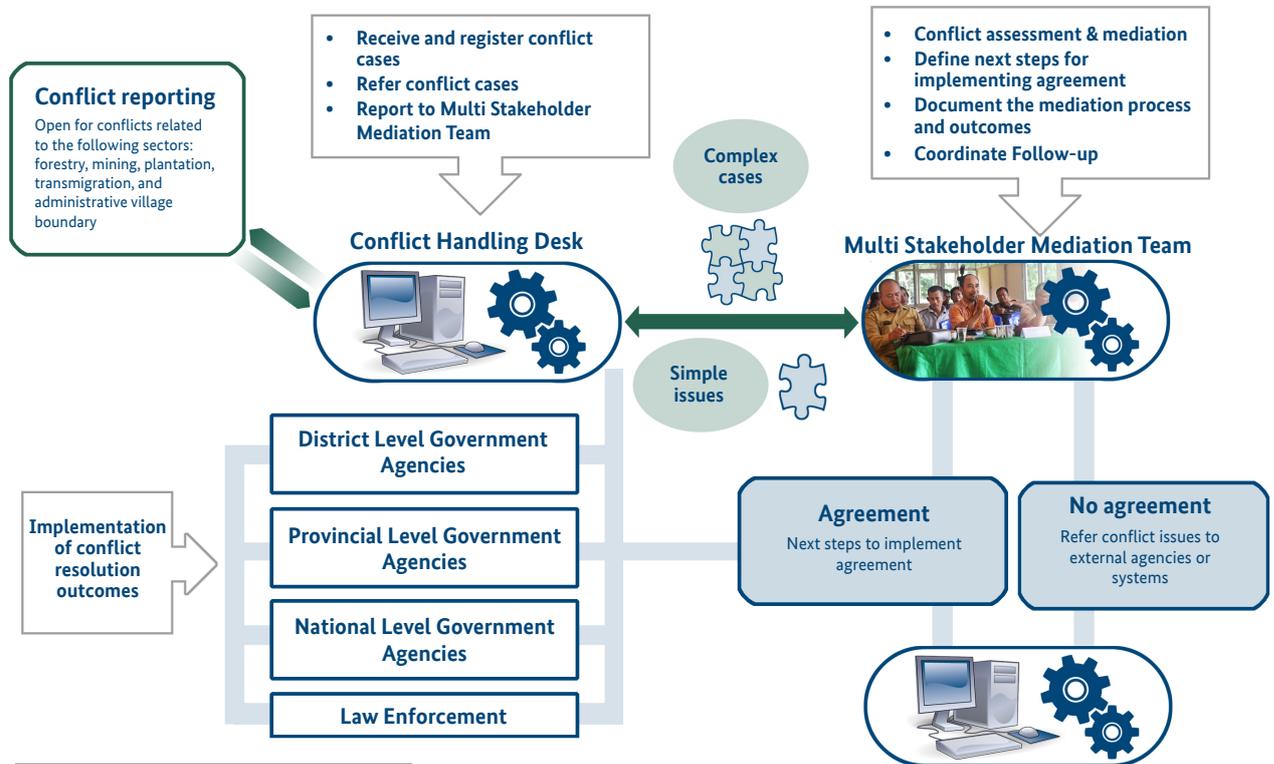


Figure 2: Proposed mechanism for conflict resolution at district level



Way forward

Some key recommendations from the above-mentioned study are already in the implementation process. The cooperation with Working Group on Forest Land Tenure, for example, is continued by FORCLIME to pilot the mechanism for enhanced forest conflict resolution at district level in Berau and Kapuas Hulu, involving key stakeholders from sub-national governments, traditional leaders, private sector and civil society. To improve vertical coordination, all activities are conducted in close collaboration with the Ministry of Environment and Forestry.

For the mechanism to operate and fulfil its function it is important to strengthen human and institutional capacities for conflict resolution at the sub-national level. This includes capacity development for staff of the conflict coordination unit (mediation team and conflict handling desk), as well as key stakeholders in the province, districts, and sub-districts. Staff will need training on conflict assessment, mediation, as well as their roles and functions. Additionally, options need to be explored on how mediation for forest and land use conflicts could be sustainably financed in the future.

Impartial mediators for multi-party mediation in the natural resource sector are crucial but so far not available at sub-national level. Training for individuals based at district or province level to become certified mediators, and the establishment of a local mediator-pool, will therefore be strongly needed to meet the rising demand for mediation once the mechanism is working.

To strengthen the overall system for land and forest conflict resolution, it is further recommended to use the experiences and lessons learned during the pilot phase of the proposed mechanism for policy and legal review. A linked system, which can coordinate across different sectors and all levels of forest governance, may be replicated if it generates positive impacts on proactive dispute prevention and reactive conflict resolution.

Published by the **Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH**

Registered offices Bonn and Eschborn, Germany

Forests and Climate Change Programme (FORCLIME)

FORCLIME Technical Cooperation (TC), a programme implemented by the Ministry of Environment and Forestry and GIZ, funded through the German Federal Ministry for Economic Cooperation and Development (BMZ)

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Forest Governance Programme (FGP)

The Forest Governance Programme (FGP) is commissioned by BMZ to support partner countries of German development cooperation in Asia, Africa and Latin America in their efforts to improve the governance in the forestry sector.

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July 2016

Photo credits: GIZ and WG Tenure

GIZ is responsible for the content of this publication. On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ)