The Asia Foundation

Improving Forest and Land Governance
SETAPAK

UKaid
from the British people

Key Components Of Indonesia's Forest And Land Governance

The Asia Foundation's SETAPAK program is focused on improving forest and land governance in Indonesia. Good forest and land governance will allow Indonesia's decentralized governance to ensure transparency and accountability in the management, protection and distribution of benefits from natural resources to achieve pro-poor sustainable growth.

This briefing paper outlines six processes and mechanisms that are key components of good forest and land governance in Indonesia. Embedded in Indonesia's forest and land governance systems, these processes and mechanisms include spatial planning, allocating licenses for land concessions (such as for logging and mining activities, and palm oil and timber plantations), environmental safeguards, budgets for environmental management, monitoring land use and enforcement of relevant laws and regulations.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Forest And Land Governance In Indonesia

Globally and in Indonesia, it is known that weaknesses in forest and land governance contribute to forest loss and degradation, damage to biodiversity and sensitive landscapes such as peatlands, and increased risk of natural disasters such as floods. These weaknesses also reduce state revenues, increase the incidence of land conflict, and affect livelihoods detrimentally.

It is also accepted that activities associated with land use, land use change and forestry, or LULUCF, are responsible for about 80 percent of Indonesia's greenhouse gas emissions, which are the third highest in the world. This results most significantly from legal and illegal logging, the conversion of forests for plantations (mainly timber for the pulp and paper industry, and palm oil), forest fires, encroachment by small scale farmers, and the exploitation of mineral resources, particularly coal.

Indonesia hosts the world's third largest area of tropical rainforest, which is reducing at around 840,000 hectares (ha) annually. The country's peatlands are also one of the most important carbon stores in the world. Most are located in lowland areas, few are protected, and many are threatened with conversion to small scale agriculture or large scale plantations. Of Indonesia's 21 million ha of peatland, it is estimated that approximately 12 million ha have been disturbed.

This degradation has impacts beyond global climate change. Forest resources are important to the livelihoods of many of the 36 million Indonesians living in poverty, including women who are often dependent on common property resources. Economically, forest resources worth US$3 billion annually to the national budget are lost as timber is logged illegally, including from protected areas.

These issues are recognized domestically and internationally. In 2009, the Indonesian government committed to a 26 percent reduction in emissions from LULUCF activities by 2020. Development agencies and international climate funds have also recognized the importance of Indonesia's forests in mitigating global climate change. To ensure that these funds and initiatives are strategic, efficient and coordinated, good forest and land governance must be promoted and institutionalized.

What Is Forest And Land Governance?

Forest and land governance refers to the processes, mechanisms, rules and institutions for deciding how forests and land are managed. Mechanisms can be top-down, government-led legislation, policies or programs designed to regulate forest and land use, or bottom-up approaches, such as community-administrated advisory, monitoring or decision making bodies. Stakeholders include governments, local communities, customary (adat) groups, non-government organizations and private sector actors.

Indonesia's current forest and land governance system allocates various responsibilities to district, provincial and national governments. These include varying aspects of spatial planning, land concession licensing, budgeting for environmental management, and environment safeguards.

However, compliance with existing regulations and procedures is often low, and law enforcement is weak. Commonly identified reasons for weak governance include overlapping or unclear regulations, lack of accurate maps and technical capabilities, unclear land tenure, low transparency and public participation, and corruption.

Good governance is vital for sustainable land and forest management. It is characterized by policy making that is based on transparent and predictable processes, competent and accountable public officials, enforcement of legal elements such as property rights, and civil society participation. Active, informed and engaged stakeholders from all sectors – government, civil society and business – are essential in managing natural resources efficiently.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Six Priority Areas For Improving Forest And Land Governance

- **Spatial Planning** involves allocating land into separate areas designated for protection and for development. It is a fundamental element in ensuring that land use activities are appropriate to their allocated land type, and that different activities are coordinated. In Indonesia, the legal framework for spatial planning includes a requirement for community participation, as well as the recognition of community-owned land. Enhancing spatial planning involves improving mapping, increasing civil society engagement, integrating information about adat land into spatial plans, and making more information available to the public.

- **Licensing And Permits** ensure that all activities are in accordance with spatial planning designations, and adhere to all environmental laws, regulations and obligations. They also regulate activities to mitigate adverse impacts on the environment and local communities, and generate government revenue. Streamlining bureaucracy and enhancing enforcement would improve the licensing system. More accurate maps, better coordination between government departments, increased transparency and public participation, and greater clarity over land use policies are also required.

- **Environmental Impact Assessment (AMDAL)** is a formal set of processes for evaluating the environmental and social impacts of land based developments. They aim to ensure that licenses and permits minimize damage and degradation, and are one of the few formal processes in Indonesia's governance system that have a statutory public participation requirement. AMDAL are required by law, but in practice legally determined processes are often not adhered to. Specifically, social impacts are often under-represented, processes can lack transparency, and results are not always made public.

- **Transparent Financial Management** primarily relates to public oversight of budget allocations, but includes the collection of revenues as well as the disbursement of funds. Poorly managed budgets and non-transparent budgeting and allocation processes can result in funds not being allocated to priority aspects of environmental management, such as law enforcement, or improving the technical capacity of forest agency (*Dinas Kehutanan*) staff. Increased transparency would improve accountability procedures and public scrutiny of budget allocations for environmental management.

- **Monitoring** is the practice of evaluating the effects of land based activities. It ensures that laws and regulations that protect the environment and communities are adhered to and are enforced, and that revenues are collected and distributed equitably. Improving environmental monitoring mechanisms, by means such as increasing public access to information and increasing participation, are effective ways to use systems mandated by law to support good governance and reduce the incidence of violations of environmental laws and regulations.

- **Law enforcement** ensures that legal sanctions are administered when laws and regulations are violated. Effective and accessible grievance procedures support law enforcement, allowing affected communities and other stakeholders to report environmental and social law breaking. Informal justice mechanisms (such as the free, prior, informed consent principle) work to promote compliance with land use and forestry laws, and to ensure that local and indigenous communities' rights are recognized.

SETAPAK is working to improve forest and land governance in Indonesia. Good forest and land governance will allow Indonesia's decentralized government to reduce greenhouse gas emissions and achieve sustainable growth by ensuring transparency and accountability in the protection, management and distribution of benefits from natural resources.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

SPATIAL PLANNING

Spatial planning aims to ensure that land use activities are appropriate to their allocated land type, that different land use activities are integrated and spatially congruent, and that any divergent objectives of government, the private sector and local communities are reconciled. According to the United Nations, a spatial planning system that manages development in an efficient, effective and fair way is a central component of good governance.

Gazettement

Gazettement is a process of legalizing the boundaries and definition of state forest. Gazettement determines whether an area of forest is *kawasan hutan* or area for other uses (*Areal Penggunaan Lain*, APL). Constitutional Court Decision No. 45 of 2011 annulled a controversial clause of the Forestry Law which had enabled the national government to declare the boundaries of the state forest zone without a proper mapping process. This decision means that the *kawasan hutan* can only be legally established once all stages of gazettement have been carried out involving designating forests according to their function, marking the areas on maps and on the ground, and formally confirming the process and decision. The law requires gazettement to be a participatory process that considers local livelihoods and existing land tenure.

To conduct gazettement, provincial governments must seek MoEF approval. The following documents must be provided:

- The current provincial spatial plan with annexes and attachments;
- Satellite images from the past two years that indicate the condition of vegetation and land cover of the relevant zone;
- A map showing current forest zone uses and land utilization licenses;
- A map of proposed changes to allocations and functions in the forest area.

Only following gazettement does the Ministry have the authority to lease concessions within areas of *kawasan hutan* marked for budidaya. Community involvement in the gazettement process is crucial to ensure that areas determined to be *kawasan hutan* do not have conflicting community land claims. Without community involvement, customary (*adat*) and community forests may therefore not be formally recognized and be gazetted as state forest, resulting in land being licensed without community consent and livelihoods being criminalized.

Regulating Land Use

Spatial planning involves measuring, mapping and consulting with experts and civil society in order to regulate land use in a fair and efficient way, thereby preventing land use conflict. Good spatial planning:

- promotes development of previously altered brownfield land, and minimizes development on virgin unaltered land including primary forests;
- conserves and enhances important environmental, historical and cultural assets;
- addresses potential environmental and climate change risks such as flooding and drought;
- protects the rights of people, including food security;
- ensures efficient use of resources and avoids duplication of effort by coordinating actions and investments.

A key element of process involves gathering public opinion in order to meet community needs.

Spatial Planning In Indonesia

The Forestry Law (*Law No. 41 of 1999*) gives the Ministry of Environment and Forestry (MoEF) the authority to determine which parts of Indonesia are forests, and designate them officially as forest areas (*kawasan hutan*). These areas are zoned into conservation, protection and production forests through a process of gazettement (see box). Spatial planning determines what activities may take place where by allocating specific areas for protection and conservation (*lindung*) or for development and production (*budidaya*). The system aims to ensure that permits for mining (including exploration and exploitation) and plantations are allocated to *budidaya*, which should be non-forested or degraded brownfield areas.
Spatial plans are made by all three tiers of Indonesian government – national, provincial and district – and should conform to each other. The national spatial plan (RTRWN) extends over 25 to 50 years, and delineates *lindung* areas for protection and budidaya areas for development. Provincial spatial plans (RTRWP), which extend over 15 years, are developed based on the national plan, and district strategic regional spatial plans (RTRWK) follow, which extend over five years. All plans are revised every five years, usually to adjust the designation of an area to accord with its physical condition.

Although district spatial plans must be approved by the national government to become legal, the system devolves significant decision making authority to provincial governments, including the allocation of permits for land use activities. A Strategic Environmental Study (KLHS) must be integrated into each government's plan. This is defined as a series of systematic, comprehensive and participatory analyses to ensure sustainable development. If a KLHS has not been conducted, the plan should not be accepted by the national ministry.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Spatial planning relies on maps to provide information about forest cover, land type and tenure boundaries. Mapping should involve both a physical inventory (measuring, marking and delineating land types and conditions) and a social inventory (consulting with local people, and recording ownership and access claims). However land mapping processes are often incomplete or inaccurate. The integration of community land into district level spatial plans is a legal requirement, but is rarely fulfilled. Official maps do not always contain information about customary (*adat*) land boundaries, and without secure tenure communities' livelihoods become criminalized and land can be allocated for industrial concessions without their consent.

A key component of the spatial planning process is therefore community participation, which occurs through participatory meetings (*musrenbang*). District governments use outcomes from *musrenbang*, along with sectorial plans, to produce the region's development plan and allocate funding. The district plan is then considered in a provincial level musrenbang, the outcome of which is used in the provincial development plan, and subsequently the national budget process.

Community maps and management plans may be submitted to district governments to request that the community be awarded the right to manage their forest area under community forest management systems. These include village forest (*Hutan Desa - HD*), community plantation forest (*Hutan Tanaman Rakyat - HTR*), and community forest (*Hutan Kemasyarakatan - HKm*).

Poorly governed spatial planning allows the process to be influenced by economic interests of politicians and bureaucrats. Private sector interests are often prioritized in this way to the detriment of community participation and the livelihoods of indigenous communities.

In May 2013, Indonesia's Constitutional Court (MK 35 of 2012) ruled that adat communities have legal rights to manage the forests in which they reside. This means *hutan adat* (customary forests) can no longer be categorised as *hutan negara* (state forests), and instead becomes *hutan hak* (forests subject to rights). Securing adat communities' rights to the forests of which they have stewardship relationships over is crucial to protecting livelihoods.

Relevant Legislation

The Spatial Planning Law No. 26 of 2007 legislates for a set of spatial plans coordinated between national, provincial and district levels. Central government has authority to regulate, empower and supervise national spatial planning, and facilitate cooperation between provinces. Provincial governments have such authority at the provincial level, and district governments at district level.

Implementing regulations include:

- **Government Regulation No. 26 of 2008 regarding National Spatial Plans**
- **Government Regulation No. 15 of 2010 regarding the Implementation of Spatial Planning**
- **Government Regulation No. 68 of 2010 regarding Community Participation in Spatial Planning.**

Other relevant laws include:
The Environmental Management Law No. 32 of 2009 which requires environmental inventories and environmental management and protection measures, including the establishment of eco-regions, to be included in spatial planning.

LICENSING AND PERMITS

Licensing and permits ensure that activities accord with land use titles, and adhere to environmental regulations and obligations. They regulate operations to mitigate adverse impacts on the environment and local communities, and generate revenue for government activities.

Relevant Legislation

Law No. 5 of 1960 on Agrarian Issues provides the legal basis for land use outside forest areas and gives the government rights to manage and use natural resources. These include time-limited land tenure for commercial use (*Hak Guna Usaha*), the right to construct buildings (*Hak Guna Bangunan*), and the right to lease lands from the state or from a private land holder (*Hak Pakai*).

Law No. 41 of 1999 on Forestry regulates the use of land within the forest estate. **Regulation No. 6 of 2007 on Forest Arrangement, Forest Management Planning and Forest Utilization** sets out licensing processes for the management and utilization of forest zones.

Law No. 32 of 2009 on Environmental Protection and Management governs the environmental aspects of licensing. The implementing regulations include **Regulation No. 27 of 2012 on Environmental Licenses,** which requires all industry operations to have an environmental license.

Law No. 4 of 2009 on Minerals and Coal Mining sets out the regulations for mining. The implementing regulation is **Government Regulation No. 23 of 2010 on the Realization of Mineral and Coal Mining Business Activities.**

Law No. 18 of 2004 on Plantations governs plantations. The implementing regulation for allocating permits is Ministry of Agriculture Regulation No. 26 of 2007 concerning Guidelines for Plantation Licensing.

Law no. 23 of 2014 on Regional Governance transfers authority for issuing permits in forestry, fisheries, mining, and oil and gas, from district to provincial governments. District governments retain supervisory authority over licenses issued prior to the law being introduced, until expiration.

Indonesia's Licensing System

A license is required for all extractive and land-based industrial activities that take place in Indonesia. Activities such as mining, logging, and clearing forest land for plantations require a series of permits from various government agencies, and from various tiers of government depending on the activity and the land for which it is planned. For a license to be allocated, the landowner and the local community must be consulted. Licenses are required for a company to be incorporated, for a company to operate, to clarify land ownership, to convert forested land, and to export exploited resources. Activities that take place in *kawasan hutan* or on virgin land have specific permit requirements.

In October 2014 the Indonesian Government introduced Law No. 23 of 2014 on Regional Governance. This law recentralizes permitting processes for the forestry, mining and oil and gas sectors. The law takes the power to issue primary licenses in forestry, fisheries, mining, and oil and gas away from district heads (*Bupati*) and transfers it to provincial governors.

Mining

Legislation limits mining to areas designated by the government in the national spatial plan to have potential mineral or coal reserves (*wilayah pertambangan*). Once categorized, an area can be designated a mining permit area (*wilayah izin usaha pertambangan - WIUP*). A mining license (*izin usaha pertambangan - IUP*) can only be issued to a mining company for areas that have been designated WIUP. Mining license holders do not own their concession area, are only allowed to extract one mineral type, and have no automatic rights to exploit other minerals.

Two types of mining licenses exist. An exploration license is required for surveying and feasibility studies, and a production operation license is required for construction, operations, processing, transportation and marketing. Licenses are issued by the Minister for Minerals and Energy or a governor depending on the size and location of the mine.

For an exploration license (*IUP-explorasi*), a company must first obtain a location permit (*izin lokasi*) to determine land ownership, the existence of any customary (*adat*) communities, and financial compensation required, along with a temporary permit (*izin prinsip*). This requires a deposit bond, and confirmation of community consultation. Company documents, maps, and evidence of corporate competence and compliance with environmental regulations must also be provided, and if the area is within an official forest area, a permit *(izin pinjam pakai kawasan hutan*) is required from the Ministry of Environment and Forestry (MoEF).

For a mining production operation license (*IUP-operasi-produksi*), where activities occur in production forest, conversion forest or protection forest, the same steps are required, but in addition further permits must be obtained from the Ministry of Environment and Forestry (MoEF). These require further technical submissions including an exploration/feasibility report, and details of and post-mining reclamation plans.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Oil Palm Plantations

Three types of licenses are allocated for oil palm plantations:
1) business licenses - *Izin Usaha Perkebunan* (IUP); 2) cultivation licenses - *Izin Usaha Perkebunan untuk Budidaya* (IUP-B); and 3) processing licenses - *Izin Usaha Perkebunan untuk Pengelolahan* (IUP-P). A company can own or control no more than 20,000 ha in any one province (or twice that in Papua) and 100,000 ha nationally. An applicant must build facilities, and clear land (without burning) within two years.
For plantations over 25 ha, all companies require a location permit (*izin lokasi*) from the governor. To begin operations, a company requires a business license (IUP) from the Ministry of Environment and Forestry (MoEF). This requires submission of mapping, technical feasibility studies, work plans, and a set of social and environmental reports and guarantees. Once a company has acquired an IUP, it is then obliged to obtain a Land Rights Title (*Hak Guna Usaha* – HGU). This requires an application to the National Land Agency (BPN) with tax information, maps, the *izin lokasi*, and any relevant forest release permits.

Timber Plantations

No more than 100,000 ha may be auctioned to one company for forestry activities (or twice that in Papua) and 400,000 ha nationally. Penalties for companies exceeding their concession areas range from 125 percent to 150 percent of the standard tariff. A Business Permit for Forest Timber Product Utilization-Industrial Plantation Forest (*Izin Usaha Pemanfaatan Hasil Hutan Kayu-Hutan Tanaman Industri* - IUPHHK-HTI) is required to establish and harvest timber plantations. They last no more than 35 years, and are authorized by the Ministry of Environment and Forestry (MoEF), which can devolve authority for areas under 10,000 ha. Application processes vary according to the size of the concession. If less than 10,000 ha, the head of the MoEF must provide a letter to the governor, and a project proposal must be submitted along with company documents. If between 10,000-50,000 ha, satellite images and more detailed mapping are also required, along with a project proposal, a feasibility study, and an environmental and social impact study (AMDAL). If over 50,000 ha, the proposal must also detail forest cover, forest boundaries and the siviculture system proposed, and present environmental management (RKL) and environmental monitoring plans (RPL). Applications for large concessions must also be announced via mass media and provide details of capacity building partnerships with smaller local enterprises.

Community Forest Management

Village institutions may apply for village forest management permits (*hutan desa*). The process involves:
- village institution representatives providing a map showing forest and village boundaries along with an annual management plan;
- central and provincial government verification of this documentation; and
- a ministerial decree defining the relevant areas which is then implemented by gubnatorial decree.

Forest Release Permit

If a mining or plantation company wants to convert land within conservation forest, land must be released from *kawasan hutan* to become an official 'area for other uses' (*areal penggunaan lain*). The process requires a decree from the Ministry of Environment and Forestry (MoEF), called *Pelepasan Kawasan Hutan*.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

ENVIRONMENTAL IMPACT ASSESSMENT

Environmental Impact Assessment (EIA) is a systematic process for examining the consequences of a proposed development such as a mine or a plantation. It aims to ensure that applications are rejected if negative impacts on the environment and/or any communities are likely to be higher than potential benefits, and that mitigation measures are in place to reduce or avoid any negative impacts. EIA should use the best available sources of information, and be conducted in a systematic and holistic manner. An important component of EIA is public participation. This ensures that governments and local people have a full understanding of the planned development, and influence over it.

Relevant legislation

The Environmental Protection and Management Law No. 32 of 2009 is the central law for the AMDAL process. Implementing regulations include **Government Regulation No. 27 of 2012 regarding Environmental Permits.**

This stipulates that any business activities that require an AMDAL or UKL-UPL also require an environmental license. It also obliges a company to apply for a change in its environmental license whenever business operations change.

EIAs should include the following components:

- scoping - identifies all possible impacts of the project, alternatives and mitigation options
- consideration of alternatives - ensures that all other feasible approaches have been considered
- purpose and rationale - details all the project components such as phases, locations and processes
- environmental baseline - determines the current environmental conditions
- mitigation - specifies measures to avoid, reduce, remedy or compensate for any adverse impacts
- public consultation - ensures that all opinions are adequately considered
- independent review - provides a systematic independent appraisal and decision
- monitoring and auditing - assesses the quality of predictions and the effectiveness of any mitigation.

Environmental impact assessment in Indonesia

Indonesia's EIA system, called *Analisis Mengenai Dampak Lingkungan* (AMDAL), is one of the few formal processes in Indonesia's governance system that has a public participation requirement. As all proposed extractive and land based industry projects are required to produce an AMDAL, it is a critical component in Indonesia's forest and land governance processes. Any project proponent proposing a business or activity that may have a significant impact on the environment is required to compile an AMDAL. A significant impact is defined as any basic change in the living environment caused by a business or activity. Residents affected, total area affected, the intensity or duration of the impact, the number of living elements in the environment affected, the cumulative nature of the impact, and remediation strategies are all taken into consideration. Any project located inside or at the border of an area protected for conservation also requires an AMDAL.

Project proponents are exempted from conducting an AMDAL when development projects are considered to not have a significant impact on the environment. A project exempt from AMDAL is instead required to undertake an Environmental Management and Environmental Monitoring Plan (UKL-UPL). The UKL-UPL is prepared at the planning stage of the activity, and needs to be updated every six months throughout the project's lifetime. If several different business activities are located in the same environmental area, only one UKL-UPL is required.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

The AMDAL Review Commission is an important accountability mechanism. Aside from reviewing AMDAL applications, its functions include approving certification for consultants who conduct AMDAL studies, along with AMDAL reviewers, and to determine legal sanctions should environmental damage occur. AMDAL Commissions have been known to refuse some projects for not adhering to environmental regulations. Reasons for refusal include that the project was not in accordance with the spatial plan, that the local community objected, and that there were environmental impacts which could not be effectively mitigated.

The AMDAL Process

According to the scale and location of the project, each level of government (central, provincial and district) has an agency with authority for approving AMDALs. If the scale of the project is over two or more provinces, the authority is the national Ministry of Environment and Forestry (MoEF). If the scale of the project is across two or more districts, the authority is the Provincial Environmental Impact Management Agency (BAPEDALDA). Smaller projects, within the bounds of one district, fall under the authority of the district BAPEDALDA.

The process for obtaining an AMDAL is as follows:

- First, the project proponent must formally notify the relevant Environmental Impact Management Agency of the proposed development. This information needs to be published for a period of 30 days to meet public participation requirements and must include the location of the proposed activity, the products of the planned activity, the types of waste that will be produced and how they will be handled, the known and potential environmental impacts, the period of time allowed for community responses, and the name and address of the official responsible for receiving responses. All suggestions, opinions and responses from the community concerned must be considered.
- The proponent is then required to prepare terms of reference and an environmental impact assessment document which must include environmental management and monitoring plans. In order to identify potential impacts to the community, the affected community must be consulted, and a formal observer is required to identify and represent potential impacts to environment. The AMDAL, along with the environmental management and monitoring plans, are then submitted to the local Bupati or governor.
- The AMDAL document and related plans must then be reviewed by an AMDAL Review Commission at the district or provincial level dependent on the proposed activity size and impact. The AMDAL Review Commission should be made up of staff from the relevant BAPEDALDA, as well as representatives from academia, NGOs and technical experts.
- The AMDAL Review Commission reviews the relevant documents. This is a consultative process, and project proponents are able to revise and resubmit their documentation. The AMDAL Commission has 75 days to provide a recommendation of an AMDAL application. Once an AMDAL is approved, the applicant is granted an environmental license by the *Bupati* or governor.

Once an environmental license is granted, the holder must comply with its terms and conditions, submit a report on compliance to the minister, governor or *Bupati* every six months, and provide guaranteed funds for environmental recovery.
A number of penalties apply for failure to comply with AMDAL and environmental license requirements. These include written warnings, government action, or the possible suspension and eventual revocation of the license. Sanctions also exist for state officials who issue licenses without AMDAL or UKL-UPL documents. A license can also be revoked if it contains legal irregularities, mistakes, or misuse and falsification of data. The minimum penalty for this is three years imprisonment, and a maximum fine of IDR 3 billion.

BUDGET TRANSPARENCY

Budget transparency related to two aspects of public financial responsibility. First, all levels of government have the responsibility to collect revenues from extractive and land based industries. Central government collects this revenue through taxes and company dues, and provincial and district governments collect a smaller amount through levies and surcharges. Second, all levels of government are obliged to allocate budgets for forest and land management, including monitoring, rehabilitation and environmental protection activities. Both require effective accounting systems, comprehensive and timely reporting systems, and internal and external audit checks. Transparency is vital in these processes to allow public oversight and scrutiny, and inform public debate.

Relevant Legislation

Law No. 32 of 2004 outlines provincial governments' responsibilities for managing, planning and budgeting a range of public services relating to the environment, public infrastructure, agriculture, industry and trade, investment, land, labor and transport. It emphasizes public participation as a primary means to address issues of community welfare.

The Fiscal Balance between the Central Government and Regional Governments Law No. 33 of 2004 sets out regional governments' responsibilities for managing public finances and the system of transfers from the national government.

Law No. 32 of 2009 on Environmental Protection and Management mandates central, provincial and district governments to develop and implement economic instruments to ensure that industrial development factors in the costs of environmental protection.

Law No. 4 of 2009 on Minerals and Coal Mining determines how mining revenue, royalties and land rent is collected from mining companies.

Other budget related laws include:
- **State Finances Law No. 17 of 2003**
- **State Treasury Law No. 1 of 2004**
- **State Planning Law No. 25 of 2004**
- **State Audit Law No. 15 of 2004.**

Revenue Collection

Indonesia's central government collects revenue in the form of taxes and company dues from extractive and plantation industries. Most of these funds are then redistributed from central government to sub-national governments which have more limited options for collecting fiscal resources. This redistributive fiscal relationship is composed of three key elements:

- Shared revenue funds (*dana bagi hasil*) is a system of sharing revenue from properties and income taxes imposed by the central government, and revenue from extractive and land based industries (forestry, fishing, mining, oil and gas). Producing regions receive a higher share.
- General allocation grants (*dana alokasi umum*) is an unallocated fund used to redistribute funds between resource rich and resource poor provinces. It covers civil servant wages, and an amount calculated according to the difference between a region's fiscal needs and its fiscal capacity.
- Specific allocation grants (*dana akokasi khusus*) is a special purpose grant allocated by the central government to sub-national governments and sector programs to address the special needs of individual regions. It covers environmental matters, as well as health, education, infrastructure development and local industry.

Aside from these transfers from central government, which can constitute up to 90 percent of regional government funds, regional governments also collect their own source of revenues, called *pendapatan asli daerah.*

Environment-related budget allocations

Each level of government has its own development, budget and spatial plans. Sub-national governments are allocated funds from the central government for maintaining, managing or improving environmental public goods such as forests and waterways, and addressing adverse environmental impacts. This is allocated through the public policy budget (*kebijakan umum anggaran*) and community participatory planning meetings (*musrenbang*) are a required component. Sub-national governments allocate around 2 percent of their total budget for environmental functions. Central government also supports forest and land restoration through schemes such as the reforestation fund and the plantation revitalization fund.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Mining revenue

Mining provides the greatest revenue generated from natural resources. In 2010, it contributed 7 percent of Indonesia's GDP. Three mechanisms apply:

- Land rent is based on land area multiplied by a unit tariff, which may differ for each stage of the mining process (i.e. survey, exploration and exploitation).
- Taxes are collected by sub-national governments, and rates are set regionally. They cover land and buildings, vehicles and machinery, and the use of underground water, rocks and non-metal minerals.
- Royalties are also collected equal to 10 percent of companies' net profit. Central government receives 40 percent of this with the rest shared between the relevant provinces and districts.

Forestry revenue

Forestry-related revenues, including those from wood manufacturing and pulp and paper industries, contributed US$21 billion to GDP in 2010, or 3.5 percent of the national economy. The Forestry Ministry alone earns $15 billion annually from selling permits. These revenues, which are divided between central and sub-national governments, come from three sources:

- Reforestation fund (*Dana Reboisasi* - DR) is a charge imposed on logging license holders that exploit timber in natural or primary forests. It is based on the forest classification and timber type, and is intended to ensure forest rehabilitation. Central government is allocated 60 percent, and the producing regency or municipality 40 percent.
- Forest resource rent provision (*Provisi Sumber Daya Hutan* - PSDH) applies to timber and non-timber production in natural forests and plantation forests. The amount is determined by production volume, tariff amount and benchmark price. Central government is allocated 20 percent, the province 16 percent, the producing regency or municipality 32 percent, and the rest of the respective province 32 percent.
- Forest utilization business permit fee (*Iuran Izin Usaha Pemanfaatan Hutan* - IIUPH) is a fee set by provincial governments at a cost per hectare of forests to be logged. The amount is dependent on the forest or land type classification and the status of the license. Central government is allocated 20 percent, the province 16 percent, and the producing regency or municipality 64 percent.

District governments are also able to collect revenue by issuing logging permits and collecting fees for timber and non-timber production in natural and plantation forests. The amount is set before logging, when a license holder is required to submit a harvest statement report to the forest service *(Dinas Kehutanan*) which determines how taxes and levies are calculated.

MONITORING

Monitoring includes observing and recording forest and land conditions and the activities taking place there, and systematically checking the performance of governance institutions. The latter involves monitoring judicial and law enforcement agencies to ensure that environmental and public participation laws and regulations are being enforced, and maintaining an oversight of government budgets to ensure that revenues from land based activities are being collected effectively and appropriately disbursed. Budget allocations for environmental programs should include funds for increasing the capacity of forest inspectors to gather, preserve and present evidence against illegal operators.

Relevant Legislation

The Forestry Law No. 41 of 1999 gives the Ministry of Forestry the authority to designate forest areas (*kawasan hutan*) and regulates the use of land within them.

The Freedom of Information Law No. 14 of 2008 requires all public agencies and local governments to make most kinds of state information publicly accessible.

Implementing regulations include:

Government Regulation No. 44 of 2004 on Forest Planning
Government Regulation No. 6 of 2007 on Forest Area Organization and Management
Ministerial decree No. 67 of 2006 on Criteria and Standards for Forest Planning.

Various ministerial decrees also concern the forest inventory at management unit level.

Forest and land monitoring

Monitoring forest and land conditions involves establishing a baseline of forest locations, conditions and resources, and systematically checking the exploitation of licenses for forest and land use, along with recording any unlicensed activity. As well as measuring changes in forest coverage or land degradation, the objective is to ensure that all licenses align with spatial plans and are suitable to the environmental conditions, and that all licensing laws and regulations are being adhered to. The process also includes monitoring commercial operations on the ground to ensure that activities match revenue payments, and that the tenurial rights of local communities are recognized and respected. Data related to changes to forest, land and social conditions are important indicators for measuring the effectiveness of government policies and legislation.
Indonesia has a national forest monitoring system, which is based on a national forest inventory. This includes surveys on the location and extent of forests, their biophysical features, forest cover change, and stock volumes for each type of forest (mangroves, peatlands, lowland forests and mountain forests) as well as the socio-economic conditions of people living in and around forest areas. It allows decision makers, forest planners and forest managers to determine appropriate forestry sector activities at national and sub-national levels. It also provides information about where high conservation value areas are located, and the potential timber yield of forests allocated for logging. This allows sustainable cut limits to be established, and for illegal logging to be identified and prosecuted. Data from the inventory is checked periodically by forestry agency staff.

Monitoring legal compliance

Government agencies play an important role in monitoring natural resource use and conservation. This includes investigating and recording private sector impacts on the environment, and the effects of conservation efforts. Primary governance mechanisms include the spatial planning system, the AMDAL (Environmental Impact Assessment) process, and the budgeting system. Forestry police and civil servant investigators (*Penyidik Pegawai Negeri Sipil* - PPNS) are responsible for monitoring and guarding forest areas, and forest agency staff also work to protect conservation areas, regulate industry operations, and monitor impacts to the environment and communities. However monitoring of legal compliance is often challenged by skill shortages among forest agency staff, a lack of funding for government agencies, and weak mechanisms for handling complaints about violations.

Companies adhering to sustainable forestry practices are also required to have standard operating procedures (SOPs) which include internal monitoring units to monitor financial matters as well as activities in the field. However only a limited number of companies have SOPs, and those that are in force do not always specify monitoring procedures for full legal compliance. This includes respecting the rights of local people and a commitment to management based on good governance.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Community monitoring and reporting

The spatial planning system, the Environment Impact Assessment (AMDAL) process, and the budgeting system all include transparency measures in the form of requirements for community participation. This recognizes the fact that in order to be effective, forest police, civil servant investigators and forestry agency staff activities must allow for public scrutiny and oversight. Public monitoring of performance measures, such as enforcement actions, helps to ensure that the relevant agencies achieve their mandates, and allows for synergies among other actors in forest and land governance, such as for local communities to participate in the management of forests not covered by the forest agency.

Local communities that live in and around forest areas have their own systems of forest guardianship. These forest management systems can help to support public servants responsible for forest monitoring. Good management and monitoring of forest resources benefits local communities that rely on forest resources for their livelihoods. These communities are particularly vulnerable to forest loss and environmental degradation and thus have an incentive to monitor forests.

Public participation can take the form of supervision, providing opinions, recommendations, objections or complaints, and submitting information and reports. Nevertheless, although civil society involvement is mandated in law, civil society actors frequently experience challenges with obtaining information on land use plans, permits and licenses, and AMDAL reports. The Freedom of Information Act (Law No. 14 of 2008) provides an important legal basis for civil society to request and access information. The law, which came into effect in April 2010, requires all public agencies and local governments – provincial, district and municipal – to make most kinds of state information publicly accessible. Increased access to information informs monitoring initiatives and activities. It supports advocacy aimed at speeding up government implementation, assisting the government to implement their responsibilities as mandated in law, and supporting local citizens to file and pursue grievances when requests for information are not adequately responded to. It allows better land use decisions to be made, helps ensure that licenses and commercial operations align with spatial plans, and that all environmental and social conditions of licenses are met, including consideration of the rights of local communities.

Land and Forest Governance Index

The Asia Foundation's SETAPAK program has developed an instrument called the Land and Forest Governance Index (LGFI) to systematically review the processes and outcomes surrounding land use and forest governance practices across Indonesia. The LGFI measures the quality of governance, including transparency, participation, accountability and coordination across issues such as spatial planning, implementation of land use related government services, including land use and forest monitoring. The transparency component of the LGFI measures the availability of 35 key government documents. These documents include spatial plans, lists of permits already issued for land-based industries, forest cover data, compliance monitoring reports for land permit holders, AMDAL documents, land rehabilitation plans, and district budget information.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

LAW ENFORCEMENT

In Indonesia, over 2,000 pieces of legislation, regulations and norms concern forest and land use, and laws from other sectors frequently impact on forest and land resources management. However, while Indonesia's legal system provides a good framework for environmental management, laws are frequently not adhered to. Some problems stem from confusion around legislation that is unclear or that contradicts earlier laws. Others relate to the fact that some authorities, including public prosecutors and judges, are unfamiliar with recent forest laws. Legal sanctions for improper land use are also weak, and corruption is prevalent. Land use infractions are unlikely to lead to convictions as companies have resources that far outweigh the public sector. Although there has been a significant increase in the number of laws and regulations associated with law enforcement in forestry and environmental cases, sanctions in criminal cases are still few. The judiciary plays a crucial role in prosecuting environmental crimes, ensuring they have the capacity to do so effectively is an important component of law enforcement.

Law enforcement is the responsibility of both local and central governments. Strong regulatory institutions are integral to enforcing environmental regulations, and a number of government agencies have responsibilities for enforcing forest governance laws. These include the Ministry of Environment and Forestry (MoEF), along with the police, forest police, forest agency staff, and civil servant investigators (*Penyidik Pegawai Negeri Sipil* - PPNS).

Criminal Forest And Land Use Activities

- Timber theft - harvesting without ownership or permission
- Forest injury - damage or destruction, including arson
- Forest revenue crimes - evasion of taxes, royalties and fees
- Illegal forest use - trespass, or unauthorized development
- Unlawful forest commerce - illegal commercial transactions
- Violation of laws that protect the environment
- Illegal forest product transportation
- Illegal forest product processing
- Trade violating national laws and international agreements.

Reporting mechanisms

An important aspect of law enforcement concerns the mechanisms for reporting breaches. As well as straightforward reports to the police and the forestry agency, complaints about violations of forest and land use laws and regulations are handled in a number of ways. The State Ombudsman, the Anti-Corruption Commission (KPK) and the Presidential Working Unit for Supervision and Management of Development (UKP-PPP) are all concerned with environmental and forestry issues and have online and offline reporting systems to allow members of the public to report illegal activities. However the public often lack information about laws and regulations regarding forest and land governance. This can limit consultation processes for reviewing, approving and monitoring development projects and inhibit reporting. Local communities have few well-functioning safeguards to protect their rights such as mechanisms for conflict mediation with the private sector. An important aspect of improving this situation is to engage with and encourage government and private sector actors to adhere to the principles of free, prior and informed consent.

Frequently Indonesian forest related law enforcement catches only the people who engage in illegal activities because of poverty or custom, while more powerful actors, such as those who buy and sell illegal timber or who traffic the goods internationally, remain undetected and unpunished. One of the key factors contributing to this failure is the prevalence of corruption. Corruption can contribute to failures to investigate or prosecute crimes by law enforcers. Corruption occurs most commonly in the form of bribery in the forestry sector, along with the exertion of undue influence on legal and policy decision making.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.

Market mechanisms

Law enforcement in the context of market mechanisms is also important. These include the Indonesian government's Timber Legality Verification System (*Sistem Verifikasi Legalitas Kayu* - SVLK), and the Roundtable on Sustainable Palm Oil (RSPO). The SVLK is a recent initiative to help improve the credibility of Indonesian timber products globally. It forms an important element of the Voluntary Partnership Agreement (VPA) with the European Union that aims to ensure that only SVLK timber is exported to the European Union. It has a number of components, including the definition of timber legality, and provides a verification system and independent monitoring systems. The RSPO is a voluntary mechanism to promote the growth and use of sustainable palm oil by improving standards throughout the supply chain. It allows local communities to monitor and report the activities of registered companies.

Grievance procedures and complaints handling

Complaints about violations of forest and land use laws and regulations are handled in a number of ways.

- The State Ombudsman supervises services provided by the state to the public. Its responsibilities include receiving and investigating reports of maladministration. It provides protection for individuals who file complaints.
- The Anti-Corruption Commission (KPK) selects, investigates, and tries its own cases in a specifically designed court. Its mandate requires that investigations and indictments meet strict deadlines for completion, to avoid delaying tactics.
- The Presidential Working Unit for Supervision and Management of Development (UKP-PPP) focuses on development issues and has a sub-directorate focused on environmental and forestry issues. It has online and offline reporting systems.

Relevant Legislation

Article 33(4) of Indonesia's Constitution attempts to integrate economic development with principles of democratization, solidarity, efficiency, fairness, and environmental sustainability, but it lacks clarity and the environmental aspects have never been tested in court.

Law No. 32 of 2009 on Environmental Protection and Management sets out government responsibilities at all levels. Provincial and district governments are responsible only for developing provincial policy within their jurisdiction and assisting the central government in enforcing relevant environmental laws.

The Forestry Law No. 41 of 1999 empowers the Department of Forestry to manage Indonesia's forest zone (*kawasan hutan*), defined as 'a certain area which is designated and/or stipulated by government to be retained as forest'.

Presidential Instruction No. 4 of 2006 directs the leaders of 18 government bodies, including the finance ministry and provincial and district politicians, to cooperate and coordinate to eradicate illegal logging.

The Public Service Law No. 25 of 2009 sets out the general aspects of complaints mechanisms.

Ministry Regulation No. P38/Menhut-II/2009 concerning the Standard and Guidelines for Performance Assessment of Sustainable Production Forest Management and SVLK sets out the legal framework for the Timber Legality Verification System.

Other relevant legislation includes: Law No. 31 of 2009 on Mineral Mining and Coal, Law No. 32 of 2004 on Local Government, Law No. 26 of 2007 on Spatial Planning, Law No. 23 of 2014 on Regional Governance, The Freedom of Information Law No. 14 of 2008, Law No. 20 of 2001 on the Eradication of Corruption, Law No. 25 of 2003 on Anti-Money Laundering and Head of National Police Regulation No. 1 of 2011.

SETAPAK is coordinated by The Asia Foundation in Jakarta and funded by the UK's Climate Change Unit.