



# INDONESIA PROGRAM REPRESENTASI (PROREP)

## ENVIRONMENT POLICY COMMUNITY HANDOVER REPORT

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**Project Contact Information:**

**Chemonics International Inc., Noelle Veltzé, Chief of Party, Wisma GKBI, Suite 2105, Jl. Jend. Sudirman No. 44-46, Jakarta 10210 [nveltze@chemonics.com](mailto:nveltze@chemonics.com)**

**Chemonics International Inc., John K. Johnson, Director, 1717 H Street, NW, Washington, D.C. 20006, USA [jkjohnson@chemonics.com](mailto:jkjohnson@chemonics.com)**

Pictures on cover (clockwise):

1. A student cycling to school wearing a mask to protect himself from the smoke from the forest fires in Palangka Raya, Central Kalimantan. Photo by Aulia Erlangga/CIFOR
2. Family in Bengkulu holding their Community Forestry Utilization Permit issued under Governor Decree in January, 2016. Photo by USAID/ Program Representasi
3. Community farmers in Bengkulu following issuance of their Community Forestry Utilization Permit issued under Governor Decree in January, 2016. Photo by Josh Estey/ USAID/ Program Representasi

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## ABBREVIATIONS AND ACRONYMS

CITES	The Convention on International Trade in Endangered Species
DG	Directorate General
DPR	<i>Dewan Perwakilan Rakyat</i> (House of Representatives)
FKKM	<i>Forum Komunikasi Kehutanan Masyarakat</i>
GR	Government Regulation
Gvt	Government
IBC	Indonesia Budget Center
ICEL	Indonesia Center for Environmental Law
LePMIL	<i>Lembaga Pengembangan Masyarakat dan Pedalaman</i> (Foundation for Coastal and Inland Community Development)
LIPI	Indonesian Scientific Institute
MoEF	Ministry of Environment and Forestry
MoF	Ministry of Finance
MoHA	Ministry of Home Affairs
MMAF	Ministry of Marine Affairs and Fisheries
MSF	Multi-stakeholder Forum
NRM	Natural Resource Management
PP	<i>Peraturan Pemerintah</i> (Government Regulation)
<i>Perda</i>	<i>Peraturan Daerah</i> (Regional Regulation)
<i>Prolegda</i>	<i>Program Legislasi Daerah</i> (Regional Legislation Program)
<i>Prolegnas</i>	<i>Program Legislasi Nasional</i> (National Legislation Program)
<i>Ranperda</i>	<i>Rancangan Peraturan Daerah</i> (Draft of Regional Regulation)
RMI	<i>Rimbawan Muda Indonesia</i> (The Indonesian Institute for Forest and Environment)
WCS	Wildlife Conservation Society

## I. INTRODUCTION

Program Representasi (ProRep) is a five year USAID project which aims to bring about better informed and more representative legislative and policymaking process. The project is under USAID's Office of Democracy and Governance Office and collaborates extensively with the Environment Office, among other offices in the Mission. During its fourth and fifth year (2014-2016), it initiated the policy community approach whereby CSOs, research institutions/ think tanks, government officials and media work together in influencing specific policy reforms. Due to the closure of ProRep in April 2016, the purpose of this report is to brief USAID Indonesia on the progress and achievements of ProRep's environment policy community program to inform future programming in this area. This report focuses on five policy areas namely: social forestry and recognition of customary forest; environment protection and management; biodiversity conservation; the forest license moratorium; and engagement with the Indonesian House of Representatives (DPR) on forest and land fires. The report will highlight lessons learned as identified by ProRep's partners, their next steps on the issues they are working on, and their recommendations for upcoming programs on how to advance the ongoing policy reforms. Finally, based on ProRep's experience, the report offers additional general recommendations for future environment policy projects/ activities.

## II. SOCIAL FORESTRY AND RECOGNITION OF CUSTOMARY FOREST

A significant part of ProRep's partners' work in environment policy has been on strengthening social forestry; particularly on the recognition of customary/ indigenous forest communities through national and regional law reform. The struggle for customary and community forestry rights is not only a human rights issue but also an economic and management one. Enabling forest dwellers to access and manage their forest areas not only increases their livelihood options but as most research studies indicate, if community forestry management is done appropriately, it can lead to better and sustainable management of natural resources. To this end, advocacy efforts in Indonesia have been ongoing for decades, with a major turning point being the Constitutional Court (CC) ruling 45/2011 on delineating forest borders and CC ruling 35/2012 on recognition of indigenous forest. Furthermore, in 2015 the new administration committed to allocate 12.7 million hectares (ha) to local communities over a five year period, following advocacy and recommendations from numerous CSOs, including ProRep's partners.

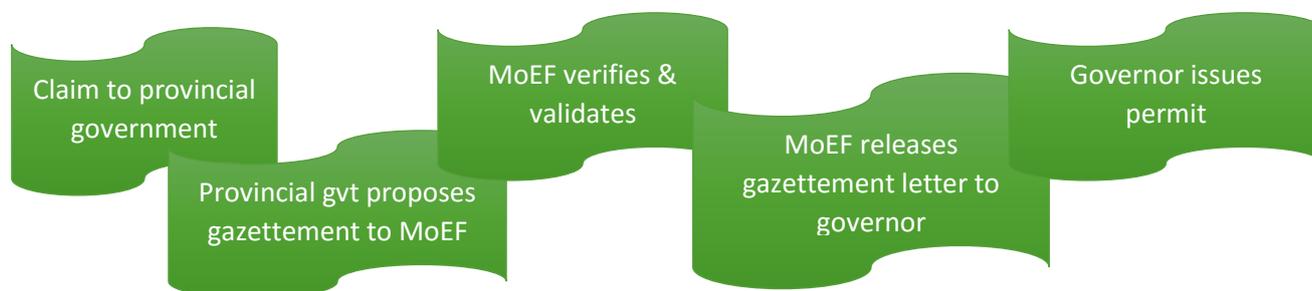
The term social forestry in Indonesia encompasses various types of forest use. Figure 1 below illustrates the main categories.

**Figure 1: Categories in Social Forestry**



Communities that fall under the first, second, and third categories in Figure 1 are eligible to claim forest permits from the allocated 12.7 million ha as long as they meet the claim requirements such as length of period they have lived in an area, no conflicts with other land claims, etc. Figure 2 illustrates the process of claiming permits following changes to the local government law in 2014:

**Figure 2: Process of Claiming Social Forest Permits**



If a community makes a successful claim, they are issued a 35 years permit under the community forest and village forest schemes. While for the community plantation forest, the permit is issued for 60 years. In the case of customary forest, they first have to be officially recognized by government as an indigenous community in order to apply for gazettement of their area; if successful, they do not get a permit but instead the area is permanently gazetted by the Ministry of Environment and Forestry (MoEF) and identified with that community. The fifth category, partnership, exists in large concession holdings e.g. plantations where 20% of the land is supposed to be managed in partnership with smallholders. This category is therefore not eligible for the allocation of 12.7 million ha as planned by the Indonesian Government.

Half of ProRep’s environment partners work on social forestry policy (see Annex 1: ProRep Environment Policy Community Diagram, and Annex 2: Map on the Distribution of ProRep Environment Policy Community Activities). To date they have been successful in advocating for the enactment of:

- a. **Two local laws** on the recognition of the Kasepuhan indigenous community in Lebak, Banten (Epistema Institute and RMI); and the Hukaea Laea indigenous community in Bombana, Southeast Sulawesi (Sulawesi Institute); and a **regent decree** on the recognition of To Kaili and To Kulawi indigenous communities in Sigi, Central Sulawesi (Epistema Institute)
- b. **DG Social Forestry and Environment Partnership Regulation on Verification and Validation of Titled Forest (Hutan Hak<sup>1</sup>)**, submitted by Epistema Institute. The guidelines will support communities currently trying to verify their title deed areas;
- c. **Governor’s decree issuing a 35 years community forestry utilization permit** for 8 *Gapoktan* (peasants associations) in Lebong, Bengkulu following AKAR Foundation’s efforts over several years. Approximately 1,400 families are expected to benefit. This is the first issuance of such a permit by provincial government in Indonesia since enactment of Law No. 32/2014 on Local Government, which recentralized responsibilities from the district to provincial level.



Family in Bengkulu with their utilization permit, Jan. 2016

<sup>1</sup> *Hutan Hak* means titled forest, any forest area with a title deed. The opposite is *Kawasan Hutan Negara* (state forest).

## Challenges

- a. **Conflict** within forest areas as a result of land-rights claims between local communities and conservation areas, state forest, or mining concession holders. Community forestry schemes (HKm) are identified as a good conflict resolution option; however it can be a lengthy process.
- b. **Society's limited understanding on how to obtain land rights and unrealistic expectations.** Some partners found that initially the communities they were working with had unrealistic expectations of the time involved and failed to comprehend that successful efforts require intense advocacy and long-term communication with policy makers;
- c. **Frequent change of government officials at the district, provincial and national levels** stagnates policy reform processes and CSOs have had to frequently press the reset button in gaining the new officials' buy in

## Policy Targets and Next Steps

The majority of ProRep's partners' work on social forestry is at advanced stages, i.e. proposed policies have been submitted to the relevant authorities for enactment/ issuance. Table 1 illustrates the policy targets the partners are working on, and the planned next steps in advancing the process. Policy targets 1-5 are at an advanced stage with high likelihoods of enactment, while the last four targets are still at the drafting or review stage.

**Table 1: Policy Targets in Social Forestry Policies**

No.	Policy Target	Stage	Organisation/ Level
<b>Advanced Stage</b>			
1	Draft of Ministerial Regulation on Local Wisdom in Forest Management (in support of the indigenous forest gazettement and management)	Submitted	Epistema Institute/ National
2	Guidebook on Drafting Local Legislation on Recognizing Indigenous Communities prepared and published (2 <sup>nd</sup> edition) due to be reprinted by MoEF for distribution to all districts and provinces	Submitted	Epistema Institute/ National
3	Revision of Government Regulation on Forest Plan and Preparation of Forest Management and Forest Utilization Plan (GR No. 6/2007), submitted to MoEF	Submitted	RMI/ National
4	Draft Local Legislation on Recognition of Marga Suku IX Indigenous Community in Lebong District, Bengkulu expected to be included into local legislative agenda ( <i>Prolegda</i> ) 2016	Submitted	AKAR Foundation/ Local
5	Draft Local Legislation on Protected and Production Forest Management Unit (KPHP/L) included into <i>Prolegda</i> 2016 in Kendari, Southeast Sulawesi, high likelihood of being enacted this year	Submitted	LePMIL/ Local

<b>Drafting / Review Stage</b>			
6	Recommendations on revision of Ministerial Regulation on Community Forestry (No. 88/2014); Village Forest (No. 89/2014)	Submitted	RMI/ National
7	Ministerial Regulation on Forestry Benefit Sharing Mechanism (BSM);	Drafting	Article 33/ National
8	Proposal on BSM submitted to local government in Jambi, Province –	Under review	Article 33/ Local
9	Draft Governor Decree on Forest and Land-related Conflict Resolution in Bengkulu submitted	Under review	AKAR Foundation/ Local

### **Recommendations**

- a. ***Monitor and support DG Social Forestry, MoEF progress on verification and validation of customary forest areas.*** The first 12 are set to be allocated in 2016, one of which will be Bengkulu where MoEF has included about 119,000 ha proposed by AKAR Foundation in its Indicative Social Forestry Map (PIAPS).
- b. ***Sustain support to organizations advocating for social forestry rights*** including those highlighted above to leverage their important progress so far; in Bengkulu province alone, there is potential for recognition of indigenous communities in five districts - Lebong, North Bengkulu, Kepahian, Central Bengkulu, and Rejang Lebong. Momentum gained in existing communities can pave the way for others to follow.
- c. ***Support sustainable community use and management of forest areas - especially those with user/management permits*** - alongside efforts on recognition of customary forest communities. AKAR Foundation, for example, plans to provide institutional support to 13 *Gapoktan* (peasants associations) in Lebong and Rejang Lebong and assist them in preparing a general 35 years management plan and annual operational plans which will identify working areas for each group.
- d. ***Link CSOs with different expertise for synergy.*** As demonstrated by the work in Lebak, RMI had strong networks with the Kasepuhan community while Epistema Institute did not, but they had strong legal expertise on legal drafting which benefitted RMI, the local government and the Kasepuhan community.

## **III. ENVIRONMENT PROTECTION AND MANAGEMENT**

### **A. Implementing Regulations for Environment Law No. 32/2009**

Indonesian Center for Environmental Law (ICEL) has been leading advocacy efforts on the drafting of three implementing regulations under the Environment Law No. 32/2009 namely: (i) Government Regulation (GR) on Strategic Environment Assessment (SEA); (ii) GR on Planning for Environment Management and Protection; and (iii) Ministerial Regulation on Environment Information System. Following support from ProRep, ICEL had made good progress in the drafting process and had gained commitment from the Ministry of Environment in early 2015 to complete and issue the regulations. However following the reshuffling and merging of the Ministry of Environment and Forestry, the process stalled given the change in officials and priorities of the new ministry.

Recently the momentum in the ministry on drafting GR on SEA has picked up again following invitation of several CSOs: ICEL, WALHI, HuMa, and Asia Foundation to meet with DG Forestry and Environment Planning on their discussion of the new draft GR on SEA in February 2016. A government harmonization team from six ministries were present at the meeting, indicating that the process has advanced and that the GR on SEA could be issued soon. Unfortunately, the CSOs noted that some of their previous key recommendations had not been considered. Fortunately MoEF (Laksmi Wijayanti) invited them to a follow up meeting on 24th February, 2016 where they were able to once again propose the following recommendations:

- a. The regulation should adopt a double quality control system which allows self-monitoring by DG Forestry and Environment Planning as well as monitoring requirements by the Ministry, in order to increase accountability levels.
- b. MoEF should be allocated with veto rights to revoke business licenses or activities that fail the assessments, and it should have adequate authority to address violations.
- c. The team needs to strengthen articles pertaining to CSOs and forest communities' participation in monitoring effectiveness of SEA.

## **B. Licensing Model**

ICEL is conducting a study of various licensing models and systems from the UK, USA, Netherlands, and Australia in order to propose how to improve the licensing system used in Indonesia. In April 2016 they plan to submit their findings and proposal to DG Law Enforcement, MoEF who have indicated interest in their work. They will also target the Ministry of Industry / the Investment Coordination Agency (BKPM), for whom additional advocacy work is required.

## **C. Environment and Forest Budget**

Indonesia Budget Center (IBC) conducted analysis on state budget allocation for environment protection and forest management and submitted their findings and recommendations to DG Conservation of Natural Resources and Ecosystems, DPR Commission IV and DG Budgeting, Ministry of Finance (MoF). IBC highlighted that the use of performance-based budgeting is key for increasing effectiveness. There is significant awareness of the need for performance-based budgeting but has not been widely implemented within other ministries. IBC through their advocacy work succeeded in:

- a. Receiving the invitation to monitor the MoEF and MoF standard cost work in the current and future financial period, a crucial step in performance-based budgeting.
- b. Gaining commitment from the ministries aforementioned and DPR to seek an increase in budget allocation for conservation and forestry in future discussions.

## **D. Local Government Law No. 23/2014**

HuMA is the CSO focal point for conducting legal reviews. They have just completed analyzing the impact of the Local Government Law No. 23/2014 on implementation of other natural resource management (NRM) laws following the recentralization of authority from the district (*kabupaten*) to the provincial level. By decreasing the number of offices with authority to issue permits, the new law is expected to decrease the level of corruption in the issuance of forest and other NRM permits. However, there are some key challenges in its implementation, for example:

- a. None of its implementing regulations have been issued and the provincial governments need institutional assistance in taking up their new responsibilities.
- b. There is concern that addressing *Hutan Adat* issues might take longer as people will now have to travel to the provincial headquarters.
- c. Concern that there will now be a lack of regency level officials' involvement in forest conservation and environment management following revocation of their authority.

HuMA will submit its recommendations to the Director of Tenure and Indigenous Forest under DG Social Forestry and Environment Partnership proposing the need for:

- a. ***Harmonizing NRM laws with new local government law.*** The best option to do this is by aligning NRM laws that are included in *Prolegnas* 2015-2019 e.g. Forestry Law No. 41/1999, Agrarian Law No. 5/1960, and Conservation Law No. 5/1990 as they are already due for revision. However there is a lack of clarity on who will lead the process. It is expected during the drafting process of a law that the inter-ministerial revision teams and the legal bureau should avoid any conflicts with existing laws, however in some case they may have limited knowledge. BAPPENAS recently proposed a national strategy on law harmonization by calling ministries to combine implementing regulations. However various ministries, e.g. Ministry of Justice and Human Rights indicated that it would be impossible given the need for very specific regulations.
- b. ***Providing institutional support to provincial government*** to develop implementing regulations of Law No. 23/2014 and strengthen their implementation capacity.
- c. ***Ensuring that the local government (Bupati level) is still engaged in NRM*** by allocating some funds e.g. through the village fund, and providing more clarity on how they can work together with the provincial level.

## **E. Community Participation in Environment Protection and Management in Bombana**

In order to increase community participation in NRM and enable them to monitor activities that may have negative environmental impact, Sulawesi Institute drafted a regent decree on 'Community Participation in Environment Protection and Management' which they submitted to the Bombana Legal Bureau and Environment Agency. It is currently being reviewed and is expected to be enacted this year.

## **F. Green Economy Development Strategy in Bengkulu**

In order to support the development of green economy activities, AKAR Association submitted a green economy development strategy to the regional secretary of the local law bureau in Bengkulu Province which they hope will be incorporated into the mid-term regional development plan (RPJMD 2016-2020).

### **Recommendations**

Several ProRep partners have supported key policy reforms to improve environment management and protection both at the local and national levels. This would be a strategic area to further in upcoming projects /activities. ProRep and partners recommend:

#### National Level:

- Sustain support on the drafting of the three implementing regulations under Environment Law No. 32/2009 by working with MoEF and other involved CSOs.
- Advocate for MoEF to consider ICEL's recommendations on how to improve the current licensing model for increased efficiency in the process while not compromising its effectiveness in preventing environment degradation.
- Support additional work on monitoring MoEF and MoF use of performance-based budgeting;
- Support efforts in advocating for: a) harmonization of conflicts between NRM laws and with the local government law; b) strengthening of the provincial government officials in their new responsibilities of authority over NRM; and c) support to district level for their involvement in NRM issues at the local level.

#### Local Level:

Continue advocating for community participation in environment protection and management in Bombana and other areas, and also for the incorporation of a green economy strategy in the mid-term regional development plan in Bengkulu.

## IV. BIODIVERSITY CONSERVATION

### A. Conservation Law No. 5/1990

ICEL, *Forum Komunikasi Kehutanan Masyarakat* (FKKM) and Wildlife Conservation Society (WCS) are part of a conservation working group called POKJA which has been advocating for revision of the Conservation Law No. 5/1990 for several years. The political nature of the law has often stalled progress of its revision, however in July 2015, a key milestone was achieved when MoEF assigned a taskforce to draft the new conservation law. The government task force assigned some of POKJA members various roles of drafting sections of the bill and the accompanying academic paper (*Naskah Akademik*) based on their expertise, e.g. ICEL (legal aspects of the draft) and FKKM (community-based conservation/ reducing human-wildlife conflicts). Below is the drafting schedule as indicated by MoEF officials at the first public consultation meeting held in Jakarta in December 2015

**Table 2: Conservation Law Drafting Schedule**

Activity	Date
Draft law and academic paper compilation, MoEF	July, 2015
Technical team inputs (conservation, ecosystem, genetics, species, crime and security etc.) in Bogor and Jakarta	26 <sup>th</sup> October – 7 <sup>th</sup> December, 2015
Preparation of 2 <sup>nd</sup> draft after review from ministry and experts, MoEF	17 <sup>th</sup> December, 2015
Public consultations in six locations: Jakarta, Medan, Pontianak, Makassar, Denpasar, Jayapura	29 <sup>th</sup> December - 2 February 2016
Preparation of 3 <sup>rd</sup> draft	3-10 <sup>th</sup> February
Submission to Ministry of Law and Human Rights, MoEF	22 February 2016
Submission to the President	April 2016
Submission to DPR	April 2016
DPR discussion	May 2016
Enactment of Conservation Law	October 2016

The proposed draft conservation law will be considerably different given that the task force has combined it with the draft bill on genetic resources. Both ICEL and FKKM noted that there is a good momentum especially in MoEF as their team has coordinated well with other members and the CSOs and have encouraged all to meet their deadlines. As planned, ICEL met their deadline for submitting the draft to the Ministry of Law and Human Rights by the end of February 2016 to as per the above schedule (Table 2).

Another key achievement beyond MoEF’s engagement is that POKJA led by FKKM were able to gain the DPR Commission IV commitment to shortlist revision of Law 5/1990 in the 2016 legislative agenda (*Prolegnas*) of which they did in October 2015. The MoEF task force hopes that the new law will be enacted in 2016, however, the recent prioritization in *Prolegnas* 2016 indicated that the Conservation Law is among 38 laws which have been proposed to be prioritized under category C, with another 47 laws in a higher priority category (categories A and B), see list below. In which case, it is unlikely that the Conservation Law will be discussed in 2016. Given its political nature, our partners and some of the task force indicated it could take up to three years after submission to the DPR.

**Table 3 : Prioritization of Bills in *Prolegnas* 2016**

Category	Priority Level	No.	Additional Information
A	Top priority bills	7	
B	Priority bills	40	Reported in the media on Jan 25 <sup>th</sup> 2016
C	Bills proposed for prioritization	38	Rev of Law. No. 5/1990 is one of them.
D	Cumulative bill	1	

### **Next Steps**

- a. The government task force and their team plan to complete and submit the draft law to the president and DPR. They, including FKKM, ICEL and the rest of the Conservation Working Group, are committed to overseeing the process until the new law is enacted.
- b. DG Conservation under MoEF is lobbying the DPR to discuss revision of the Conservation Law in 2016 by moving it up the priority list.

### **Recommendations**

- a. In addition to MoEF, CSOs should also lobby the DPR and especially the Legislation Council or *Badan Legislasi / BALEG* to further prioritize revision of the Conservation Law. To strengthen advocacy efforts, they should highlight evidence from the ground including how communities will be empowered.
- b. The existing networks should be supported to avoid duplication of efforts and to expedite their objectives.
- c. Several projects/ programs have provided support at different levels of the process. ProRep has been supporting key members of POJKA in drafting of the bill, while others like TFCA and USAID LESTARI amongst others are supporting public consultations at the local level. By sharing the burden of support, this has advanced the process and with increased coordination where possible, projects both at the national and local level can continue to see steady progress in the revision of the Conservation Law and in other policy reform processes.

- d. Different CSOs with similar or opposed agendas should be engaged prior to submission of recommendations or drafts to government (whether to the ministry or DPR) in order to consolidate efforts and prevent unnecessary rivalries.

## **B. Species Protected List, GR No. 7/1999**

Since the enactment of GR No. 7/1999 on Preservation of Wild Flora and Fauna, which is one of the implementing regulations of the Conservation Law No. 5/ 1990, there has been no systematic evaluation of the protected species list which an annex in the regulation. This is necessary for updating species' names, correcting editorial mistakes that exist, and for the addition of species that need to be protected or removal of those which no longer need protection. The failure to update the list has had important implications for law enforcement, protection and conservation efforts, and the legal protection status of species. The regulation clearly states the Indonesian Scientific Institute (LIPI) also the CITES<sup>2</sup> scientific authority, is responsible for reviewing and proposing changes to the list which can be enacted by the MoEF as the management authority via ministerial decree. WCS has been supporting MoEF and LIPI's efforts towards finalizing an updated species list through coordinating and hosting ministerial and public consultation meetings, and by providing analysis and recommendations for the proposed list. WCS' study supported by ProRep highlighted that the main threat to amphibians in Indonesia is the loss of habitat due to agriculture activities, illegal logging and mining, land use change from forest to commercial commodities, fishery activities, and forest conversion into human settlements. Consequently, there is increased need to protect more species and WCS noted a significant improvement in the number of new species LIPI has proposed with the revised list totaling 1,349 species which includes 677 species from the previous list and 672 new species, a 99% increase.

### **Next Steps**

- a. In October 2015, LIPI had proposed to categorize the protected list into three sections namely: (1) full protection (*mutlak*), (2) limited protection (*terbatas*), and (3) monitored protection (*terpantau*), similar to the CITES categories. However this would require a revision of Article 4 in the regulation, which is a more complex process than just updating the species list in the annex. After much debate, it was agreed to remain with the original two categories - protected and not protected. The proposal for the three category system will be introduced in the revised Conservation Law.
- b. WCS will continue to support the updating process of the protected species list by facilitating meetings between all stakeholders: government, LIPI, NGOs, animal breeders, corporations, universities, etc. WCS will also provide technical inputs towards the protected wild animals and plants list. The work is expected to be completed in 2016. The status of the revision of the Conservation Law No. 5/1990 could also have an impact on the process.
- c. WCS will continue to work with MoEF, LIPI and MMAF on specific issues on aquatic species and how to strengthen the legal framework governing them. Moreover they hope to expand their work beyond GR No. 7/1999 to also work with MoEF legal bureau on revision of substantial articles in PP No. 8/1999 on Wildlife Utilization.

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<sup>2</sup> The Convention on International Trade in Endangered Species; Indonesia became a signatory in 1978

## Recommendations

- a. Regular repeat revisions of the annex, for example every 2 years are required to ensure that the protection statuses are responsive to changing trends and up to date with scientific information.
- b. Evaluation of wildlife protection and conservation management regulations is required, especially on inter-sectoral institutionalization and legal frameworks that regulate the protection of terrestrial and aquatic protection.
- c. Prevention of wildlife crimes should be encouraged including instituting higher penalties to deter crimes.
- d. The proposed list excludes the marine species that are currently protected under MMAF ministerial decree e.g. sharks and manta rays, which is not ideal. They need to be included in the protected species list under PP 7/1999 which carries stronger sanctions and prohibitions compared to those in the MMAF decree. Moreover efforts to institute MMAF a CITES management authority would further empower their role in protection of marine species.
- e. The proposed updated species list by LIPI does not include protection for non-native species that are commonly traded illegally in Indonesia such as African ivory, and previous experience proves it is difficult from a law enforcement process to prosecute such cases. It is highly recommended that either some of the non-native species are included in the list, or the list is automatically linked to the CITES list (but the later could complicate the enforcement process). This last could also be addressed under revision of the Conservation Law.

## V. FOREST LICENSE MORATORIUM

Joko Widodo's government re-extended the Forestry License Moratorium in May 2015, by issuing the Presidential Instruction No. 8/2015 regarding the Suspension of New Permits and the Improvement of Governance of Primary National Forests and Peatlands. This Presidential Instruction is the extension of previous Presidential Instructions: No. 10/2011 and No. 06/2013. The Moratorium is expected to foster a transparent and accountable permit process, an important foundation for sustainable forest and peatlands management and the reduction of greenhouse gas emissions from reduced deforestation and forest degradation. However, CSOs have raised concerns at the lack of reduction in size of the amount of forest and peatlands still being issued as concessions despite the existence of the forest license moratorium.

Kemitraan has conducted analysis of the effectiveness of the Forest License Moratorium and proposes recommendations on how its implementation can be improved. Some of their key findings include:

- a. ***A decrease in the area protected by the moratorium.*** MoEF issues an Indicative Map for Suspension of New Permits (PIPIB) which is revised every six (6) months. Kemitraan's study found an overall decrease of the protected area of 4,057,960 ha between PIPIB stipulation in 2011 and the ninth revision in 2015. Several reasons identified as the cause include: spatial planning development; permit data renewal; change in land data; permit confirmation prior to the Presidential Instruction and the follow up; and inconsistencies in the survey report on Primary Natural Forests and peatlands which lead to revision of the PIPIB.

***No reduction in the total size of area licensed,*** e.g. the area size licensed under timber permits remained the same at 10,000 Ha per year between 2011 and 2013.

- b. ***Different interpretation of the peatland category between local governments and MoEF*** technical team which led to some local governments still issuing peatland permits.

- c. *Social forestry hampered.* Some regencies e.g. Pelalawan in Riau and Musi Banyuasin Regency, South Sumatera were unable to issue village and community forest rights because the proposed working areas are included in the moratorium area.
- d. *Lack of Systematic and Participatory Monitoring and Evaluation.* MoEF conducted the PIPPIB revisions one-sidedly and local governments have not coordinated or involved stakeholders in conducting monitoring and evaluation. Some CSOs under their own accord have monitored some areas, and their results have not always received any response from the Government or relevant ministries/institutions.

### **Recommendations**

To address the weaknesses identified in implementation of the Forest License Moratorium, Kemitraan will submit their recommendations to several DGs in MoEF including to DG Forestry and Environment Planning proposing the need for:

- a. Use of a landscape approach
- b. Increased multi-stakeholder collaboration
- c. Review of permits and improvement of permit issuance systems
- d. Protection of high conservation value areas, as not all are currently included
- e. Use of the moratorium policy as a reference for spatial planning
- f. Exempting social forestry areas

## **VI. ENGAGEMENT WITH DPR ON FOREST AND LAND FIRES**

### **A. Forest and Land Fires**

Kemitraan's policy paper also highlighted the plight of forest and land fires in Indonesia. Despite efforts to reduce greenhouse gases, more than 2.6 million ha of forest and land, including peatlands, burned between July - October 2015. The World Bank estimates the economic loss for Indonesia due to the forest and land fires to be more than USD 16 billion an equivalent of 1.8% of the Gross Domestic Product (GDP).

*President Joko Widodo's presidential instruction No. 11/2015* regarding the enhancement of forest and land fire control calls on more than 18 Ministers, the Attorney General, and other institution heads such as police commanders to enhance control over forest and land fires. This policy does not differ significantly from Presidential Instruction No 16/2011 issued by President Susilo Bambang Yudhoyono also on the enhancement of forest and land fire control in November 2011, which failed to prevent the fires in the last few years.

*The new Peatland Restoration Agency* established in January, 2016, has the task to coordinate and facilitate peatland restoration in Riau, Jambi, South Sumatera, West Kalimantan, Central Kalimantan, South Kalimantan, and Papua Provinces. Within the next five years, the agency targets to conduct peatland ecosystem restoration of approximately two million hectares.

### **B. Engagement with DPR on Forest and Land Fires**

ProRep facilitated a public hearing session with the DPR Commission IV on Agricultural, Plantations, Forestry, Maritime, Fisheries, and Food Affairs in October 2015 where 27 members of parliament, 20 DPR expert staff, and 34 CSOs, research institutions and various donors attended. The hearing provided an opportunity to present analysis on the social and economic causes of forest and land fires and to offer joint CSO's recommendations to the MPs on how they can address the forest and land fire issue in the country. The CSO group was led by Kemitraan, and also included CIFOR, IBC, WARSI Jambi, and the Asia Foundation. ProRep then conducted a follow up discussion with CSOs, donor organizations (USAID,

UKCCU, World Bank and UNORCID) and partners from other environment projects (LESTARI) to consolidate efforts on how to support the DPR's and CSO's oversight roles over the government as it addresses the forest and land fire issue and seeks to prevent it from happening in the future.

### **Recommendations:**

- a. ***Continue engagement with DPR Commission IV*** given their interest and engagement on the matter; the head of commission has requested for technical assistance from the Westminster Foundation for Democracy (WFD) and ProRep has facilitated their work by providing background information and helping them to connect with stakeholders.
- b. ***Support DPR's oversight role over the government*** (executive branch) and the implementation of the forest license moratorium, presidential regulation instruction No. 11/2015, and the peatland restoration agency's work. Concern over the effectiveness of some of these initiatives suggests that more long-term solutions are needed to address the forest and land fire challenge.
- c. ***Identify loopholes in existing legislation and recommend how they can be addressed by the DPR and/or executive*** e.g. law permitting smallholders to burn up to two ha of land or revision of the requirement of large concession holders to convert their forest areas within five years while some are now indicating through their sustainable plans preference to intensify production over extending into new production land areas.
- d. ***Promote a Biodiversity Conservation Caucus in DPR.*** Various projects and donors including ProRep and the United Kingdom Climate Change Unit (UKCCU) have supported the development of and environmental caucus in the DPR over a few years; with mixed results. This is mainly due to lack of commitment from some of its members; there are 12 but not all are actively engaged. There have been other unsuccessful efforts by the caucus, e.g. they were not able to obtain a room for its secretariat within the DPR, which limited their visibility. Recommendations from donors would be to consider supporting a new 'Biodiversity Conservation Caucus' and learning from previous efforts in establishing a caucus, it is important to identify the right individuals to champion the issues and who have time and the willingness to lead.

## **VII. CONCLUSION**

As illustrated in the majority of the policy issues highlighted in this report, persistence is one of the principal drivers of sought-after policy outcomes. CSOs have been advocating for many years on environmental issues, be it on social forestry, wildlife and species conservation, or legislation of implementing regulations for Environment Law No. 32/2009. The constantly evolving political environment and reshuffling of government officials / institutions can either slow down or expedite policy reforms. This is indicated in the case of CC rulings No. 45/2011 and No. 35/2012 on indigenous forest rights, the reshuffling of the Ministry of Environment on the drafting of SEA regulation, and the openness of various ministries and local governments to CSOs recommendations since the new government administration came into place. Even so, this report illustrates that ProRep partners have had success in advancing long-standing issues, and "connecting the dots" between stakeholders at the local and national levels, research, citizen input, and well-founded policy outcomes. This has resulted in the enactment of five pieces of legislation/ regulations, with another 20 policy proposals submitted and being monitored and further advocated by our partners.

### **Key Factors of Success:**

- a. ***CSO long-term commitment*** in pursuing the issue. Most have been working on it for 10-20 years.

- b. ***ProRep's role in increasing collaboration between CSOs through the policy community, enabling them to consolidate their expertise.*** One example is RMI who had advocated in Lebak, Banten for over 15 years. However, following collaboration with Epistema Institute who works at both the national and local level, RMI gained the legal drafting support that they and the local government needed. This expedited the enactment of the local law recognizing the Kasepuhan indigenous community.
- c. ***Use of a complete advocacy kit*** which goes beyond merely raising concerns, but also supports petitions with evidence-based recommendations and draft regulations for the government's consideration. ProRep invested in the partners' communication skills by offering training on how to write opinion articles and policy briefs, and on stakeholder mapping to identify the target audience. This has been particularly useful for legislators at the national and local levels who may be willing to act but do not always have sufficient knowledge or legal understanding on how to address a policy issue.
- d. ***Use of soft/ nuanced advocacy approach given the increased openness to CSOs.*** Following the change in administration in 2014, most partners have been able to approach and work alongside government or legislators rather than just using an adversary advocacy approach.
- e. ***Building trust among all stakeholders*** through meaningful engagement with community leaders, legislators and government officials, etc. This involves conducting both formal and informal meetings and maintaining good communications channels.

### **ProRep's Recommendations for Upcoming Environment Projects**

In addition to the specific recommendations on how to advance the policy issues addressed in this report, below we present some additional overarching recommendations for upcoming environment policy projects/ activities:

- a. ***Leverage the expertise, experience, and the networks fostered through ProRep's environment policy community and capitalize on their achievements.*** ProRep was, for example, able to capitalize on the success of Epistema Institute's guidebook on how to prepare local legislation which had been prepared for local parliamentarians in Lebak during its fourth year, by choosing to further support them in the fifth year in preparing a 2<sup>nd</sup> edition for the MoEF. As a result, the ministry has now committed to reprint Epistema's guidebook and distribute it nationally.
- b. ***Leverage success at the local level to inform policy at the national level.*** As demonstrated in the case of Epistema Institute's guidebook, following its success in assisting the Lebak parliamentarians, it has also proved useful for the ministry at the national level. A similar case is Article 33's work on benefit sharing mechanism (BSM) in Jambi province which is now influencing their advocacy approach at the national level for a BSM government regulation. This demonstrates the importance of capitalizing on success at the local level and using that experience to inform future policy reforms at the national level.
- c. ***Collaborate with CSOs and think tanks who work on specific environment policy areas;*** they have long-term experience and understand the complex policy process in Indonesia and the wide range of relevant stakeholders.
- d. ***Facilitate CSOs' collaboration with other CSOs that have stronger capacity or differing expertise for synergy.*** An example of this is how Epistema Institute supported AKAR Foundation in the

drafting process for the local law on recognition of the Marga Suku IX indigenous community in Lebong, Bengkulu. Furthermore, CSOs working on recognition of indigenous communities will need support in collaborating with CSOs that have more experience in working on forest management plans, for example.

- e. ***Take time to understand the political will for each policy issue to better target policy advocacy efforts.*** The Conservation Law took 25 years before it was enacted in 1990 and it has now been 26 years where it has not been updated or revised.
- f. ***Stakeholder mapping is useful for the identification of policy champions*** within ministries and in DPR.
- g. ***Encourage use of evidence-based policy recommendations by CSOs.*** Working alongside research institutes and think tanks enables them to go beyond just ‘making noise’ and having the information has enabled them to be invited to work with government, e.g. the biodiversity conservation working group (POKJA) and Epistema Institute were requested to be part of ministerial task teams drafting laws and regulations.
- h. ***Multi-stakeholder forums (MSF) enable different stakeholders with varying skills and power to engage, communicate, and build trust.*** The process of gaining trust takes time and MSFs have proven to be a useful tool in getting stakeholders to sit together to negotiate policy agendas and objectives, and develop an action plan for influencing policy.
- i. ***Follow up on the drafting of implementing regulations and budget allocation following enactment or revision of a law.*** The DPR usually does not follow up on whether mandatory implementing regulations have been put in place and often they are not completed until 5-10 years after a law is passed.
- . ***Consider having a flexible funding option to assist CSOs and partners to respond to urgent advocacy opportunities.*** An example of this is how ProRep was able to fund an ICEL-led coalition within a short time frame in order for them to propose recommendations on the restructuring of MoEF, and a number of their recommendations were reflected in the final design.

# ANNEX 1: SUMMARY DIAGRAM OF PROREP ENVIRONMENT POLICY COMMUNITY

## Environment Policy Community



### Connecting with Stakeholders

#### Civil Society and Research Institutions

- Bantaya Legal Aid Foundation
- Consortium for Agrarian Reform (KPA)
- Conservation Policy Working Group (POKJA)
- Farmers groups
- Indigenous Peoples' Alliance of the Archipelago (AMAN)
- Indonesian Scientific Institute (LIPI)
- Journalist Network for Environmental -Advocacy (Jurnal Celebes)
- Kasepuhan Indigenous Community in Lebak District
- Media
- Moronene Kampo Hukaea Laea indigenous community
- Network for Participatory Mapping (JKPP)
- Sabaki
- To Kalli and To Kulawi Indigenous community in Sigi District
- University of Indonesia (UI LPEM)
- WALHI
- Water Resources Area Office

#### Government Stakeholders

- Bupati of Bombana, Lebak, Lebong, Rejang, and Sigi
- Directorate General of Natural Resources and Ecosystem Conservation
- Directorate General Social Forestry and Environment Partnership
- Governor of Bengkulu
- Ketahun River Basin Management Office (BP DAS)
- Legislative and executive branches at the village, district, and provincial level
- Local Environmental Agency in Bombana
- Local Forestry Offices in 17 districts/cities
- Members of Parliament of Commission IV on Agriculture, Plantations, Forestry, Maritime, Fisheries and Food Affairs
- Members of Regional Parliaments (DPRD) of Lebong and Rejang Lebong
- Ministry of Agrarian and Spatial Planning/ National Land Agency
- Ministry of Environment and Forestry
- Ministry of Home Affairs
- Ministry of Mining and Energy Resources
- National Development Planning Agency (Bappenas)
- Natural Resources Conservation Agency (BKSDA)
- Rawa Aopa Watumohai National Park Office
- Regional Development Planning Board (Bapedda)
- Regional Government of Bombana
- Southeast Sulawesi Environment Office (BLH)
- Southeast Sulawesi Regional Development Agency
- Watershed Management Centre, Ministry of Forestry and Environment

## ANNEX 2: MAP ON THE DISTRIBUTION OF PROREP ENVIRONMENT POLICY COMMUNITY ACTIVITIES

