

Making land rights go hand in hand with biodiversity in Mawas, Indonesia

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Front page picture: The Kaharingan Tree of Life



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Definitions

Land rights:

This thesis uses the term “land rights” instead of the term “ownership”. This is because the community forestry schemes in question do not transfer full ownership rights, such as they are known in the West. There are certain restrictions to what the villagers can and can’t do if granted rights. While this might also be true in the West, (consider for example the concept of Fredsskov in Denmark), the central right to sell the land is what separates the land rights in question from being true ownership. Land rights can be considered a bundle of rights, (Sardjono et. al:2013.10):

1. Access rights 2. Withdrawal rights 3. Use rights 4. Control rights 5. Management rights 6. Transfer rights 7. Residuary rights, and 8. Ownership rights.

Indigenous:

The term “indigenous people” is used interchangeably with the phrases “local inhabitants” and “villagers” in this thesis. The fight for indigenous land rights is typically hinged on the notion that indigenous peoples have a long and unbroken relationship with the land they inhabit, but the Indonesian government resists this argument on the basis that practically all Indonesia’s inhabitants are ethnically Indonesian, and as such are “indigenous” and entitled to the same rights, (IWGIA:214:263).

Still, the Indonesian understanding of “indigenous” isn’t as synonymous with ethnicity as the Western understanding is. One can move from one village to a new village and become indigenous there as long as one upholds the local customs and language.

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1.0 Introduction

1.1 Problem Field

Continued deforestation of the world's forests is an unfortunate reality; from 2000 to 2010 worldwide deforestation took place at an average of 0.13% per year, (FAO:2010:18). But while deforestation previously primarily took place in temperate forests in Europe, North America and Asia, it now primarily takes place in tropical forests in South America, Southeast Asia and Africa, (FAO:2012:10).

It is estimated that the tropical forests of the world contain approximately 80% of the world's documented species, (WWF/http1). One of the species endangered by further deforestation of tropical forests is the orangutan, which can only be found on the Indonesian island of Sumatra and the Indonesian/Malaysian Island of Borneo. For the Sumatran orangutan the decline in habitat has been 1-1.5% each year, while it has been as high as 1.5-2% for the Bornean orangutan, (Ministry of Forestry:2009:2). This has resulted in the addition of the Sumatran orangutan to the IUCN "critically endangered" redlist category with approximately 6,500 individuals left, and the Bornean orangutan to the "endangered" category with approximately 54,000 individuals left, (BOSF/http1). Other unique species endangered by further deforestation in Indonesia are types of tigers, rhinoceros, and elephants indigenous to one or more of the main six Indonesian islands.

The exact figures of deforestation in Indonesia vary from source to source, but one recent study put Indonesia ahead of Brazil as the country with the largest clearing rate for 2012, (the last year of the study), with a total of 0.84 Mha (Margono et. al: 2014:2). However, the rate of deforestation has decreased compared to the 90's, (FAO:2010:10).

The main causes of deforestation in Indonesia are land conversion to oil palm plantations and timber plantations as well as legal and illegal logging. Other concerns are forest fires and Indonesia's Transmigration Program. Even though vast tracts of land in Indonesia enjoy some sort of protected status, such status appears to offer no real protection against deforestation. Almost 40% of total primary forest loss within national forestlands occurred within land uses that restrict or limit clearing, 22% within limited Production Forests that restrict clearing and 16% within Conservation and Protection forests that prohibit clearing, (Margono et. al:2014:5).

Concessions given by the government for logging or oil palm and timber plantations also often overlap with areas already inhabited by local forest peoples. Different estimations of the overlap exist, but the number could be as much as 70%. While customary (adat) rights are broadly recognized in the Indonesian Constitution, these rights have not been carried through to other national legislation, (RRI:2014:35). Only one 1 Mha of 40-42 Mha estimated customary land is recognized formally as such, (Stevens et. al:2014:24). Of this Mha as little as 30,000 hectare could be in the actual control of indigenous communities, (Maryudi:2013:8).

After a ruling in the Indonesian Constitutional Court in 2013 however, this might change. At the request of an indigenous rights organization called AMAN, the court struck down a provision in the 1999 Forestry Law which defined customary forest as being State Forest (Stevens et. al: 2014: 25). Defining customary forest as part of the State Forest has meant that the government could previously hand over customary land to oil palm companies and other financial operators through concessions.

The ruling does not mean that indigenous claims will be recognized right away. The government will not release forest from state ownership unless the indigenous communities have been recognized as such on a local level. However, local governments rarely have legislative and financial capacities to draft local regulation and carry out mapping (IWGIA:2014:268).

From a conservationist/biodiversity point of view, it could be advantageous for indigenous villagers in Indonesia to gain formal ownership of their ancestral lands. As previously mentioned, forests having status of being “protected” is not the desired safeguard, but there is hope to be found in growing evidence from countries around the world that when indigenous communities gain formal ownership of ancestral lands it combats deforestation. In Brazil for example, deforestation in legally recognized indigenous community forests was less than 1 percent from 2000 to 2012, compared to 7 percent outside of the communally owned forests, (Stevens et al.:2014:3). Even when formal ownership also fails to safeguard satisfactorily, it is still better than the alternative. This is seen in Peru where deforestation was higher inside the community owned forests than outside due to a large overlap with mining concessions, but where it is estimated that the deforestation rates would have been even higher without the recognition of formal ownership (Stevens et al:2014:37). There is also evidence from China, South Korea, Vietnam and India, that

local communities are very capable of restoring already degraded forest. Compared to these other countries in the same region Indonesia has been particularly slow at recognizing indigenous claims to land, (RRI:2011:10). This is despite the fact that Indonesia also needs to stop deforestation in order to live up to their recent pledge of cutting GHG emissions 29% by 2030, (The Guardian/http).

The link between curbing GHG emissions and indigenous land rights is certainly something that makes sense to push for NGOs in Indonesia, as it kills two birds with one stone, in a manner of speaking, (Stevens et al: 2014: V). And following the same logic, so does pushing the link between saving biodiversity and indigenous land rights.

1.2 Problem Formulation

About 10 Mha of Indonesian land is peat swamp. The peat swamps are found mostly on the islands of Borneo (Kalimantan), Sumatra, and Papua. Papua alone contains one-third of Indonesia's peat swamp, (Mongabay/http1). Only 49 percent of Indonesia's historic peat swamp remains forested, and of that, less than 10 percent is considered pristine, the rest having been selectively logged, partially drained, or otherwise degraded. In Indonesia, peatlands have higher deforestation rates than any other type of rain forest, with the possible exception of mangroves, (ibid). In an effort to provide the strongest possible protection against deforestation, the Indonesian NGO BOSF – Borneo Orangutang Survival Foundation – is advising indigenous villagers living in or around the protected peatswamp forests of Mawas, Central Kalimantan on how to get land rights and how to manage the land according to the type of land rights granted. The idea for applying for land rights has arisen among the villagers themselves, and as such it can be seen as a bottom-up process.

Mawas administratively encompasses two main districts — South Barito and Kapuas districts — as well as five sub-districts and 53 villages with a population of 29,000 families. Five or six villages are located within the forest area and the rest are located on the outskirts, (BOSF/http2). The Mawas area contains 309,000 hectares of natural habitat for wild orangutans, and the peatswamp sustains one of the largest remaining orangutan populations with an estimated 3,000 individuals (ibid).

As of 2003, Mawas has been managed for conservation by BOSF as per the approval of the provincial government, (Hecker: 2005:9). The stated goal for the area is *"Ensuring sustainability of Mawas area as high conservation value of peatland and orangutan habitat, through the involvement of the community and stakeholders and can provide environmental and economic benefits for local communities"* [sic], (BOSF:2013.15). According to the provincial land use plan, any activities must be approved by BOSF, and although this seems to be enough to protect against conversion to plantations for now, it could quickly change due to the lack of a permanent spatial plan in Central Kalimantan. The increased vigilance against illegal logging among villagers that land rights could bring about is also needed since at least one such incident took place in 2004, (Hecker:2005:12).

There are several types of land rights schemes which the indigenous communities could apply for as a part of Indonesia's Social Forestry Program, but villagers have already zeroed in on two types of programs, called Village Forest (Hutan Desa) and Customary Forest (Hutan Adat). Customary Forest is a recognition of existing traditional ownership and not an actual program, but for simplicity's sake both options will be referred to as programs from now on. Both Village Forest and Customary Forest promise to be reasonably beneficial for the environment if carried out correctly, but could also result in deforestation if the reverse is true. A study from 2011 indicated that 65% of Bornean villagers – both Malay and Indonesian - were against large scale deforestation while 20% were supportive, (Meijaard et al:2013:11). So while there is support for environmental protection it is not uniform, and there are examples of Malaysian Borneans contributing to deforestation once they gained formal ownership, (Lund, S: 2015).

The attitudes of villagers, and therefore the success of a land rights program, might be contingent on a number of preexisting conditions like alternative income opportunities or the lack thereof, or religious use of the forest. What are they and to what degree can Village Forest and Customary Forest be said to accommodate for the conditions with negative implications for long term sustainability? And what are the factors that are inherent to the programs themselves such as the difficulty of the application process and the cost of planning?

Ultimately it is up to the villagers themselves to choose one of the two programs to pursue, but BOSF will likely be asked to assist with everything from funding to practical guidance. This makes it relevant for BOSF to consider the realities of the two programs in question and how their resources are best spent, trying to get land rights for the villagers of Mawas.

Can one program be said to be superior from an environmental or social point of view? Is there one program which would be better for BOSF to assist the villagers in getting than the other, and how should they go about doing it?

This leads to the Research Question:

Is Customary Forest or Village Forest the best type of land rights program for Borneo Orangutan Survival Foundation to assist Mawas villagers in attaining?

1.3 Working Questions

1. What is to be learned about the Customary Forest Program?
 - 1.1 Why did Timpah choose Customary Forest?
 - 1.2 How will the specific use of Customary Forest be in Timpah?
 - 1.3 What are the preexisting conditions that have power to impact the long term sustainability of the Customary Forest program in Timpah?
 - 1.4 What are the relevant aspects in terms of strategy, environment, livelihood, cost, access restrictions and application process for Customary Forest?

2. What is to be learned about the Village Forest Program?
 - 2.1 Why did Batampang choose Village Forest?
 - 2.2 How will the specific use of Village Forest be in Batampang?
 - 2.3 What are the preexisting conditions that have power to impact the long term sustainability of the Village Forest program in Batampang?

- 2.4 What are the relevant aspects in terms of strategy, environment, livelihood, cost, access restrictions and application process for Village Forest?
3. How do Customary Forest and Village Forest compare?
- 3.1 How do Customary Forest and Villages Forest compare on a case level, as illustrated by Timpah and Batampang and with regards to preexisting conditions, specific use and reason for choice of land rights program?
- 3.2 How do Customary Forest and Village Forest compare on a more general level when looking at strategy, environment, livelihood, cost, access restrictions and application process?

1.4 Project Design

The **Introduction** kicked off with the **Problem Field** in section 1.1, which broadly described problems of deforestation and how land rights for indigenous people can halt deforestation. The Problem Field eventually narrowed down into an Indonesian context, and then narrowed further down into the specific case of the area of Mawas, which was described in the **Problem Formulation** in section 1.2. The **Working Questions** in section 1.3 will help to structure the analysis. They introduced the two villages of Timpah and Batampang that were visited in the course of writing this thesis as a way to understand the practical application of the two land rights programs. The Working Questions also introduced the theory of Political Ecology, the use of which will be elaborated upon further down in this **Project Design**, which is section 1.4. The **Mission Statement** in section 1.5 that rounds off the Introduction is particularly important for this thesis because the thesis is written on behalf of an NGO, who in turn are acting on behalf of indigenous villagers. With so many different motivations in the mix it is important to ascertain exactly what this thesis sets out to accomplish and why.

The **Background** chapter is quite extensive. It starts off with a description of **Mawas** in section 2.1, which is followed by section 2.2 on the Mawas **Villagers** in general and on the two villages, Timpah

and Batampang, which are used as cases in this thesis. Then comes section 2.3 on the **Legal frame**, which includes subsections on the **International Frame**, **The National Frame** and **Program Descriptions**. The Program Descriptions are not exhaustive and focus on the rules of the programs, but they contain some basic facts that provide an introduction. Later on in the Analysis the politics and application processes related to the programs are discussed.

Methodology in chapter 3 starts off with section 3.1 on **Philosophy of Science**, which in some ways picks up where the Mission Statement left off, in that it seeks to position the writing of this thesis in a landscape of multiple but aligned interests. The section on **Limitations**, 3.2, seeks to define what is within the scope of the Research Question and what is not. A short section on **Case Work** in section 3.3 seeks to explain the method of using cases to illustrate bigger issues. Then comes the **Empirical Data** in section 3.4, which explains what information was collected in Timpah and Batampang and why these two villages were chosen to exemplify Customary Forest and Village Forest, and the section called **Collection of Empirical Data**, 3.5, explains how data was collected in the villages. Finally, a section on the **Interviews** in section 3.6 gives a little background info on the interviewees, where the interview happened and what function the interview serves in terms of answering the Research Question.

Chapter 4 is **Theory**. The choice of theory for this thesis, Political Ecology, is rather unique as a theory, in that it doesn't offer a cohesive vision of the world of its own, but rather critiques the dominant ecological narrative which holds native peoples responsible for ecological destruction. As such it will mainly be used to discuss the circumstances surrounding the state of the environment in Timpah and Batampang and the ability of the villagers to manage forest sustainably in the future. It is particularly useful in discussing the preexisting conditions.

The **Introduction and Use of Theory** in section 4.1 explains the main ideas of Political Ecology, while the next section, section 4.2, called **Theses of Political Ecology**, goes into a little more detail. These two first sections rely heavily on the writing of P. Robinson. The last section, section 4.3, focuses specifically on **Deforestation as Seen Through the Lens of Political Ecology**, and relies on the writings of several authors by the names of W.N. Adger, T.A. Benjaminsen, K. Brown and H. Svarstad. The two texts on Political Ecology do not always align perfectly, so they will occasionally be used to contrast each other.

The **Analysis** comes in chapter 5. The **Design of the Analysis** and its logic is explained in section 5.1. The Analysis attempts to answer Working Questions 1 and 2. Section 5.2 called **Timpah** answers Working questions 1.1, 1.2 and 1.3. and section 5.3 called **Getting Customary Forest** answers Workings Question 1.4. Section 5.4 called **Batampang** then answers Working Questions 2.1, 2.2 and 2.3 and Section 5.5 called **Getting Village Forest** answers Working Question 2.4.

Chapter 6, the **Discussion**, answers Working Question 3. The **Design of the Discussion** is presented in section 6.1. Then comes section 6.2 called **Lessons on a case level**, which is a compounding of the answers to Working Questions 1.1, 1.2, 1.3, 2.1, 2.2, and 2.3 from the Analysis, and which enables direct comparison between the two villages and their situations, and thus answers Working Question 3.1. Section 6.3 called **Lessons on a general level** is likewise a compounding of the answers to Working Questions 1.4 and 2.4 from the Analysis, enabling direct comparison of the two land rights programs, and thus answers Working Question 3.2.

The overall strategy for answering the Research Question can be illustrated as follows, (black numbers illustrate the number of the section in the Analysis and Discussion and the red numbers illustrate the number of the Working Question the section answers):

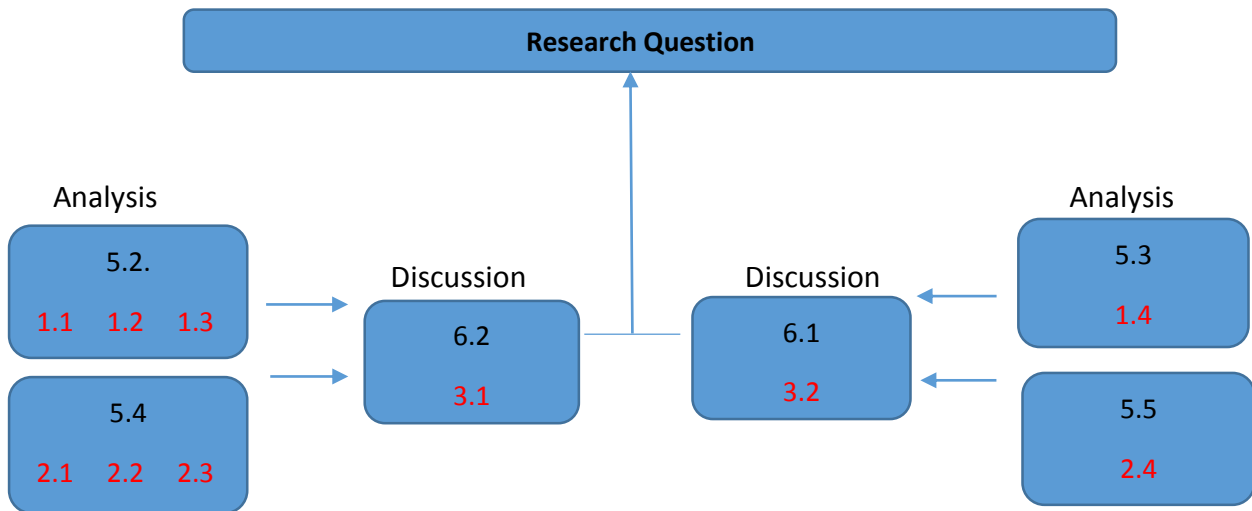


Figure 1: Illustration of how the Research Question will be answered

Source: own creation

The thesis is rounded off by the **Conclusion** in chapter 7 and then follows **Strategies Going Forward** in chapter 8 about the way for BOSF to continue their work with land rights in Timpah, Batampang and in general. This section is a little atypical from similar sections in comparable reports because it continues to draw on empirical data. This is because the subject matter discussed does not fall directly within the Research Question. However, it is too important not to be addressed.

1.5 Mission statement

This thesis is written in cooperation with the organization Red Orangutangen, the Danish collaborator of the Indonesian NGO BOSF. Therefore it is written from their vantage point and to serve their interests first and foremost. The specific task proposal can be seen in appendix 1.

The role of the author of this thesis in relation to the two NGOs and to other stakeholders can be said to be *translator/interpreter* and *facilitator/mediator*, as described by Andrew Jamison in the anthology “Debating Participation”, (G. Ribeiro, S. Lund, M. Mullins eds.).

The translator/interpreter is someone who has knowledge of several academic fields and can reveal “hidden connections”, (Jamison:2004:33). The two academic fields in this case would be environmental planning and social science, and the “hidden connections” would be the way that using land rights as an entry point can benefit the environment and biodiversity in the long run.

Through acting on behalf of the two NGO’s the role of facilitator/mediator is also taken on. The facilitator brings people from different policy cultures together, and bridges “social capital”, (Jamison:2004:33). The mediating in this case can be said to take place between the indigenous peoples in question and their local governments, whose track record is support for commercial harvesting of wood and development of plantations, (Ministry of Forestry:2009:18). As far as other stakeholders go; the palm oil industry, the logging industry etc., there will be no mediating. The object of this thesis will not be to strive toward a consensus.

Beyond carrying out a task for the two NGOs Red Orangutangen and BOSF, there is also the matter of personal motivation for writing this thesis. Unlike other environmental causes, such as ensuring clean air and water, most kinds of biodiversity provide no clear advantages for humankind.

However, according to the Norwegian philosopher Arne Naess and other believers of the school of thought called *Deep Ecology*, biodiversity actually has an intrinsic value which is independent from anthropocentric values, (Context Institute/http). This means that biodiversity can be prioritized without having to justify the effort according to how much it benefits humans. This is the attitude that lays at the base of the motivation for writing this thesis but not one that dictates the outcome. Hopefully the outcome will be beneficial to both humans and biodiversity.

2.0. Background

2.1 Mawas

As mentioned, the area Mawas largely consists of peat swamp forest. Peat swamp forests form when organic matter is not fully decomposed due to frequent flooding or saturated soil. As the organic material is accumulated it holds even more water, and eventually a dome of wet material is formed. 0.5 – 2 mm is accumulated each year, and the depth in the Mawas peat swamp forest can be up to 10 meters thick in places, (Hecker:2005:5). The Mawas peatland forests have a so-called Blackwater Ecosystem. The runoff from the peatsoils gives the rivers a characteristic golden brown color, and the low content of mineral in the soils makes sure that the water is very acidic, almost sterile, with a PH between 3.5-6. Blackwater rivers are known as some of the cleanest natural waters in the world, and they tend to have a very large diversity of fish species (Mongabay/http2).

Mawas is bordered to the east and west by the two rivers Kapuas and Barito. It lies east of Palangka Raya, the capital city of Central Kalimantan, and overlaps with land that was incorporated in the Mega Rice Project (MRP). The Mega Rice project was a grand scale government project intended to convert 1.7 million hectares of peatforest to rice fields, so that Indonesia could once again become a self-sufficient rice producer. The project was initiated in 1995 without any EIA being done, had disastrous environmental effects, was economically unsuccessful and has since been abandoned, (Hecker:2005:11). Had the project not been abandoned, all of Mawas would have been deforested. As it stands, parts of it are were severely degraded by the project, (Red Orangutangen:2011:4). Today, around 80% of the Mawas area remains forested.

Surviving the Mega Rice Project without being deforested, Mawas was also threatened by conversion to oil palm plantations in 1997 as well as logging concessions, (ibid).

Mawas itself is divided into two types of forest: *Protection forest* and *Conservation Forest*.

Protection Forest is forest where the main function is to provide water management, prevent flooding, erosion and brine water intrusion, and to maintain land fertility. Conservation Forest is forest that is designated for biological and ecosystem conservation. Subcategories are Strict Nature Reserve and Wildlife Sanctuary, National Park, Grand Forest Park, Nature Recreation Park,

and Hunting Resort, (Maryudi:2013:2). Before Mawas became Protection Forest and Conservation Forest it was *Production Forest*.

The protected parts of Mawas are divided into four sites according to their legal status and the district they are in: 1. Protected Forest Areas in Kapuas District 2. Conservation forest in Kapuas District 3. Protected Forest Areas in South Barito District 4. Conservation Areas in South Barito District, (BOSF:2013:11).

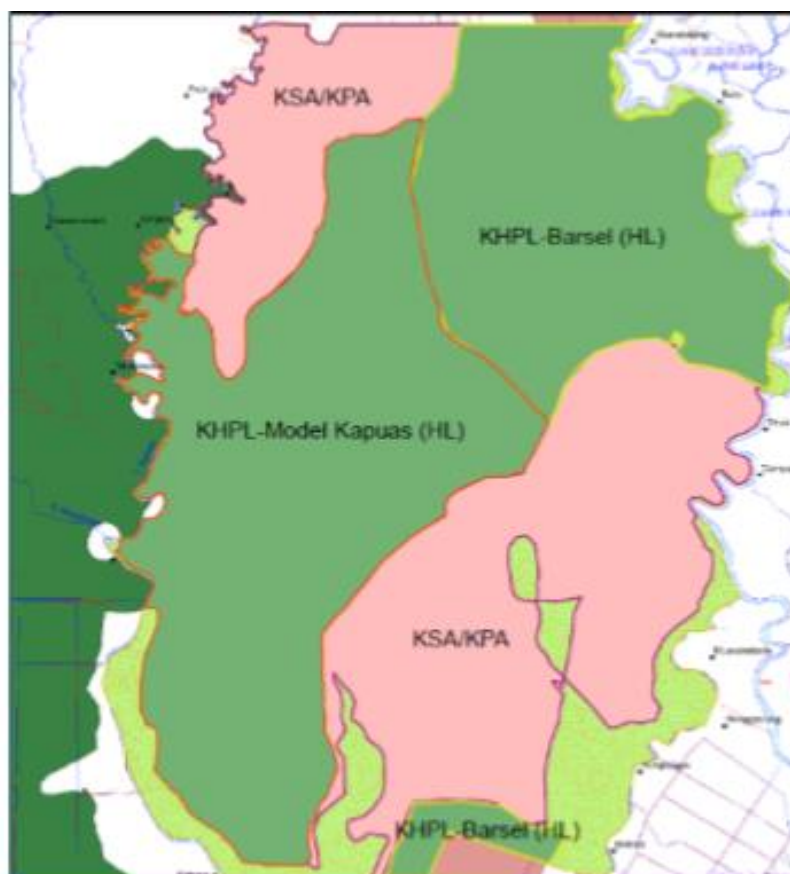


Figure. Protected forest and Conservation forest (KSA/KPA) in Mawas area

Map 1: Map of different areas in Mawas according to legal status and district

Source: BOSF:2013:9

KPHL is the governmental forestry unit which is responsible for the Protection Forest areas on a national level while KSA/KPA is a similar unit responsible for Conservation Forest areas on a district

level. On a practical level, BOSF manages all of the different areas with the blessing of these forestry units. BOSF does all the field work, and also carries the expenses.

When and if the land rights are granted to the indigenous villagers in the KPHL and KSA/KPA areas the Conservation Forest and Protection Forest status will probably still exist, but will have to supplement the land rights where there is overlap.

2.2 Villages

As mentioned in the Problem Field, 53 villages exist on the outskirts of Mawas with 29,000 households, (BOSF:2013:5). Use rights and management rights are typically communal in nature. Though not formally recognized, they are embedded in the local community as a people, (Sardjono et. al: 2013: 12).

The villages are mainly populated by *Dayaks*, which is a European/Dutch term for non-Malays, (WWF/http2). It is estimated that there are over 50 different Dayak tribes and 10 of these are present in the Mawas area. Many of the Dayaks have converted from animas beliefs to Christian and Muslim beliefs (Red Orangutangen:2011:5). The traditional Dayak religion called Kaharingan is especially important in this context because those that still follow it believe the forest is a medium through which to speak with God. One of the most basic tenets of this religion is a balance between man and his natural environment, symbolized by the Tree of Life, (WWF:?:21).

The Mawas villagers draw great benefit from the ecosystem that surrounds them. The peat domes absorb and regulate water, which is vital during both rainy and dry seasons. During the rainy season they will soak up excess water and in doing so prevent flooding. In the dry season they work as freshwater reservoirs, and since nutrients and other chemicals are filtered out, water quality is improved (Red Orangutangen: 2011: 4). A livelihood baseline survey conducted of four villages that lie along the outskirts of Mawas also describes the way one of the villages, Kalahien, benefits directly from forest resources by harvesting fuel wood, rattan, medicinal herbs, and game such as birds, deer and wild boars, (Munkager&Oskjær:2013:45).

Though soil in the peat swamp is poor on nutrients and flooded every year, most households are still engaged in farming. Villagers farm things such as rubber, rice and rattan. This is typically done

using shifting cultivation, where changing plots of land including forested land are cleared with fire, a practice often referred to as slash-and burn, (BOSF:2013:6). The baseline survey mentioned above revealed that in all four villages The Community Together was seen as the unit responsible for protecting and managing the Mawas area.

The survey also showed that Low or Fluctuating Income Levels was only seen as the major concern in one of the villages, but this is probably not statistically typical since poverty rates are 2-4 times higher in the Mawas area than in the rest of Indonesia, (Red Orangutangen:2011:5).

BOSF are conducting microfinance activities in two villages called Timpah and Batampang. In Timpah a savings and loans group has been set up among the women while a credit union lends money in Batampang. Capacity building activities regarding utilization of natural resources has also been carried out in those two villages, as well as two villages called Lawang Kajang and Sungai Jaya, (BOSF:2013:10). These activities are carried out to reduce the pressures on the surrounding forest.

The Orangutan Action Plan from 2009 names a number of prioritized actions to be taken to strengthen community involvement in protecting orangutans and their habitat, and one of them is micro financing in villages near orangutan habitats such as is being done in Timpah and Batampang, (Ministry of Forestry: 2009: 50). The plan mentions crackdown on illegal poaching and trafficking of orangutans as well as protection of orangutan habitat, (curtailing of illegal logging), as specific ways in which villagers can have a direct effect, but land rights for the villagers isn't mentioned even though it is stated that activities carried out should benefit both the stakeholder and the orangutan, (ibid).

The two villages Timpah and Batampang, were visited as part of writing this thesis. Timpah and Batampang were primarily chosen because they are each trying to implement one of the two land rights programs this thesis focuses on. Beyond that they were also picked because they have vastly different profiles which can be seen in the table below:

	Batampang	Timpah
Religion	100% Muslim	Ca. 50% Christian and 50% Kaharingan
Location	South Barito District. Accessible by two hour boat ride from Buntok.	Kapuas District. Accessible by road from Palangka Raya and Buntok.
Economic activities	Almost all villagers fish. A little farming. Microfinance scheme put in place by BOSF.	Illegal mining, rubber cultivation, fishing and small-scale businesses. Microfinance scheme put in place by BOSF.
Environment	Forest cover has been reduced through illegal logging. Because the peatlands have been degraded the ability to absorb water has been lessened, and the water level in the river rises every year. Diminishing fish stock.	Infertile and barren land surrounds the community, the rivers are polluted and fish stock is diminishing.
Challenges	Forest fires. Farming has become very difficult. Dependence on single activity.	Gold resources are soon exhausted, growing population, vulnerability towards oil palm plantations and mining companies.

Table 1: Profile of Timpah and Batampang

Source: Red Orangutangen: 2011: 8

As seen, Timpah is both Christian and Kaharingan, while Batampang is 100% Muslim. This led to a preconceived notion that Batampang would probably be more vulnerable to environmental degradation than Timpah due to the Kaharingan philosophy of sustainability. This notion turned out to be wrong.

On the map below the two villages of Timpah and Batampang can be seen next to red stars.



Map 2: Map of Mawas depicting Timpah and Batampang

Source: BOSF:2008:1

2.3 Legal Framework

2.3.1 International framework

Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, which states in Article 10 that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

(United Nations:2008: 6).

And in Article 26 that:

- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

(United Nations:2008:10).

Indonesia is not however a signatory to The Indigenous and Tribal Peoples Convention under the International Labour Organisation, (ILO).

This states in Article 14 that:

- 1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*
- 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.*

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

(ILO:1989:5).

The ILO Convention is legally binding while the UN Declaration is not, (ILO:2007:2).

2.3.2 National Framework

Indonesia has four different policy levels: National, Provincial, District (Regency), as well as Sub-District/Village level where election of representatives also takes place, (Akiefnawati et al:2010:2).

There is a general attitude among Indonesian legislators that peatlands are 'idle' land that it is economically worthless, (Hecker:2005:10). Natural forest has continually been made available for industry at far below its social or economic value, while forest communities have been systematically ignored, (RRI:2011:7).

The problem might be especially prevalent among local legislators. In the Orangutan Action Plan The Ministry of Forestry points the finger at local government as having played a large part in compromising conservation efforts aimed at the orangutan, (Ministry of Forestry:2009:18). Since 1998 forest management has undergone decentralization and regions have gained autonomy, and this is seen as a great driver of deforestation. Regional land use plans are often decided without a thought to nature conservation and ecology, (ibid).

The importance of the forest sector and therefore perhaps the disregard for nature and ecology is reflected in sector's share of the Indonesian GDP. It is second only to the petroleum and natural gas sector and brings in 6-7 billion USD and a further 1 billion in undocumented revenue such as illegal logging, (Maryudi:2013:2).

The government of Indonesia has been notorious not only for its disregard for nature but also for its involvement in economic activities that have brought more wealth to the already wealthy class, (Hecker:2005:10). The formal ownership right to customary forests were first taken away in 1967 when The Basic Forestry Law designated all forested land in Indonesia not otherwise owned as State Forest, thereby ignoring the traditional Adat system of land and forest tenure, (Maryudi:2013:4). In 2011, approximately 70 percent (131 million hectares), of Indonesia's land

area of 187.6 million hectares was classified by the Ministry of Forestry as Forest Estate (Kawasan Hutan). Non-Forest Estate, (Areal Penggunaan Lain), is outside the jurisdiction of the Ministry of Forestry and generally under the control of the district level, (WRI:2012:7).

However, slow steps have been taken to return some of the forest ownership rights to the traditional inhabitants, which can be seen as an attempt at a more fair distribution of wealth.

The first programs which attempted to counter the Basic Forestry Law focused on access to forests for the purpose of temporal agricultural cropping. The programs were heavily criticized for not taking indigenous people's opinions into account and for limited schemes to improve livelihoods, (Maryudi:2013:5). The program PHBM from 2001 which focuses on benefit sharing and joint decision making between the State Forest company and the local communities is an improvement, but the management rights still remain with the state, (ibid).

As early as 1995 the Community Forestry (HKm) program was introduced, and this program was later complemented by the programs Village Forest (HD), People's Timber Plantations (HDR) and Company-Community Partnerships (Kemitraan), (Maryudi:2013:7). Even though these programs have existed for a while the number of villages who have achieved such management rights is astoundingly low. As previously mentioned, there was a ruling in Indonesia's Constitutional Court in 2013 that finally put an end to the practice of automatically labelling all non-private forest as State Forest. This will lead to a new way for indigenous communities to gain land rights – via Customary Forest (HA) becoming an officially recognized legal status, (Stevens et. al: 2014:25). Recently the Prime Minister of Indonesia announced plans to turn over 12.7 million hectares of land to communities. Of the 12.7 million hectare, 5.5 million are purportedly to be for Company-Community Partnerships (Kemitraan), while the rest are going to be Community Forest, (Hkm), Village Forest, (HD), and Customary Forest. AMAN however criticized the Prime Minister for not wanting to turn over the full 40 million hectare that the landmark ruling in the Constitutional Court designated as being Customary Forest, (Jakarta Post/http).

The Customary Forest and Village Forest schemes will be explained briefly below since those are the two schemes that villagers in the Mawas area have shown initial interest in.

2.3.3 Program Descriptions

Village Forest

The focus of the Villages Forest scheme is livelihood improvement and utilization of forest resources, but it also includes responsibilities to preserve the life-supporting functions of the forest.

The permission is valid for 35 years and can be renewed after that. Villages Forests can be located in Production and Protection Forests, (Sardjono et. al:2013:6). This means that any Village Forest in Mawas has to be in the KPHL zones, which are Protection Forest. Natural and planted trees can be harvested in Village Forest located in Production Forest only, (Royo&Wells:2012:7). Permission for logging trees has to be obtained separately, (Maryudi:2013:11).

The planning, managing and allocation is the responsibility of a Village Institution set up for this sole purpose. The area targeted to become Village Forest must be mapped for purposes of identifying borders with the land of adjoining villages, but it must also undergo mapping to identify resources and potentials. Based on the maps the area is divided into different zones according to use, such as completely protected areas, agroforestry areas and areas where wood for daily use can be harvested. The Village Forest regulation stipulates a limit for how much villagers can grow and extract, and plants like rattan grow among the existing trees, so don't therefore necessitate any land clearing at all. Each year, a village is allowed to collect up to 50 cubic metres of wood and 20 tonnes of non-wood products such as rubber and fruits, (Inside Indonesia/http).

The Village Institution must report on the progress once a year to forestry authorities and the program can be terminated if the objectives are not met, (Akiefnawati et. al:2010:7).

Customary Forest

In Central Kalimantan the legal definition and conditions of Customary Forest have still not been settled following the ruling in the Constitutional Court, but will be based on the experiences gained from two trial projects. Customary Forest status will only be given to traditional communities, but should be available in all types of forest (appendix 2). The customs in such

traditional communities are closely related to the Kaharingan religion, and will dictate how the forest is managed.

BOSF have collected information about some of the customs of traditional forest management in the Mawas area. The customs include: *Ngariau/mamparinjet*, which is a ceremony to seek permission with the spirits of the land being taken into use; This involves a series of necessary steps, requirements and calculations which help to control the rate and size of areas cleared; *Gotong-royong/Handep hambaringhurung / Bahandep*: Cooperating on land clearing etc. for common benefit; *Pukung Pahewan /Keramat/ Pahajatan*: forest which is sacred to the local community and is therefore protected from human activity; *Katuan / Himba*: forest that supplies the day to day-to-day needs (timber and nontimber) of the communities; *Kaleka*: former farmland no longer used for agriculture, but used for plantations (eg rubber, etc.), (BOSF: 2013:7).

3.0. Methodology

3.1 Philosophy of Science

As indicated in the Mission Statement, this thesis will take an active stance as opposed to a more objective view, and as such will be largely adhere to the scientific tradition of Action Research. This is partly due to inspiration from another project that also describes itself as Action Research, and which worked to bring Village Forest status to a Sumatran village called Lubuk Beringin as the first village in Indonesia, (Akiefnawati et. al:2010:8).

Action Research is the process of a researcher aligning him or herself with a group of Local Actors or an organization which is trying to bring about societal change. It is stated in the anthology "Videnskabsteori på Tværs af Fagkulturer og Paradigmer" (Fuglsang, L. & Olsen, P. B. eds.) that *"the understanding of meaning is only interesting, when the person trying to understand someone else sees himself as being part of the same project as the person he is trying to understand"*, (Nielsen:2004:518).

The group of Local Actors with which this thesis aligns itself is the inhabitants of Mawas. They exist within the system which the project aims to change, as described below:

*"Thus, there is a dual commitment in Action Research to study a system and concurrently to **collaborate** with members of the system in changing it in what is together regarded as a desirable direction "*, (O'brien/http).

What actual collaboration took place, took place with the organizations Red Orangutangen and BOSF, but these organizations are not part of the system as such. According to the philosophy and intent of Action Research, the collaboration should have involved the members of the system; the people of Mawas. Still, the inhabitants of Mawas have set the premise for the thesis by singling out the two programs - Village Forest and Customary Forest - that they deem acceptable; a premise which BOSF and by extension the author of this thesis have chosen to go along with. In this sense the project is not completely top-down.

Another hallmark of Action Research is that it does not try to come up with generalizable truths, as it operates in local contexts, (Nielsen:2004:518). Whether this holds completely true for this thesis or not is a matter of debate. The lessons learned on a general level might be used to generalize for

the 53 villages in the Mawas area, but not the lessons learned on a case level, as is explained in the section Case Work.

Finally, many texts about Action Research speak about a feedback loop of learning, with the steps *Diagnosing, Action Planning, Taking Action, Evaluating* and *Specifying Learning* that should be repeated continuously (O'Brien/http). This thesis should only be viewed as one or two of the first steps, and the rest of the steps will hopefully be taken by BOSF and Red Orangutangen at some later point.

3.2.Limitations

This thesis is only looking into two types of community forestry; Village Forest and Customary Forest. This is because the villagers of Mawas have indicated to BOSF that these are the two types of land rights they are interested in. From an environmental point of view, the Community Forestry (HkM) scheme might also have been worth exploring, but it makes sense to go by the wishes of the villagers so that whatever way BOSF chooses to engage simply underpins a grassroots process which the villagers themselves are the driving force behind.

The thesis tries to shed some light on the preexisting conditions that might either prevent or ensure the sustainability of a land rights program. However, only the factors that were relevant for Timpah and Batampang are explored. For other villages in Mawas, there could be other factors. There is also one preexisting condition which might be relevant for Timpah and Batampang in the future which is not fully explored in the thesis, and that is ecosystem services. The Mawas peat domes help to regulate water levels, which can be said to be an ecosystem service, but this was not discussed with Timpah and Batampang villagers, so it's hard to evaluate one way or the other, and will not be part of the Analysis. The massive amounts of carbon stored in the forest is also an ecosystem service, and there was actually a REDD project that took place in the Mawas forest. Again, it was not discussed with the villagers but it is part of the Strategies Going Forward section.

Due to conflicting information and lack of information, the details regarding different types of land deeds won't be delved into, although the acquisition of land deeds are likely to be important for the ability of the villagers to get bank loans.

3.3 Use of Litterature

The amount of literature in English about some of the main concepts discussed in this thesis was very limited. At times factual details about the programs emerged through informants but could not be verified in the literature, and therefore this thesis relies very heavily on information collected through interviews overall.

With The Customary Forest program especially there is the problem of the program not even being fully realized yet, much less described in any literature of note. This was also the case for the Dayak Misik program. For these two programs a few articles in Indonesian have however been translated and are in the appendixes. For the Village Forest program two central peer reviewed articles in English were employed (Akiefnawati et. al and Maryudi), but even these were lacking in information.

Some of the articles on Village Forest contradicted each other on central points, such as the length of the obtained license and in which type of forest Village Forest can be set up. These two issues each had one article contradicting multiple others, so the majority opinion has been taken as fact. The process of applying for Village Forest itself is also shown to be different in multiple literary sources, and they also all contradict the verbal testimony from an informant. Here the informant has been given most credence.

3.4. Case Work

It has been discussed among scholars whether generalizations can be made based on one or two cases alone. The traditional definition of a case study says not:

Case Study. The detailed examination of a single example of a class of phenomena, a case study cannot provide reliable information about the broader class, but it may be useful in the preliminary stages of an investigation since it provides hypotheses, which may be tested systematically with a larger number of cases.

(Abercrombie et al.:1984: 34).

While rejected by some scholars, this thesis *does* adhere to the traditional definition of a case study. The cases will not be used to generalize, but only to hypothesize when possible. In truth,

the cases turned out to be so obviously atypical that not even hypothesizing was possible for most of the objectives presented below.

It can be said that there were three objectives in visiting the two villages used as cases. These three objectives tie directly back to the Working Questions 1.1, 1.2, 1.3, 2.1, 2.2 and 2.3.

At the outset it made sense to go beyond the mere specifications of the programs, to the degree that those were even available, and try to find out what reasoning the villagers in Batampang and Timpah have employed themselves in choosing between programs. The idea then was to compare this reasoning with whatever literature was available and form an opinion on the programs.

The idea was also to learn about the practical implementation of Customary Forest and Village Forest and again compare it to the way the programs are described in the literature.

Thirdly, the objective was to learn about the preexisting conditions in Timpah and Batampang, such as livelihood concerns, geography, religion and use of the forest, that have both shaped the desire for land rights and have tremendous power to shape how such land rights are managed in the future.

3.5 Collection of Empirical Data

If quantitative methods are applied it is recommended that at least 10% of populations of 101 – 1000 people are surveyed to be representative, (Yount:2006:4). Due to time constraints, the method of information gathering for this thesis was therefore qualitative rather than quantitative.

Differences in income, gender and occupation etc. were considered to be relevant factors before data collection occurred, but the low number of interviews in the villages made it near impossible to really explore these factors. It also became clear that the democratic structure in the villages was completely exclusionary of women, so the women who were asked about the land rights projects hadn't even heard of their existence. One woman asked was a social studies teacher in a nearby high school, and even she had not heard anything. The problem with representation has been compensated for somewhat by asking informants with authority and an overview to reflect upon general attitudes, but ideally some of the power structures behind land rights projects in the two villages could have been explored a little more.

The collection of data was somewhat encumbered by the fact that a lack of Research Permit for Indonesia meant that interviews could only be conducted as informal conversations. The interviews were presented as an element of “monitoring” the ongoing BOSF project related to land rights, so while conversations could be had about the project, a notebook and prepared interview questions could not be utilized. The conversations were taped, but not openly. It was vital that no data was seen being collected under the rules of the Social/Cultural Visa. One person from BOS Mawas was also present at all times during most of the interviews so as to minimize any doubt about the purpose of the visits and questions. These conditions all contributed to making the interviews very improvised in nature. Sometimes it provided an added ability to ask pertinent follow up questions rather than being distracted by checking off all the questions in an interview guide, but it also meant that some relevant questions did not get asked.

The interviews were conducted with the aid of a translator. The translator’s English was passable but not great, which sometimes meant that a question had to be asked two or three times before it was asked and answered correctly. The slight communication barrier affected the interview technique. Sometimes the questions were rephrased a few times, and a lot of “closed questions” were asked in order to confirm answers. Unfortunately the translator would sometimes confirm without translating, and it would later turn out that he had misunderstood.

The translator, Eddie Taufan, was hired on the recommendation of Red Orangutangen, and engaged for 11 days in total. The translator turned out to have a thorough knowledge of the topic, both through earlier work with Red Orangutangen, but also because of independent work on a Village Forest project. The translator had many strong, independent opinions of his own and this was at times a problem. For example, the translator once or twice began to immediately answer a question himself that he felt was too critical to pose, and at other times he clearly let his own opinions shine through by continually emphasizing the livelihood aspect of the discussion, more so, it seemed, than the person being interviewed. Especially the last interview with the head of the NGO YTT was problematic, in that the translator started talking to the informant for up to half an hour at a time before translating anything. His philosophy of translation was that he “wasn’t translating but interpreting”, and therefore was condensing the answers a lot. There are pros and cons to this method of interpretation: it is possible that he was eliminating misunderstandings by asking clarifying questions before translating anything, which would be a positive thing, but at the

same time he was also removing some of the ability of the interviewer to control the interview, as well as possibly omitting important details that to him didn't rate as significant.

The translator's role became complicated once it became apparent that his experience working as a manager on a Village Forest project meant that he was also a valuable source. Furthermore, his own negative experiences with a Village Forest project might have caused him to be biased in the translating of interviews. On the other hand, some villagers in the village of Batampang praised his presence because of his background knowledge, which they felt was conducive to a better conversation. Overall, his knowledge of local customs and ability to make introductions was invaluable.

Three of the informants were given a nominal amount of 250,000 IDR for their time. This amount was given in agreement with the translator and was only given to people who could be described as experts. There was also another, more subtle tradeoff: some of the informants from YTT, LMMDDKT and ASPERA-KT regarded the author of this thesis as a contact through which to access funding for individual projects.

3.6 Conducted Interviews

13 interviews have been conducted in all. They are described below in the order they were conducted. Some of the interviewees only have one given name.

1. **Kaji Kelana Usop**, head of the local branch of LMMDDKT as well as head of the organization ASPERA-KT.

LMMDDKT is an NGO which is devoted to furthering the interests of the Dayak people in the areas of environment and development and Kaji Usop's father was district head before him. Currently they are working on improving conditions in the areas of farming, land rights and small-scale mining, (the small scale-mining project is conducted under the auspices of the organization ASPERA-KT which also employs Eddy Taufan, the translator). The interview was conducted at the district headquarters of LMMDDKT in Palangka Raya. The interview mainly served as a way to fill in large gaps of knowledge about the land rights situation for the Dayak people, and the circumstances for the Dayak people in general. The communication with Kaji Usop did not go

through the translator which in hindsight was the wrong choice due to Kaji Usop's poor English. **Eddie Taufan** was however present, and sometimes interjected with answers of his own.

2. **Simpun Sampurna**, elected head of the national organization AMAN in Central Kalimantan, which agitates for land rights for the indigenous peoples of Indonesia.

AMAN is the organization behind the 2013 Constitutional Court decision which has ushered in legal recognition of Customary Forest. The interview was conducted at their regional office in Palangka Raya which also seemed to double as a residential home. This interview was used to gain further insight into the legal battle surrounding the recognition of Customary Forest. Present was also a man named **Taulat** who seemed to serve as Simpun Sampurna's right hand, but is also a manager of a Village Forest.

3. **Jhanson Regalino**, head of BOS Mawas.

BOS Mawas is a regional office of BOSF, while other locations are spread throughout Central and East Kalimantan and Jakarta. Jhanson Regalino oversees all the activities that BOSF carries out in the Mawas area, and he often travels to the villages to talk to the villagers himself. This interview primarily served to provide full understanding of BOS Mawas's role in the land rights process, which turned out to be substantially different than the understanding prior to the trip to Indonesia. The interview was conducted in BOSF's office in Palangka Raya.

4. **Damang**, spiritual leader of Timpah

The Damang is the spiritual head of the village. The interview was conducted in the home of the Damang. The Damang was not completely clear about the details of the land rights plans, but was able to say something about the importance of protecting a few places with special religious meaning for the villagers of Timpah.

5. **Seiko**, Village Chief in Timpah

The village chief is elected for 3 years at a time, but is controlled by a village council of seven members, all men. The interview was conducted in the home of the Village Chief. The interview mostly served to provide background on the village, as the Village Chief seemed very confused about the land rights project.

6. **Midel Tarung**, retired civil servant, assistant Damang in Timpah

Midel Tarung is a retired civil servant and also serves as the main link between Timpah and BOS Mawas. He is also the assistant Damang. The interview was conducted in the village hall after a BOS meeting about fire prevention. The interview was used to confirm the information given by the Village Head. Midel Tarung seemed to have a clearer idea of the project than the Damang.

7. **Luwe**, Village Head in Batampang

Like in Timpah, the Village Head is elected for 3 number of years and controlled by a village council of seven men. The interview was conducted in the home of the Village Chief. The interview served to illuminate what the village of Batampang plans to do to gain land rights.

8. **Saidi**, Village Representative

Saidi is one of seven village representatives that overlooks the work of the Village Head, acting with others as a sort of elected parliament. The interview served to confirm the information given by the village chief and was conducted on a boardwalk terrace in the village with many villagers sitting around.

9. **Heri Susanto**, Head of the NGO YTT and its project to get Village Forest status project for the village of Tambak Bajai

The YTT does community and environmental advocacy. Currently they are trying to get Village Forest status for the village of Tambak Bajai. YTT will get 20% of all benefits accrued from the project. Heri Susanto is a former BOS Mawas employee and Tambak Bajai is his home village. The interview was a way to learn about the steps that have to be taken in order to get Village Forest status and the obstacles encountered along the way.

10. **Dehen**, Forestry Agent in Kapuas

Dehen is a forestry agent for the Ministry of Forestry. He is responsible for the South Barrito district, but does not work directly with Mawas. His main work area is overseeing forestry management plans. The interview mainly served to get accurate information about the recognition of Customary Forest and the government's position on the progress of transferring land rights to indigenous communities. Dehen was interviewed in the district capital of Kapuas.

11. Eddy Taufan, former manager of a Village Forest Project in Kalawa village

Eddy Taufan is, along with translator and an associate of Kaji Kelana Usop, also a former manager of a Village Forest project which ultimately failed. His experiences can be used to sidestep mistakes in any future Village Forest projects that BOSF gets involved in.

12. Nikolaj Bro Moseholm, Adviser for Verdens Skove specializing in organizational building, advocacy and indigenous rights

Verdens Skove is a Danish NGO which since 1982 has worked for the preservation and sustainable use of the world's rainforests. While they previously purchased rainforest they have switched tactics towards empowering local peoples. Nikolaj Moseholm has worked more than 20 years securing land rights for indigenous peoples in Latin American countries such Nicaragua, Panama, and Bolivia. The interview was conducted in a café in Copenhagen, and provided an understanding of how another, more experienced environmental organization works with land rights.

13. Morten Faurby Thomsen, Program Coordinator for CARE Denmark

CARE Denmark is part of the larger NGO CARE International, which has organizations in 12 countries and carries out projects in more than 70 countries, which benefit 45 million people. CARE works with women and environment as the two main areas of focus. They are currently carrying out land rights projects in the Asian countries Vietnam, Laos and Nepal. The interview served as a way to get a second opinion on the strategies of advocating land rights, particularly in Asia since Nikolaj B. Moseholm, mentioned above, only works in South America. The interview was carried out in CARE's offices in Copenhagen.

4.0 Political Ecology

4.1 Introduction and Use of Theory

Political Ecology can take many forms, but centers around critique of the way that “apolitical” explanations of environmental issues are supposedly used as a tool for the Global North to control the Global South, with Global North environmentalism thus almost being akin to a new kind of colonialism. Political Ecology then is the attempt to explain that there is often an outside stemming “political” dimension to degradation that may at first seem very localized in nature.

The main points of critique are the ideas concerning “ecoscarcity” and “modernization”, which view the earth’s resources as finite and vulnerable to an ever growing and consuming human population – population growth which mostly takes place in the Global South, (such ideas are expressed in known texts like *The Tragedy of the Commons*, *The Limits to Growth* and *The Population Bomb*, (Robbins: 2006:7). Political Ecology argues that because of our extreme use of resources per. capita the Global North has the actual population problem, and it furthermore argues that technological improvements and the ability of the market to regulate the demand for scarce resources should be considered, (Robbins:2006:8).

As explained earlier, Political Ecology will be used to discuss the reasons for the environmental degradation of the forest surrounding the villages of Timpah and Batampang. Can the degradation be traced to outside influences, or not? Are there any implications for the commitment of the villagers to an environmentally sustainable land rights program and the suitability of the two programs? These issues will mostly be discussed in sections 5.2., 5.3, 5.4, and 5.5 of the Analysis.

4.2 Theses of Political Ecology

Different theses of Political Ecology explain different phenomena. Of the four theses presented by Paul Robbins in the book *Political Ecology*, two are relevant for this project and are presented as such:

Thesis	What is explained	Relevance
Degradation and marginalization	Environmental Change: Why and how?	Land degradation, long blamed on marginal people, is put in its larger political and economic context.
Conservation and control	Conservation failures and political/economical exclusion: why and how?	Usually viewed as benign, efforts aimed at environmental conservation are shown to have pernicious effects and sometimes fail as a result.

Table 2: Overview of relevant Political Ecology theses

Source: Robbins:2004:14

Degradation and marginalization: Otherwise sustainable methods of traditional production can become unsustainable when integrated in regional and global markets or confronted with state intervention. This can lead to a cycle of further poverty and further overexploitation. The enclosure of collectively owned land also falls under this heading, and so does the introduction of new institutions/foreign institutions, (Robbins:2004:14). The enclosure of land could mean the creation of a national park which villagers are forbidden from entering, and the creation of new institutions could mean the introduction of private ownership and state ownership as the only two recognized types of ownership.

This thesis has two main theoretical underpinnings. One is that of *degradation and reversibility*, which poses that degradation of an area requires as much or more energy and investment to reverse as was put into the initial exploitation of it, and that degradation can have “progressive momentum”, (Robbins: 2004:131). This all seems to imply that pouring money into habitat restoration is useless and perhaps better spent only on improving the life quality of local people.

The second underpinning is *Accumulation and Declining Margins*. This assumption is about local producers being made to carry increasing risks and losses, which they transfer to the environment they live in. When farmers clear forest to offset lower prices for their products the lost value in

terms of ecosystem services and biodiversity is transferred to distant markets, (Robbins: 2004:131).

Conservation and control: Control of landscapes and resources are seized from local producers by state or outside organizations via plans to protect the environment, natural resources or community. Local systems of production, livelihood and socio-political organization are dismantled. Local practices and methods of production that are historically benign are often accused of being unsustainable, (Robbins:2004:14). Shifting cultivation is one such historic method used by many indigenous communities that has become heavily debated.

Similar to the thesis of *Degradation and Marginalization*, *Conservation and Control* has four theoretical underpinnings. The first one is *Coercion, governmentality, and internalization of state rule*. This underpinning speaks to the way that primarily states have sought to control native users of an area by either excluding them from entering or even forcibly removing them from what becomes a national park. Even though NGOs could be seen as being in opposition to the state – the very term Non Governmental Organization suggest this – political ecology sees such organizations as having internalized much of the suppressive nature of the state, (Robbins: 2004:151).

The second underpinning assumption is that of *Disintegration of moral economy*. This speaks to the way that the imposition of a new conservation regime can destroy management systems and norms that have been put in place through generations through face-to-face interaction, and which had so far guaranteed a sustainable resource extraction. The disruption may lead to the complete abandonment of any restraint and result in reckless extraction. This might entail sudden large scale deforestation, for example, (Robbins: 2004:151).

The third assumption is that of *The constructed character of natural wilderness*. This is about the fact that few areas of natural wilderness are truly completely untouched by humans, and therefore not really “wilderness”. Human roads, human pollution and human influence extend to the most remote areas. In some cases humans have even helped to create those ecosystems which are later prized by outside forces, but which leads to the eviction of those same humans.

The last theoretical underpinning is that of the *Territorialization of conservation space*. This assumption is about the inherent futility of trying to fence in an ecosystem, since wild animals often migrate.

4.3 Narrative Around Deforestation Seen Through the Lens of Political Ecology

Another author who has also written about Political Ecology, Adger et. al offer a specific view of deforestation, and the discourses that surround it. According to his view of Political Ecology, two existing discourses surround deforestation, neither of which are correct.

The first is the *Neo-Malthusian/Managerial discourse*. It is Neo-Malthusian because it connects the loss of forest cover to over-population and over-consumption, but this discourse also specifically identifies the shifting cultivation/ slash-and-burning practice of many subsistence farmers in developing countries as the main cause of deforestation. Poverty, environmental degradation, government, market failures and environmental security are furthermore identified as factors that require action to be taken by the North (Adger et. al:2001:687).

The second discourse is the *Populist Discourse*. This discourse turns the Neo-Malthusian/Managerial discourse on its head, in that it identifies subsistence farmers as victims who are driven to committing ecological degradation through no choice of their own rather than being the true initiators of said ecological degradation. The villains in this scenario are logging companies and cash crop plantations (such as palm oil plantations) and the consumption in the North that is fed by said logging and plantations. These villains force the subsistence farmers to abandon their traditional, benign way of farming. Interestingly, this description of the Populist Discourse echoes many of the same sentiments as the *Degradation and Marginalization* thesis presented earlier, particularly the part about local people being made to abandon their sustainable, traditional land use systems by outside forces. It would therefore seem that there is some internal discord as to what actually falls within Political Ecology and what does not, because according to Adger et. al both the Neo-Malthusian/managerial Discourse and the Populist Discourse are simplifying reality.

The correct discourse according to Adger et. al must take into account complex social interactions between outside forces and local inhabitants which make it hard to put blame for environmental

degradation squarely in one camp. For example, logging companies open up areas with roads that inadvertently also make it possible for local producers to cultivate products for markets further away from the village, thus making it necessary to clear more land. Logging companies/plantations and local villagers also interact through employment situations which may bring some social benefits to the local area. Do these interactions qualify as an outside force willfully forcing local communities into degrading their environment?

In the long term, it is said, the local communities are either left with a greater sense of the worth of their forests due to the experienced degradation or conversely, a new ability to exploit resources more quickly, (Adger et. al:2001:688).

5.0 Analysis

5.1 Design of the Analysis

To illustrate the two programs Village Forest and Customary Forest via case studies, the Analysis will juxtapose the work that is being done to achieve the two aforementioned type of land rights in two very different Mawas villages, Batampang and Timpah as well as expound on the programs themselves.

Section 5.2 utilizes Political Ecology in an attempt to explain the preexisting conditions surrounding the land rights program in Timpah, but the section also deals with the specific use of Customary Forest and the reason the villagers chose it. **Section 5.3** then deals with the concept of Customary Forest and explores the road for Timpah to obtain this type of land rights and the concept in general, as a way to make it applicable to other villages in Mawas who may also pursue Customary Forest.

Section 5.4 does much of the same as section 5.2, as it describes the preexisting conditions in Batampang, again with the help of Political Ecology. Furthermore, the specific use of Village Forest and the reasons for the choice of program are explored. **Section 5.5** delves into the concept of Village Forest and how Batampang can get this type of land rights with a view to making it applicable to other villages, much like section 5.3.

5.2 Timpah

Even though the forest area is some distance away from Timpah, the villagers go there every day. Some of the trees are protected, but the orangutans are not. In fact it is not unheard of for the villagers to hunt orangutans, (Interview 5: Seiko: 28:15). Among other things they gather in the forest is a type of bark which is an ingredient in lipstick. They sell this to outside buyers. It is unclear if the forest area they visit daily is part of the forest area that they now wish to claim through land rights programs.

Two things seem to have prompted plans for land rights. One is the threat of companies getting concessions in the area, (Interview 4: Damang: 12:00). The villagers have special places such as a lake where river fish come to spawn and other sites with religious significance that they would like

to protect. The other thing that has spurred them on is the possibility of getting more farmland. Timpah has seen a rise in population from 513 in 2009 to 936 in 2015 and many families are without land, (Sigvartsen, M: 2015).

The villagers are planning to apply for Customary Forest status for two plots of forest of 25 and 30 hectares which lie near a smaller village called Manyawang to the north of Mawas, and which they believe the spirits reside in, (Interview 6: Tarung:17:00). The Damang is aware of the existence of the Village Forest program, but believes only Customary Forest offers adequate protection of these areas, (Interview 4: Damang: 9:45). This is possibly correct as concerns the long term, in that Village Forest is not permanent, but still seems a very rudimentary understanding of the differences between the programs. This is not surprising since the villagers have not been given any material to read on land rights programs – all their information comes from a verbal governmental presentation, (Interview 5: Seiko: 13:30).

For another part of forest the plan is to take part in the - supposedly - upcoming program called Dayak Misik, which aims to give 5 hectares of state land to each Dayak family, (appendix 3). The plan is for 500 families in Timpah to each get 5 hectares, totaling 2500 hectares. The Dayak Misik program has not been realized yet, and the promise of its inception has been made in an election year, so it is possible that the idea will die after a new provincial government is elected. However, should it come to fruition, it poses a serious threat to the acquired forest area. The individual families will be able to turn their newly acquired plots of forest into plantations or after 20-30 years sell it to corporations who will do the same, (Interview 6: Tarung: 20:45). Already the Village Head wants to partner with such corporations to get help in managing the future Dayak Misik areas in the coming years, (Interview 5: Seiko: 20:15).

The affected tracts of forest as concerns both the Customary Forest plans and the Dayak Misik plans are not within the official boundaries of the Mawas forest, but such artificial borders hardly matter to orangutans and other species that will be affected, both positively (by Customary Forest) and to a much larger degree negatively, (by Dayak Misik). Furthermore, Timpah's plans give rise to some fundamental observations. The intent to deforest challenges Political Ecology's perception of the "benign indigenous villager/subsistence farmer" as well as the assertion that overpopulation can be always be combatted sufficiently through advances in technology. It is also

relevant to try to look at outside circumstances and influences such as the imposition of foreign value systems and market opportunities explained in the underpinning of *Disintegration of Moral Economy*. According to Kaji Usop and Eddy Taufan it is indeed outside influence that has caused some Dayaks to be swayed from the traditional beliefs that have regulated their environment sustainably for thousands of years. This influence has been labelled “development”, and has altered the expectations for quality of life for indigenous villagers to include higher education and more disposable income, and thus in some cases transmitted the act of environmental degradation from the companies to the Dayaks themselves (Interview 1:Usop:1:25:00).

Some of the “development” in the Mawas area could be said to have come in the form of logging companies operating in logging concessions. Most of the Mawas forest has been logged, (BOSF:2013:3). Logging concessions are typically viewed favorably compared to palm oil plantations by local inhabitants because they don’t occupy the land permanently. In fact, villagers often appreciate the roads and occasional work that such sharing of their forests with logging companies has brought about, (Colfer&Resodudarmo:2002:5). The logging companies cut trees selectively rather than clearing entire areas, and some trees protected by customary law can’t be harvested at all. At the same time, villagers can continue to hunt and gather in the forests. Thus, logging concessions do not result in the same conflicts that palm oil concessions do (Interview 1: Taufan: 2:14:30). Could this exposure to a somewhat “benign” type of environmental degradation have taught villagers how to exploit their surroundings rather than made them aware of the downsides? This line of thinking is supported by the *Narrative of Deforestation* that was explained earlier in this thesis.

And then there are the issues related to *Accumulation and Declining Margins*. Could the newly constructed road – 3 years old – from Timpah to the much bigger city of Palangka Raya have contributed to new market opportunities and therefore a desire to cultivate more land? And could it also have contributed to the influx of people from other areas? The Damang in Timpah thinks so, (Interview 4: Damang: 37:00). Head of BOSF Mawas, Jhanson Regalino, is very sensitive to the impact on biodiversity that opening up Mawas with roads can have, (Interview 8:Regalino: 3:57:15).

Accumulation and Declining Margins also speaks to the way that local people are made to internalize falling prices higher up in the commodity chain in prices they get for the unrefined agrarian products they produce. This is true in the case of the current low prices on rubber and rattan, which are produced in Timpah. While harvesting rubber and rattan was previously enough to cover daily needs and still leave extra money it isn't these days, and certainly isn't enough to provide higher education for children of villagers (Interview 1:Taufan:2:00:00). One of the hopes of the organization KKMMDT is therefore to form co-ops in order to negotiate better prices. Ideally, the microfinance scheme in the village could also help to reverse the effects of declining margins, perhaps through refinement of their raw products, but the loans are small and the men in the village think that small loans are only suitable for women to work with, (Interview 5: Seiko: 30:45). This is a cultural barrier.

As mentioned earlier, many villagers in Timpah still have ties to the indigenous nature based religion that was present before Christianity and Islam. Whatever the exact reason for the turn of events in Timpah, it would appear that ties to the native Kaharingan religion is not a guarantee for continued sustainable use of the forest. This is somewhat contrary to expectation, according to program adviser Nikolaj B. Moseholm from Verdens Skove, whose experience it is that nature religions generally provide a way to regulate the use of the environment sustainably, (Interview 12: Moseholm: 37:30).

5.3 Aspects of Customary Forest

At this moment, the decision in the Constitutional Court to recognize all customary land is not recognized on either provincial or district level in Central Kalimantan, (Interview 2:Simpurna:8:15). This is despite more than 3 policies based on the Constitutional Court decision produced by the Jakarta government which should have been adopted at lower levels of government. According to the Forestry Agent in Kapuas, the specifics of the new Customary Forest status are being sorted out and will depend on two test cases (Interview 10:Dehen:55:00). Based on the experiences with these two test cases the policy for recognizing Customary Forest in all of Central Kalimantan will be formulated.

Even though the definition of customary forest as State Forest had prohibited any meaningful recognition until the ruling in the Constitutional Court in 2013, the meaning of Customary Communities was and is already fleshed out in a Clarification of The 1999 Forestry Law, which states that the community-

1. - laws are still based on traditional laws (*rechtsgemeenschap – Dutch term for “community based on law”*)
2. - possesses customary institutions in the form of traditional authorities
3. - exists within a clear, legal territory
4. - adheres to their respective customary regulations or similar legal tools
5. - utilizes or harvests forest products in the forest within their territory in order to fulfill necessities of daily living

(appendix 4).

Presumably the upcoming requirements for getting Customary Forest will be similar to this definition. Point numb four was mentioned by Forestry Agent Dehen in Kapuas as being a requirement to gain the new legal status, (Interview 10: Dehen:9:45). This aspect is interesting because it refers to the Kaharingan/other similar nature based religions, and yet many of the Dayaks and other previous followers of nature religions elsewhere in Indonesia have become Muslims and Christians. According to the Forestry Agent, this does not necessarily exclude them from Customary Forest, since the methods of forestry management connected to the Kaharingan religion may have survived in the villages even if the religion itself has not, (Interview 10: Dehen: 28:15). Somewhat contrary to this explanation, Jhanson Regalino, head of BOSF Mawas, believes that the access to Customary Forest status does indeed require the Kaharingan religion to be present, (Interview 8: Regalino:39:45). As does the researcher Mara Moeliono from CIFOR, (appendix 2). The truth of the matter is quite crucial since BOSF considers it its most important task to inform the villagers about the way the different land rights programs/options work, (Interview 8: Regalino: 28:30).

With so many practices, (some of them described previously in this thesis), connected to the Kaharingan spirits, it would seemingly have to be a very limited version of traditional forest management if it was practiced by strict Muslims or Christians.

Besides the existence of traditional forest management, a requirement for gaining legal status as Customary Forest is going to be proving a historical link to an area, i.e. generational to generational management as relayed through verbal history (Interview 10: Dehen: 21:45). This is an aspect that is strongly highlighted by the Forestry Agent.

As explained the forest which Timpah will be applying for is slightly to the north of Mawas, and currently, no village is planning to apply for Customary Forest within the Mawas forest, (Interview 8:Regalino: 3:01:00). The current limbo with regards to Customary Forest being recognized on provincial level renders it difficult for BOSF to assist the village in Timpah or any other village which may want to pursue their forest being recognized as such. However, AMAN has already been able to use the law to negotiate the return of 4 hectares of land and 49 billion Rupiahs for an indigenous community, meaning the law is not completely ineffective at the moment, (Interview 2:Simpurna:28:00). It is possible that BOSF might be able to employ a similar strategy while waiting for the Customary Forest program to be formally realized in Central Kalimantan.

While Customary Forest no doubt is more sustainable than the permanent land clearing oil palm companies wish to do, it will be interesting to see if there will be any changes to the prevalence of shifting cultivation done with slash-and-burn. In Political Ecology the concept of shifting cultivation is covered under the thesis of *Conservation and Control*, where it is described as a historically benign method of farming, which has been deemed unsustainable by outside forces in order to take control of landscape and resources. Nikolaj B. Moseholm from Verdens Skove subscribes to this view, saying that it is a sustainable practice as long as there are no outsiders with a different agrarian culture coming into an area, (Interview 12: Moseholm:38:30). This view doesn't take into account the scale of shifting cultivation though, and whether it is still sustainable with a growing population.

Slash-and-burn as a practice independent from shifting cultivation is also under fire. Although the Dayaks consider slash-and-burn to be a safe practice which is sufficiently regulated through traditional ceremonies and customs, the practice was outlawed in Central Kalimantan for smallholders in 2006, (Someshwar:2013:4). This proved to be very unpopular. Subsequently, a compromise was reached, and in 2008 a new law was put into effect that allows monitoring of rainfall patterns to determine which years the smallholders can burn, and which years they can't.

However, given that there is no compensation for the farmers in the “no-burn” years the system does not work adequately yet, (Someshwar:2013:17). The Dayaks also criticize the Central Kalimantan government for not providing any alternatives such as technology or fertilizers says Kaji Usop, (Interview 1:Usop:1:35:15).

As explained earlier, slash-and-burn is done through a specific ceremony: the villager who wants to clear land puts something in a big tree where a spirit resides and asks it whether the land is suitable for a specific purpose. If the person doing the asking has a good dream during the night they then offer different types of food for the spirit, and ask it to move from the land so the land can be opened. The spirit moves to Pukung Himba, Protected Forest, (this seems to be a contraction of some of the terms recorded by BOSF). All the trees are cut and burned in the middle. The burning isn't done randomly, but kept to the selected area, (Interview 1:Taufan:1:30:00). This method of slash-and-burn supposedly ensures that the fire remains under control, but in reality Indonesia is plagued by out-of-control forest fires, some of them probably stemming from slash-and-burn fires set by local inhabitants, (Channelsnewsasia/http). The villagers of Timpah also suspect that out-of-control forest fires are sometimes started by people from their own village, (Interview 4: Damang: 29:30).

Beyond the uncertainty of slash-and-burn in Customary Forest, there is the question of whether the communities will be able to sell their forests if their rights are formally recognized in this way. Experiences from South America are that villagers can't and the requirements for traditional forest management for villagers to qualify for Customary Forest point to it not being the case in Indonesia either. However, it raises some ethical questions. If indigenous communities really have a moral right to manage the forest, then shouldn't that include the right to sell it? The right to sell property is tantamount to what we consider true ownership in the West, but as explained in the section Definitions there is a difference between a broad term like land rights and ownership. Although Nikolaj B. Moseholm from Verdens Skove is a big advocate of indigenous land rights, he defends not allowing the villagers to sell off their forest, (Interview 12: Moseholm: 47:15).

5.4 Batampang

The village of Batampang is situated on a river in the heart of Mawas. Forest surrounds the village on all sides, though a fire has recently ravaged some parts. The villagers in Batampang use the

forest in much the same way as the villagers in Timpah; they collect the same bark, as well as birds, honey etc., (Interview 7: Luwe:2:15). They don't hunt the orangutan because their Muslim faith makes it an unsuitable food. According to the Village Head there are no traces of their Kaharingan origins left in their culture, (Interview 7: Luwe:45:00).

Farming has become more and more difficult, with some attempts to grow rice failing, (Interview 7: Luwe:1:30). The villagers are entirely dependent on their income from catching and selling fish, and this has made them sensitive to any pollution of the river which might be caused by pesticide runoff from plantations. Therefore they have in the past stood together to decline any offers from outsiders to buy parts of their forest and turn it into a plantation. A different kind of offer from 9 coal- and logging companies has now been accepted, however. This offer is not for buying a part of the forest, but to replant the part that has been ravaged by forest fires. The companies are doing it to fulfill a legal obligation to plant a certain amount of trees to offset the forest areas they have exploited elsewhere, (Interview 7:Luwe:32:00) This obligation is linked to something called the Reforestation Fund which companies pay into, (Gunawan:2004:282).

The replanted area would get status of Village Forest, and the villagers would use this area to supply their daily need for wood and would in turn leave the rest of their communal forest completely alone. According to one of the Village Representatives, there is 100% agreement in the village about this plan, (Interview 9: Saidi: 29:00). They have had support from the provincial government in South Kalimantan from the beginning, (even though Batampang is located in Central Kalimantan, not South Kalimantan), presumably because of the involvement of the nine companies. In fact, the South Kalimantan government was the entity which first initiated the project by drafting it and then contacting the villagers, (Interview 7: Luwe:11:00). The villagers do not know anything about Customary Forest now being recognized as a legal status, so there was no choice between programs to be made (Interview 7: Luwe:21:15). They know about it as a type of management, and they are aware that without legal recognition it doesn't (didn't) offer any protection, so they feel that Village Forest was a good option in this regard, (Interview 8: Saidi:11).

The total area that will be replanted and be made Village Forest is 15.000 hectares. There are another 23.000 hectares of communal forest, but surprisingly the Batampang villagers do not wish to claim this as Village Forest, (Interview 7: Luwe:36:00). They feel that the village unity in warding

off outsiders is enough to protect the rest of the communal forest. This was true in two instances in 2011 and 2012 when companies tried to obtain parts of the forest, and therefore they feel it will continue to be the case in the future, (Interview 7:Luwe:1:02:00). They also feel that because the area of 23.000 hectares is closer to the village it will be easier to monitor than the 15.000 hectare area which is further away, (Interview 8:Saidi:18:15).

They argue that because they know the exact location of their borders, they cannot simply be evicted from the land by the central government without consent, as has been the case in the eviction of other villages, (Save the Rainforest Network: 2013:6). They show a clear awareness of the social capital that they possess, but they are probably mistaken about their ability to ward off outsiders in the long term. A study of 20 Indonesian villages in Kalimantan and Sumatra showed that almost all of them hugely overrated the strength of their de facto land tenure, (Resosudarmo et al: 2014:80).

Batampang does not wish to do any zonation of their Village Forest area. And while this means that their project can't really be viewed as being typical of a Village Forest project, the atypical application makes sense in their case. Firstly, they don't really want or need any new farm area and secondly, they don't have any locations in the forest where they imagine forest spirits to reside, since they don't follow the Kaharingan faith (Interview 7:Luwe:45:00). Despite lacking the motivation for protecting forest that the belief in spirits provide, and which might end up securing a minimal amount of protected forest in Timpah, the villagers in Batampang have opted to protect the majority of the communal forest. This is an interesting fact.

Jhanson Regalino says BOSF is positive towards the Batampang project, but they are adamant that there should be a lot of coordination and consultation, (Interview 8:Regalino: 3:52:30. The project presents as being much more environmentally sustainable than the project in Timpah, but it is hard to say why. Is it because of geographical circumstances? Batampang is completely sheltered from the outside world save cumbersome travel by river. Could this have protected them from outside influences to some degree, by preventing a *Disintegration of moral economy*? They have not even heard of the Dayak Misik program, which shows some degree of insulation from negative influences, and the unity that they show faced with companies who wish to turn their forest into plantations shows that their moral economy is strong, (Interview 7:Luwe: 21.30).

Batampang has experienced a drop in inhabitants from 425 in 2009 to 369 in 2015 (Sivartsen, M: 2015). Furthermore, the rising water level in the river has made it harder and harder to farm. Both are factors that lessen the need to clear land for farming. As is the case in Timpah, BOSF have set up a microfinance scheme in Batampang, but unlike in Timpah, there is cooperation with a credit union. This has allowed for bigger loans, and the money has been used for smallscale fish farming, which allows them to sell fish to outside buyers from the south. The twenty families currently participating say they have seen a 75% increase in income (Interview 7:Luwe:56:00). The villagers are therefore hoping to expand the project. The current success in increasing their livelihood is another reason that the pressure on the forest has been reduced, and because the villagers believe the oil palm plantations to be a threat for the fish habitat in the river, the growing success of the microfinance project means that the desire to safeguard the forest has become self-reinforcing. This chain of causation might be said to be the opposite of what is described by the underpinning *Accumulation and Declining Margins*, where livelihood concerns are what works *against* the environment. This may be because the product that the villagers of Batampang produce and are dependent on is not part of the world economy and does not undergo a long chain of refinement before reaching the producer.

As was the case with the forest close to Timpah, all the forest surrounding Batampang has been logged and is therefore secondary forest. Considering the *Narrative of Deforestation* once again, it can be speculated that what the villagers took away from this experience was a heightened desire to protect their environment, as opposed to what can be speculated happened in Timpah.

5. 5 Aspects of Village Forest

Village Forest as a program is more environmentally oriented than most of the other social forestry programs, so in that sense BOSF are fortunate that the villagers have chosen this as one of their preferred methods of getting land rights. However, given that the program allows some agroforestry in the forest area there is also a danger of the forest area becoming a little smaller even though indiscriminate land clearing will not be permitted (Interview 8: Regalino: 52:30). The draw of Village Forest for villagers in terms of livelihood betterment is that the mapping and

zonation of their forest area might help them identify exactly where the soil is good for planting rattan and rubber, and where it makes sense to keep honey bees and put fish ponds.

The Village Forest program has been criticized for not living up to nine design principles for social forestry put forth by a Japanese scholar called Makoto Inoue; the nine principles are Degree of Autonomy, Clearly Defined Resource Boundary, Graduated Membership, Commitment Principle, Fair Benefit Distribution, Two Storied Monitoring System, Two Storied Sanctions, Nested Conflict Management Mechanism and Trust Building, (Sardjono et. al:2013:9). The critique has been that there isn't enough autonomy, (Principle 1), and that this affects the commitment of the villagers, (Principle 4). Furthermore, the resource boundaries are unclear (Principle 2) due to delineations of Production Forest, Protection Forest and Conservation Forest being done without field checks. Lastly, the stipulations of Village Institutions conflict with the idea of graduated membership, (Principle 3), (Sardjono et al:2013: 11).

While some problems might exist with the design of the Village Forest program the biggest issues seem to be with the application process. The Village Forest application takes a long time to complete: it involves approval at district, provincial and national levels, and may be handled on as many as 29 desks before getting the final approval, (Thomson Reuters Foundation/http). The process is split into two: firstly, the area itself is cleared for potential management, and secondly, the management is planned and approved.

Faze 1: Clearing of area for potential management	Faze 2: Management is planned and approved
1. Village Head writes proposal (perhaps with support from NGO).	1. Village Institutions are set up
2. District Head recommendation	2. Exact borders are mapped
3. Governor recommendation	3. Potential of area is mapped
4. New proposal for Forestry Ministry	4. Zonation is carried out
5. Forestry Ministry sends staff to site to verify that there is no overlap with other activities such as concessions, as well as assessing that the borders are roughly correct. They verify in person that there is support at all levels for the project from villagers to Governor.	5. Five year management plan is made
6. Permission Letter from Forestry Ministry to manage which gives legal status. Is good for one year.	6. Final Permission Letter from Governor

Table 3: Application Process for Village Forest

Source: (Interview 11:Eddie Taufan:21:45)

The above process is as described by Eddie Taufan, but other descriptions that vary somewhat from the one above also exist, and can be seen in appendix 5.

The process may take years, (Maryudi: 10:2013). Therefore there is a danger of impatience and loss of hope setting in among the communities. This happened in 2013 in a Village Forest project in a village called Kalawa that Eddy Taufan was managing, and where the quest to obtain Village Forest status ultimately failed, (Interview 11: Taufan: 19:00). This type of hopelessness is dangerous because the villages may pin their hopes of increased income on the projects, and a failure to reach quick results could mean an acute *Disintegration of Moral Economy*, and therefore a pillaging of the forest.

At the moment there are nine villages in the Mawas area which are planning Village Forest projects, and two of these villages already have the Permission Letter from the Ministry of Forestry, (Interview 8: Regalino:3:00:00). One of the biggest issues, and the reason why many

projects may ultimately fail, is that no governmental funds are readily available for the communities to carry out the laborious mapping of their territory. One assessment puts the available funds at 51.2 million Rupiah for the targeted 500,000 hectare in 2011 while the actual need was for 250,000 billion Rupiah, (Royo&Wells:2011:12). Eddy Taufan attempted to access funds in the course of the Kalawa project, but nothing ever materialized.

Eddy Taufan estimates an average of 2 billion Rupiah as the cost of obtaining status as Village Forest, while another cost estimate for a HKm project with much the same mapping and inventory activities was 20 million Rupiahs for 15 hectare, (Maryudi:2013:10). The price included hiring a “facilitator”. If the Batampang project were to cost 20 million per 15 hectare, the total cost would be 20 billion Rupiah.

With such prices, the communities become completely dependent on outside assistance from NGO’s. This was the case in Kalawa, where lack of funds eventually meant that the project had to be abandoned, (Interview 11: Taufan: 14:45). Something similar might happen in another village called Tambak Bajai, where the only part of the process they still have to complete is the mapping and inventory, (Interview 9: Susanto: 58:45). If they don’t find the money for this soon, things might become critical because the communities only have one year to complete the process of mapping before the Permission Letter from the Forestry Ministry expires, requiring the whole process to start over, (Interview 11:Taufan:35:00). This can probably be considered a fundamental flaw in the design of the Village Forest program.

6.0 Discussion

6.1 Design of the Discussion

Taking lessons from the Analysis the **Discussion** will attempt to clarify whether Customary Forest or Village Forest is the ideal program for BOSF to assist villages in the Mawas area in partaking in, or whether they are perhaps equally suitable. **Section 6.2** looks at what was learned from visiting Timpah and Batampang and whether their quest for land rights and situation in general are unique or representative of the whole region. It thus ties directly back to sections 5.2. and 5.4 in the Analysis. **Section 6.3.** then looks at what was learned about the Customary Forest and Village Forest programs on a more general level, and how they compare in a number of key areas. It ties directly back to sections 5.3 and 5.4 of the Analysis.

6.2 Lessons on a Case Level

As explained earlier, the two villages of Timpah and Batampang were visited with a view to understanding why villagers chose one program over the other and the way the programs are implemented in praxis, but also to learn about the exterior factors that have had or will have the power to impact the success of their land rights programs.

The villagers seemed quite limited in their understanding of the two programs, with the Damang in Timpah convinced that only Customary Forest can offer an area protection from concessions and the Village Head in Batampang not even knowing about the existence of Customary Forest. Because of this limited understanding, nothing could really be learned from trying to understand the choices of the villagers.

Timpah has chosen to utilize the Customary Forest program in an untraditional way – instead of a forest with multiple uses they will potentially have a forest only for the protection of the residence of their spirits. This atypical use of Customary Forest as well as the combination with Dayak Misik does not say much about the strengths and weaknesses of the Customary Forest program itself, but rather speaks to the pressure Timpah is under in terms of livelihood and rise in population.

While the land rights project in Batampang seems more environmentally beneficial than the one in Timpah it likewise does not seem to typify the chosen program, Village Forest. Like Timpah and their Customary Forest, the Village Forest in Batampang will not have zonation, which is atypical. The village is also getting more benefits out of the project than a normal village would with Village Forest, in that they are getting a large area of forest replanted free of charge. In this respect, the Village Forest program is providing something for them that the Customary Forest program wouldn't have done.

Throughout the above discussion it has become clear that using Timpah and Batampang as typical examples of Customary Forest and Village Forest and their implementation is impossible, and therefore no general lessons about the programs themselves can be taken away either.

The one thing that *can* be taken away from the visits to Timpah and Batampang is an understanding of the preexisting conditions that have brought about the wish for land rights and will also impact the managing of said land in the future.

Some villagers in Timpah forage in the forest for sustenance and bark, but this reliance on their forest does not seem to have brought about an overall wish to conserve it. The threat of concessions in the area seems to have had equal parts negative and positive ramifications. Positive because it has caused them to want to permanently protect their areas of spiritual importance, but negative because it may have provided a hope of selling off Dayak Misik forest sometime down the line. Although their plans to apply for the Dayak Misik program may not directly impact the Mawas forest itself negatively, their ability to manage forest sustainably in general comes under question, especially because the ratio of Customary Forest to Dayak Misik forest is so heavily in favor of Dayak Misik.

Still, the biggest factor in the villagers wanting to apply for Dayak Misik is clearly livelihood pressure. This pressure seems in part to have been brought about due to a new road to Palangka Raya which has attracted people from the outside, increasing the need for farmland to supply several hundred people. They have a microfinance scheme in place but it has not provided any successful relief, due to being limited to small projects run by women. Their financial difficulties are compounded by currently low prices for their products, rubber and rattan. Faced with this kind

of pressure it is doubtful whether Village Forest would have proved a more sustainable option, though it does have a distinct livelihood aspect, which Customary Forest does not.

The lesson seems to be that even in villages where the use of Customary Forest follows a more traditional pattern it is paramount that livelihood is taken into account as a preexisting circumstance that can make or break the long term sustainability. This, it would seem, is not the case for the presence of the Kaharingan religion, judging by the presence of Kaharingan religion in Timpah and the lack of it in Batampang. As noted earlier it defies expectations that the villagers in Batampang are so environmentally dedicated because of their lack of Kaharingan culture. One might have expected the imposition of the new management regime that was coupled with the move away from the Kaharingan faith to have resulted in a *Disintegration of Moral Economy*, as explained by Political Ecology. Still, some preexisting conditions have clearly played a role in shaping their attitudes. They forage in the forest, but of even bigger importance is their dependence on the fish in the river, which in turn are dependent on clean water. Unlike in Timpah, their livelihood concerns have positive ramifications for the environment, and this is reinforced by the microfinance scheme because it successfully helps them set up small fish farms. The product from these fish farms they can sell on to buyers from the south. They have also seen a drop in inhabitants, possibly due to geographical isolation and difficulties with farming. In Batampang, the threat of concessions has led them to want to protect forest that is far away from the village, but it hasn't led them to worry about the forest closer to the village.

Often preexisting conditions such as the ones presented above which lie beyond the design of a land rights program can make or break whether such programs are adequately managed. Although Timpah and Batampang are just two villages out of many, and although nothing definitive can be said about their future management, the findings in Timpah and Batampang can be used to theorize, and this theory can later be proven by further data collection, (as explained in the Case Work section).

The preexisting conditions discussed in this section and their impact on environmental sustainability, whether positive (+) negative (-) or neutral (/) can be summarized as following:

Exterior Circumstance	Timpah	Batampang
Presence or lack of Kaharingan religion	/	/
Type of economic activity	-	+
Population changes (possibly related to geography)	-	+
Day to day use of forest	/	/
Success of microfinancing	/	+
Nearby concessions	+	+
Market changes	-	+

Table 4: Influence of preexisting circumstances in Timpah which have impacted or might impact management of forest in the future

Source: own creation

6.3 Lessons on a General Level

The lessons about the Customary Forest program on a general level can be categorized in terms of Strategy, Environment, Livelihood, Cost, Access Restrictions, and Process and are roughly discussed in these terms below.

In terms of security, Customary Forest seems to offer the best deal because it is permanent solution. This is of course advantageous seen from the point of view of the villagers, but it might also help BOSF secure the Mawas forest permanently. As things stand right now, BOSF are worried that the Central Kalimantan government will have a change of heart and take away their management of the Conservation Forest areas and turn them into plantation at some point, (Interview 8:Regalino: 1:43:15). If the government found another purpose for the Mawas forest in the future, the existence of Customary Forest status would enable the villagers to claim a breach of territory and of human rights violations in a way that Village Forest status would not, (Interview 12:Moseholm:53:00).

The Village Forest program is only valid for 35 years a time. Nikolaj B. Moseholm believes that such management programs are simply ways for a government to put off surrendering control to

indigenous peoples. In his view, it is a tremendous mistake for indigenous people to buy into these programs, because it is akin to signing away their rights, (Interview 12:Moseholm:43:30). By agreeing to such a program, they give up their right to own the land and settle for managing it. According to Moseholm, an inexperienced organization might think a program such as Village Forest is great, but assisting villagers in taking part in such programs is a real disservice, (Interview 12:Moseholm:44:30). This sentiment is echoed by AMAN, the indigenous organization that was responsible for bringing the judicial review of the Forest Law to the Constitutional Court. In their view the Village Forest option is akin to recognizing a state claim to indigenous land. (Interview 2:Talau: 1:00:00). Morten Fauersby Thomsen however, points out that the political situation in a country has to be taken into account. In the case of Laos, where he is in charge of a land rights program, the likelihood of ever getting any kind of permanent land rights is zero. Therefore they are happy with management rights for a shorter period of time, such as 25 years, because that is enough for a farmer to invest, (Interview 13: Thomsen: 34:30). Looking at Indonesia's individual situation as Thomsen recommends, it is clear that the decision in the Constitutional Court makes widespread permanent ownership a very real possibility in the near future, and therefore it makes sense to pursue.

The Village Forest program might be the best option for forest areas that are acutely threatened by concessions since it is difficult to say how many years it will be before the Customary Forest program is fully instituted, but in general, there is probably not much of an environmental difference between the two programs. On paper, they are both environmentally sustainable and almost identical in their design, with different zones for different uses. But whether the reality is also environmentally benign all comes down to management in practice, (Interview 8: Regalino:1:16:00). In villages where the environmental commitment is not strong, Village Forest might be the slightly better option, Herry Susanto argues, (Interview 9: Susanto:38:00). The Village Forest program comes with governmental monitoring and reporting, so environmental destruction would be less likely to occur than with Customary Forest, where the government won't have much control. The governmental reporting in the Village Forest program also covers livelihood improvement. One could fear that because Customary Forest program doesn't come with built in plans for a livelihood lift for the villagers, this will cause villagers to seek out opportunities at

random, putting strain on the environment. When implementing Customary Forest it might therefore be a good idea to have accompanying ideas for livelihood improvement.

The main problem with Village Forest, aside from how short-term it is, are the enormous costs associated with it. Regardless of whether the cost is 2 billion Rupiah or 20 billion Rupiah, it is far beyond what BOSF can spend on a single project. For that much money they can buy concessions for degraded forest and use it for releasing rehabilitated orangutans. They already did this when they bought the right to manage 86,540 hectares of forest for 60 years in 2010, and called it Kehje Sewen. This cost them around 19.6 billion Rupiah, (1.4 million USD); so basically the same as an expensive Village Forest Project (BOSF/http3). For Customary Forest, there might be expenses connected with mapping the area, but probably not with inventory, which should mean that the total cost of achieving Customary Forest status would be much smaller.

Although nothing is set in stone yet, it will probably be a criteria for communities to have retained their historical practices in some way to qualify for Customary Forest, as was already mentioned earlier in this thesis. The criteria could therefore be said to embody the reverence Political Ecology has for such practices. Ironically however, this criteria could also keep some villages in Mawas from participating in the program if they, like Batampang, have put the Kaharingan faith completely behind them.

Both programs will likely take years to apply for.

All the lessons above can be summarized as follows:

	Customary Forest	Village Forest
Strategy	<ul style="list-style-type: none"> *Is permanent. *Will make allegiance with AMAN possible. 	<ul style="list-style-type: none"> *Is only for 35 years, so not a permanent protection. *Can be viewed as a way for government to retain control.
Environment	<ul style="list-style-type: none"> *Indigenous peoples have historically been able to manage their forests in sustainable way using Customary Forest Management practices. *No government control still might be viewed as an environmental weakness. 	<ul style="list-style-type: none"> *Designed to be environmentally sustainable. *Government control might be viewed as upside. *Good for villages where commitment to sustainability is low.
Livelihood	<ul style="list-style-type: none"> *No livelihood aspects of the program. 	<ul style="list-style-type: none"> *Community learns how to utilize their area in best way according to the identified potential.
Cost	<ul style="list-style-type: none"> *No known price. Likely some cost related to mapping. 	<ul style="list-style-type: none"> *Up to 20 million Rupiah for 15 hectare. Governmental funds very difficult to access.
Access Restrictions	<ul style="list-style-type: none"> *Might only be available to communities with clear ties to the Kaharingan religion. 	<ul style="list-style-type: none"> *Is not possible in Conservation Forest.
Process	<ul style="list-style-type: none"> *No one knows how long it will be before it is even possible to apply for Customary Forest in Central Kalimantan 	<ul style="list-style-type: none"> *Can take years. Maybe even longer if the mapping/inventory funds are not secured in time.

Table 5: Relevant design aspects of the two programs

Source: own creation

6.0 Conclusion

The analysis has shown that without a doubt, Customary Forest is the program that BOSF should be actively pursuing as a broad land rights solution.

From a moral standpoint, the villagers have a right to manage the land that they have inhabited for thousands of years, and conceding to a time-limited program like Village Forest would be acknowledging the state's dominion over their forest. This of course does not carry much weight from a practical standpoint, but it is worth mentioning. If the political situation had been different – i.e. if the recognition of Customary Forest had been completely out of reach, perhaps Village Forest as a compromise would have been inevitable. However, given that Customary Forest was recognized in the Indonesian Constitutional Court, it seems clear that a final push now by civil society to get it implemented in Central Kalimantan and elsewhere is what the situation calls for. Because AMAN only supports the idea of the Customary Forest option, BOSF doing the same might land them a valuable ally.

From a practical standpoint, Customary Forest looks like it will be a lot cheaper than Village Forest. With the cost of Village Forest, it is doubtful whether more than a few projects could ever be realized if the funding is to come solely from BOSF, and this is truly a deciding factor. With 53 villages for BOSF to assist, the price of Village Forest is simply too high. At the same time, Customary Forest and Village Forest are very similar in design and thus in environmental sustainability, so nothing is lost in that aspect. Of course there is a very real threat that the management of Customary Forest in some villages won't be as sustainable as it ought to be on paper – and there are no checks and balances in the Customary Forest program that would hinder this. Therefore it becomes clear that the Customary Forest program might not be able to stand alone. BOSF will have to make sure that there are no preexisting conditions which would threaten sustainability. Looking at Timpah as an example, population pressure, the type of main economic activity, market changes and the inadequate results of the microfinance scheme all contribute to an overarching problem: lack of adequate livelihood opportunities. Political Ecology was helpful in understanding the root and effect of all these preexisting conditions except one: population

pressure. It would be foolish to follow the thinking of Political Ecology and ignore the importance it has played in creating livelihood problems in Timpah.

One last concern that needs to be noted is the fact that only “traditional” communities will have access to Customary Forest. There seems to be some disagreement about whether this is synonymous with still adhering to the Kaharingan religion or only the related forest management practices, but either way, villages like Batampang where no trace of the Kaharingan practices whatsoever are left would be excluded. For villages like this, and for villages where it is known ahead of time that the commitment to sustainability is very low, the Village Forest program might be a necessary backup option.

7.0 Strategies Going Forward

BOSF have developed a relationship of trust with their project villages in the Mawas area, it would seem. They have the power to exclude the villagers from the forest, but have chosen not to do so, (Interview 12: Regalino: 3:54:00). This makes sense from an ethical, but also practical point of view. As Nikolaj B. Moseholm from Verdens Skove points out, instead of having to pay ten park rangers to guard a huge, closed off territory, they can have thousands of guards at zero expense, (Interview 12:B. Moseholm:20:45). BOSF sees the relationship with the villagers as a partnership, (Interview 8: Regalino:1:12:00). This will give them a good basis for implementing Customary Forest.

It is important to note that the general impression BOSF has of the villagers is that they do not generally want to exploit without preserving, (Interview 8: Regalino:22:45). However, as illustrated by the case of Timpah, there are bound to be exceptions. But how should BOSF handle these occasions when they arise? According to Nikolaj Bro Moseholm from the organization Verdens Skove it is acceptable for an organization like BOSF to pick and choose which villages they help to achieve land rights. If they find out that a village is not committed to environmental protection, the best conclusion to draw is that their energy might be better spent on other villages, but there are also ways to educate the villagers to change their stance; Verdens Skove sometimes arrange educational trips to villages in other countries that have already experienced the selling of their land, for example, to show villagers that land doesn't come back after a sale, (Interview 12: Moseholm:17:00).

It is never going to be in the interest of the government of any country to give away land, especially tropical forest. Therefore some strong arguments are needed for BOSF to help secure land rights for the villagers. Nikolaj B. Moseholm recommends using the REDD project already conducted by BOSF in the Mawas area to show the government that the forest can generate income, (Interview 12: Moseholm:14:30). The project was funded AusAid, and money was paid out as wages to the community for helping with activities that restored the area, such a canal blocking, fire prevention and reforestation, (Interview 8:Regalino:2:44:45). If there is a wish to utilize the REDD program in other parts of the Mawas forest then it is possible to use Village Forest as a precursor for REDD as was done in the village of Lubuk Beringin, (Akiefnawati et. al:2010:1).

Getting Village Forest here helped to clear up questions of boundaries and statutory rights that are important for making payments in the REDD program. The expectation of REDD was found to give more influence to social forestry proponents and lessen the influence of forest industry proponents, and as such, the possibility of REDD probably tipped the balance in favor of a Village Forest project in Lubuk Beringin at both the central and provincial levels, (Akiefnawati et. al:2010:11).

Verdens Skove try to align themselves with national organizations that have experience advocating for land rights, as well as networks of villages/ territorial organizations, but they don't try achieve land rights for individual villages. They see their tasks as being creation of forums for indigenous organizations to connect with villages and as creating international pressure, (Interview 12: Moseholm:5:30). According to Moseholm, there is no reason why Red Orangutangen should be trying to learn the whole business of land rights from scratch. The ideal approach, he says, would be for BOSF to align themselves with an Indonesian organization that already works with land rights, which would also help to legitimize a different kind of international pressure than a message from an organization dedicated solely to orangutans could elicit, (Interview 12: Moseholm:12:30).

By supporting and facilitating a national land rights network in Laos, CARE Denmark employs much the same strategy, Morten F. Thomsen, their Program Coordinator says. They take care not to be activist themselves, but make activism possible for the network they support. They can't be openly activist and put pressure on the Laos government because the reactions would likely be very adverse, but they do collect stories or cases of people who have been disenfranchised of their land to document the problem and give it to their allied network to be put on a website, (Interview 13:Thomsen:12:30). Unlike Laos, Indonesia is a democratic country, so putting international pressure on the Indonesian government might be more feasible.

For BOSF, the obvious candidate for an alliance would be AMAN. As seen by their ability to push the issue of Customary Forest into the Constitutional Court AMAN certainly has political power. As mentioned in the Analysis and Conclusion, AMAN will only work for Customary Forest rights and opposes the Village Forest program, so provided that BOSF also focus their efforts on Customary Forest the interests of the two organizations should be aligned. BOSF can team up with AMAN and

make it their primary political goal to get the Constitutional Court decision implemented in Central Kalimantan and in other regions as quickly as possible. BOSF can also take a cue from AMAN and actively use the Constitutional Court decision in a preemptive way while awaiting the implementation, as was described in the Analysis.

While both CARE and Verdens Skove seem to discourage a one-by-one approach to getting land rights for villagers, a few things *can* be done on village level.

The Conclusion of this thesis touched upon the need for improving livelihood opportunities in order to secure the success of Customary Forest, and this is also something that Nikolaj B. Moseholm recommends (Interview 12:Moseholm:24:45). It is also something that is already happening, but perhaps something can be learned by looking at Batampang where the involvement of a credit union has meant large loans and corresponding large growth in income for the participants compared to Timpah where the projects are at a smaller scale and reserved for women.

Another thing that BOSF can do as preparation for both Customary Forest and Village Forest projects ahead of time is to continue their work mapping the boundaries of the communities using GPS, (Interview 8:Regalino:1.53:00). This will prevent territorial conflicts from arising in the future. At the moment only extremely crude maps exist, with territories that sometimes overlap.

Thirdly, BOSF can make sure that the villagers are aware of their rights and options – this was not the case for Batampang who didn't know that Customary Forest was an option. The network that CARE cooperates with have volunteers who visit villages where they share a curriculum of rights, (Interview 13: Thomsen: 28:30). This might also be possible in Mawas with the help of AMAN.

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List of Appendixes

Appendix 1: Red Orangutangen Project Proposal

Appendix 2: Customary Forest I

Appendix 3: Dayak Misik

Appendix 4: Customary Forest II

Appendix 5: Illustrations of Village Forest Application Process

Hjælp Foreningen Red Orangutangen

Hjælp Foreningen Red Orangutangen med at finde løsningsforslag til, hvordan oprindelige folk og lokale skovsamfund kan få anerkendt deres rettigheder til land og skovressourcer i Mawas området, Central Kalimantan, Indonesien. Dette ønskes udført gennem en undersøgelse af, hvordan der i andre dele af Indonesien og/eller Asien, har været arbejdet med advocacy i forhold til rettigheder.

Uddybelse af problemstillingen

Oprindelige folk og lokalsamfund i Indonesien har længe været marginaliseret blandt andet i forhold til formelle rettigheder til land og skovområder. Dette til trods for, at de i generationer har boet i skovområder og forvaltet naturressourcerne. Med en national lovændring i 2013 er der dog formelt åbnet op for, at disse grupper kan få anerkendt deres rettigheder. I praksis menes det at være en lang proces, der for de fleste vil være vanskelig grundet manglende viden om det politiske og juridiske system, knappe ressourcer til kortlægning af land, samt manglende erfaringer med lignende processer og det at udøve lobbyarbejde.

Red Orangutangen ønsker sammen med vores indonesiske partner, BOS Foundation, at assistere lokale skovsamfund i det fredede Mawas-område, med at opnå formel anerkendelse af deres rettigheder enten som Indigenous Forest eller Village Forest. Spørgsmålet er, hvordan der bedst støttes op omkring dette arbejde?

Beskrivelse af organisationen

Red Orangutangen arbejder både direkte med at redde og rehabilitere orangutanger, såvel som med at bevare regnskoven og sikre en bæredygtig udvikling for de mennesker der lever i og omkring skovene. Organisationen blev oprindelig oprettet, for at støtte op omkring danske Lone Dröscher Nielsens rehabiliteringscenter for orangutanger på Borneo, men støtter i dag flere af BOS Foundations programmer. Organisationen har ni ansatte, der arbejder med fundraising, oplysningsarbejde, monitorering af projekterne på Borneo etc.

Ønsker til samarbejdsform

Red Orangutangen samarbejder gerne med flere grupper af studerende (f.eks. fra IU), såvel engelsktalende som dansktalende. Vi ønsker at få besvaret:

- Hvori ligger udfordringerne i at skulle fremme de lokales rettigheder?
- Hvilke metoder og midler er der tidligere blevet anvendt i arbejdet for at opnå formelle juridiske rettigheder til land og naturressourcer – og hvad var erfaringerne? Hvordan arbejder andre organisationer med denne form for rettighedsbaseret arbejde?
- Hvordan drages der bedst nytte af erfaringerne fra andre steder, i arbejdet for de lokales rettigheder i Mawas området?

Tidsramme

Vi ønsker undersøgelsen udført indenfor efterårssemestret 2014 og vil gerne høre fra interesserede grupper senest 30. september.

Customary Forest



Customary forest and Village forest are the legal option for the community to manage the forest area within the national forest zone. The customary forest is exclusively given to the traditional customary communities. The village forest are part of national forest that are not given to other parties to manage, and thus given to the local village, so they can manage the area for the prosperity of the village. Up until now, the implementing regulations that govern customary forest and village forest are still under discussion.

No.41 Act of Year 1999 promises a chance for the community participation in forest management and establishes the basis for cultivation and management of diverse resources in the forest, for the sake of community empowerment. Such empowerment cannot be provided by outside parties. People can only be empowered by empowering themselves, and the government can only create the supportive environment that enables people to empower themselves. So, what should be governed in community empowerment through customary forest and village forest?

According to the current legal framework, customary forest and village forest are a forest which the rights to manage was given to the indigenous community or local people of certain customary traditions, without discriminating whether the forest is under the territory of national forest or not. Does a forest that is within the territory of a village or traditional community, but outside the national forest area, can also be called a customary forest or a village forest? Is a forest may only be called a “forest”, if there are legal establishment from the government? When does a field covered with trees that are being managed as a forest, can be called a “forest”? And when it is established, what are the rights of the traditional community or the village people? What does the “rights to manage” means? In the descriptions, the “rights to manage” are treated as a “responsibility” as well as “obligation”, and to obtain such rights requires a complicated

administrative process. But where is the protection for their rights, especially the protection from the outsiders and from one of their own people? And if the customary forest or village forest area are outside of national forest territory, but still maintained as a forest, are there any guarantees that the government will not permit any forms of encroachment by other parties?

In the meantime, modern lifestyle has changed the society. Homogenous, traditional community that are free from modern market economy, are hard to find. Natural resources are all valued by money, from selling such resources or by getting a compensatory fee. The traditional customary laws, which revolves in communal use of properties, clashes with modern private property rights. This fuels conflicts within a community or between communities. Thus customary laws are changing with time.

Because regional autonomy does not equal a change in administrative structure in the government, and since villages (kampong) are a relatively stable community that are open and inclusive, regulating a village forest is far easier than a customary forest.

The government should only set a criteria and standard of forest management for the village (or customary communities) according to the functions, determines that the appointment of a village forest (or a customary forest) area are not contrary to the public interests, ensure certainty of the rights given to the village people (or customary community) and provide technical support, surveillance, and evaluation. The forest management body, distribution of rights and obligations, and how to manage the forest, should be given to the village (or customary) community.

The customary forest, village forest, or community forest policy provides greater opportunity for the village people to gain access and rights to manage natural resources within the national forest territory, with a stronger certainty (from a legal standpoint), even with its limitations. The rights of the people to manage (according to Ostrom and Schalger 1996: 133), are the rights of management and exclusion, and not a mere rights to collect and access. The National forest resources should be governed for the prosperity and welfare of our own people, as stated in our 1945 National Constitution. The prosperity of the people are not only in the economic sense, but also means to provide comfort, health, beauty, and all necessities of life that can be fulfilled by a forest.

The realization of the opportunity depends on further operationalization. It is a fact that the operationalization of a policy requires constant effort and still takes a long time. It has been almost 10 years since the No.41 Act of Year 1999, even longer since the Community Forest Act of 1992, and the operationalization of customary forest, village forest, and community forest has stalled. What are the obstacles?

The obstacles to realize an opportunity to manage a national forest stems from both the inside and outside the community. The primary internal obstacles are the technical and management capacity of the people. Even though there are a lot of community has proven themselves capable in managing the forest in a sustainable way, there are other instances where such capabilities are fading. With the interventions from market and political disturbances, the village people do not really stand a chance. Therefore, it is imperative to provide efforts to strengthen the capability (individual, social, culture, and economy) of the village people. That means the support and participation from the government (central and regional), NGOs, educational and research institutions, and financial institutions, are critical.

The government holds an important role, and in itself is also an external obstacle. The readiness of the government agencies (Provincial and District Forestry Services Agency, the field forestry instructors, and

other agencies) to provide service and facilitation for the village people are still inadequate. Inadequate in numbers, knowledge and skills, and (the most important) still inadequate in morality, that it affects their views, attitude, and behavior. Some of us are still concerned if such communities have the customary rights, the basis of the customary rights, whether the community is capable, whether the community will sell their land, et cetera.

The lengthy process of assembling legislation (No.41 Act of 1999, No. 34 Regulations of 2002, No. 6 Regulations of 2007, and other drafts of related regulations) are related to prejudice, suspicion, doubts, reluctance, and fear. The weaknesses in the community should not dismiss or decrease the obligations or responsibility of the government, NGOs, universities, and other parties to provide the rights to manage a national forest area to the people. On the contrary, it is our moral responsibility to enhance and strengthen the capacity of the people, together. We must fundamentally change ourselves, and our moral norms, to support our responsibility to our own people.

Adapted from: Studies and opinion of Dr. Moira Moeliono, CIFOR Researcher

Original source: <http://desakuhijau.org/hutan-adat-bagian-3-3/>

Dayak Misik

BATARA, PERSIA

The echoes of Coordinative Forum of “Dayak Misik” Farmer Group reverberate in “Rumah Betang” (*TL Note: Traditional House of Kalimantan, a type of longhouse where many families reside*), Central Kalimantan (Borneo). This farmer group is a part of a noble effort from Provincial Government of Central Kalimantan, which was conceived by Teras Narang (*TL Note: 12th Governor of Central Kalimantan Province*). In provincial level, this organization is chaired by DR. Siun Jaras, SH, MH. The goal of the group is to provide assistance for (Traditional) communities to obtain Customary Land Certificate for each and every member (*TL Note: the members are the head of each family in the community*), with the land area of ±5 Hectares. Hopefully with every part of the community being members of the organization, the community will have the legal force they require to obtain land ownership.

“The program is a smart and noble move, and must be supported,” said Natalius, SH, MH, the leader of Customary Council of Northern Barito Dayak Community and also the Person-in-charge of his regional Dayak Misik Farmer Group. It is highly encouraged for those people who own a customary land to join the Farmer Group, so they can have legal documents or certificate for their land ownership. The Central Government shall fund all administrative fees required.

“This program to ascertain the ownership of Customary Lands -especially in Central Kalimantan- which was conceived by Teras Narang, in the form of Dayak Misik Farmer Group, must be supported by the people, specifically the Dayak people. This is our chance to revive our land ownership, by obtaining Certificate of Ownership that are legally recognized through national framework. With this program, there will be no Customary Land that can be encroached or seized by other means. Let’s go... All you people who own Customary Lands, join us in Dayak Misik Farmer Group. All required administrative fees will be covered by the government, so this is only a matter of your willingness and intention! Don’t let yourselves be in a risky situation where encroachment and annexation by other parties can be easily done, or a prolonged dispute which can lead to adverse outcomes for our Customary Lands,” said Natalius seriously, in an attempt to encourage people to join Dayak Misik Farmer Group. Director of Non-Governmental Organization “Communicative Forum of Barito Utara Development Community” (LSM FKMP BATARA), Bung Harianja, is very supportive of the great program. He thinks that the land ownership problems happen very often, and the results are almost always detrimental to the Customary Communities. He elaborates, there are people that are called “Land Invaders”, that grabs the ownership of Customary Lands and uses the land for their own profit without reserving for the generations to come. Such land invasions are often sponsored by foreign parties, especially investors.

“To all customary people (*of Dayak Misik*), we encourage every one of you to guard your precious assets, especially your customary land ownership. You must defend it, and those who own the lands should promptly file the necessary paperwork, individually or in groups. And it would be very wise if you also voluntarily join Dayak Misik Farmer Group,” said Bung Harianja.

The meeting results in assembly of Dayak Misik Farmer Group of Inu Village, Barito Utara regency, with Mr. Jhon Kennedy as the chairman. Mr. Jhon Kennedy is also a member of Organizational Consortium of Inter-NGO Communicative Forums of Barito Utara. To PERSIA, Mr. Kennedy says that the establishment of Dayak

Misik Farmer Group is also a revival of Dayak community, without religious or sectoral discriminations, because the primary goal is to preserve the customary lands and the protection of customary traditions. "I am very proud and thankful to the people of the community that finally understood the true meaning behind Dayak Misik Farmer Group, and even joins voluntarily to create our own Farmer Group. I am very hopeful that all Dayak people may also assemble in this Farmer Group. For the sake of our generations to come," he said. (EA.001)

Original source: <http://www.peristiwaindonesia.com/dayak-misik-kebangkitan-masyarakat-adat-membantu-dapatkan-sertifikat-tanah/>

Customary Forest

Customary rights and the rights of customary communities were already written in the Basic Regulations of Agrarian Principles Act, the No.5 Act of 1960. But unfortunately, the legal *(TL Note: “de yure” – “through law”)* acknowledgement and enforcement of those rights through Regional Regulations are still nowhere to be found.

It is also stated in the General Explanations II Number 3 that, “Regarding the connection between the people, the land, the sea, and the National authority as stated in Articles 1 and 2, therefore in Article 3 the provisions regarding customary rights of the customary entities are organized, which means to put such rights in its rightful place in this current state realm.”

The Article 3 also specifies that, “The implementation of the customary rights and similar rights of customary communities, as long as it really exists, must be so that it is in accordance with the National interests and cannot against the Constitution and other higher regulations.”

This means that the National rights of control are limited by customary rights, but the execution of the customary rights may not against national interests and in broader aspect, against the country.

According to their status, the forest in Indonesia can be divided in two: 1) National Forest, and 2) Claimed Forest *(TL Note: The actual, direct Indonesian transliteration would be “Rights Forest” or something that probably means “Forest that may be managed by those with the rights” or “A Forest that has been claimed by other parties”, or maybe it’s because there is no English equivalent for the term. Laws and regulations have a tendency of using or creating nonsensical or absurd terms that the meaning can’t be literally inferred from their base words)*. The National Forest is the forest in the area without land ownership, while the Claimed Forest is the forest in the area that has been claimed by land ownerships. *(TL Note: Another example of literally absurd term. The direct transliteration would be “The National Forest is a forest within lands that has been weighed down by the rights of the land” - but it just don’t make much sense to me, so I rephrased the sentence to use the simplified, literal meaning of the term)* In the Clarifications of The Forestry Act (No.41 Act of 1999), the Claimed Forest is further elaborated as the forest that has been claimed by the rights to manage as has been stated in The Basic Regulations of Agrarian Principles Act, or the No.5 Act of 1960, which constitutes the ownership rights, cultivation rights, and utilization rights.

Because there are only two types of forest according to their status, the customary forest must be a part of National Forest. In The Forestry Act (No.41 Act of 1999) Article 1, Number 6: *“The Customary Forest is a part of National Forest that is within the territories of customary community”*. Therefore, the Customary Forest, Tribal Forest, Clan Forest, Seignorial Forest, or any other synonyms, belongs to the customary community AND within the National Forest zone.

It is stated in the Clarifications of The Forestry Act, that to anticipate the aspiration of the people, this regulations divide the types of forests in Indonesia into National Forest and Claimed Forest. National Forest is the forest that has not been claimed by the rights to manage as has been stated in The Basic Regulations of Agrarian Principles Act (No.5 Act of 1960), and among them are the forests that are within the territory of customary communities, clans, tribes, etc. The inclusion of customary forest within the definition of National Forest, is the consequence of the National rights to control and manage, as The Nation is an authoritative organization that is guided by the principles of Negara Kesatuan Republik Indonesia. *(TL Note: I treated this like a “brand name”, or if you’d prefer the official English name of my country, it’s “Republic of Indonesia”)* As

long as the customary community exists and their existence is recognized, they may be permitted to manage and harvest the forest within their territory. The customary community can be recognized, if in reality they fulfill the conditions stated in Clarifications of The Forestry Act, Article 67:

1. The community are still based on traditional laws (*rechtsgemeenschap* – Dutch term for “community based on law”)
2. Possesses customary institutions in the form of traditional authorities
3. Within a clear, legal territory
4. Adheres to their respective customary regulations or similar legal tools
5. Utilizes or harvests forest products in the forest within their territory in order to fulfill necessities of daily living

Other than fulfilling the five criterions above, the existence of customary community must be confirmed by Regional Regulations, as stated in The Forestry Act, Article 67, Number 2: “Confirmation of the existence or absence of a customary community as stated in Number 1, must be stipulated through Regional Regulations.”

It is clear in the paragraph above; that the Regional Government plays a big part in recognizing and confirmation of customary communities. In accordance with Regional Autonomy, the regional governments – especially those with high potential of conflict such as Kalimantan and Papua – should make a concrete step to confirm the existence of customary communities through Regional Regulations.

If these customary communities are confirmed by Regional Regulations, the Central Government can assign the forest area for specific purposes, for the benefit of the customary communities. The management of forests with special purposes consists of management for the sake of research and development, education and training, and also for socio-cultural and indigenous technology. Therefore in the execution of management, the history of community development, indigenous institution, and preservation of ecosystem, must be taken into consideration. (Clarifications of The Forestry Act, Article 34)

The forest management by indigenous community should be in accordance with its function. So if the customary forest is within the Production Forest zone, the applied functions of the customary forest are those of Production Forest. If the customary forest is located in Protection Zone, the customary forest may only function as a Protection Forest. And if the forest is within the Conservation Zone, the functions are those of Conservatory Forest.

Customary community as long as they exist in reality and their existence is recognized, have the rights to: (The Forestry Act, Article 61, Number 1)

1. Harvesting forest products to fulfill the necessities of daily living
2. Management of the forest according to traditional laws, as long as it is not against the Constitution
3. Receiving empowerment in order to improve their welfare

Actually, in The Forestry Act, Article 67, Number 3 is stated that the further regulations regarding customary communities are regulated by Government Regulations. Unfortunately, there are no such Government Regulations until now. The Government Regulations should contain: (refer to Clarifications of The Forestry Act, Article 67, Number 3)

1. The procedures of research
2. The parties involved
3. Matters of research

4. The Assessment Criteria for the Existence of Customary Community

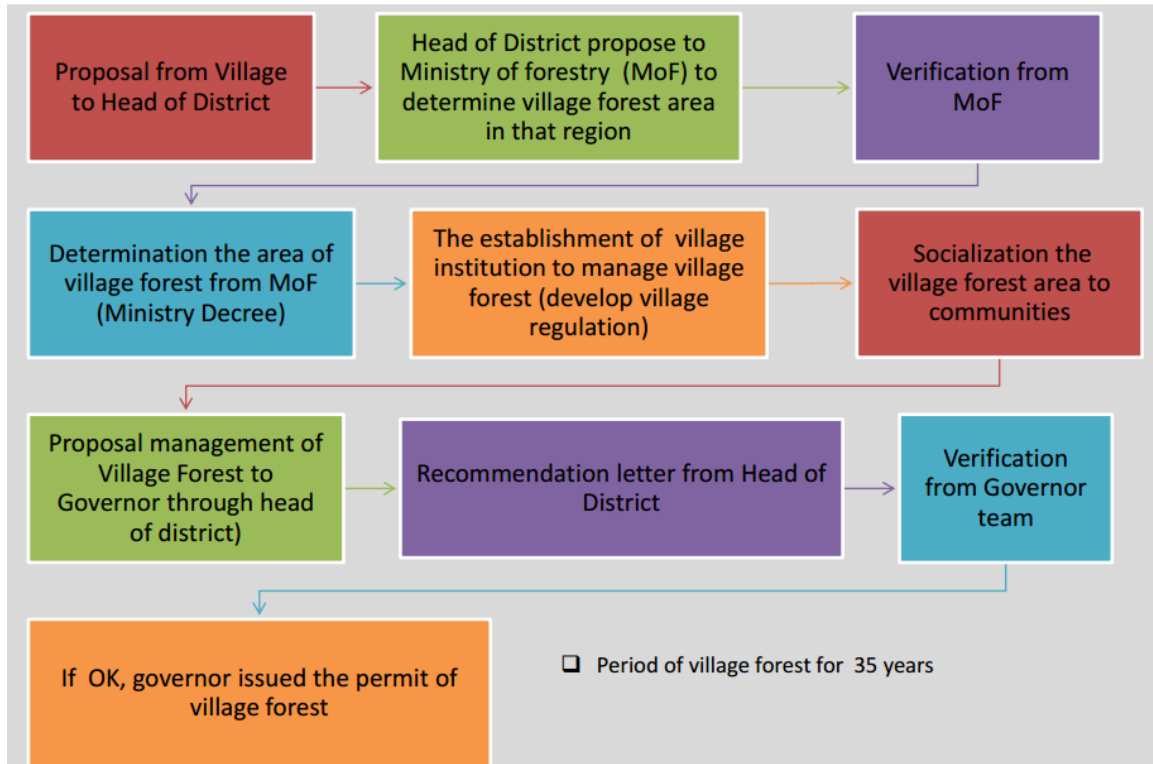
While there are no Government Regulations to accommodate the conflicts of customary communities, in March 12th, 2004 the Minister of Forestry issues an Official Circulars No.S.75/Menhut-II/2004 about The Problems of Customary Laws and Claims of Compensation by Customary Communities. The Governor / Regent / Mayor may follow these steps in the face of customary community's demands:

1. If there are demands from customary community/communities in a forest area that has been licensed for IUPHHK (*Izin Usaha Pemanfaatan Hasil Hutan Kayu*, Timber Utilization Permit), a prompt research must be conducted by an expert of customary laws, local public figure, and the related institution or parties, while assessing whether the applicant is a customary community or not. For the criteria of a proper customary community, refer to Clarifications of The Forestry Act, Article 67, Number 1.
2. To establish a National Forest as a Customary Forest where the management are given to the indigenous community, the Regent / Mayor must make a proposal for the National Forest to be assigned as a customary forest. Literal locations, borders, the area, and the map of the customary forest should be provided, and proposed to The Minister of Forestry with the Governor's recommendation, as long as the said customary community really exists (*de facto*) and their existence legally recognized (*de jure*).
3. If the result of the research for the demands are qualified, the customary community must be assigned through Provincial Regional Regulations.
4. Regional Regulations regarding the existence of customary communities should be forwarded to The Minister of Forestry for the proposal of establishment of customary forest. Regarding the proposal, The Minister of Forestry may accept or decline the establishment.
5. If the proposal is accepted, the forest specified in the proposal shall be assigned to the proposed customary community. The Minister of Forestry issues Establishment Decree of the customary forest, which will be sent directly to Governor / Regent / Mayor, and they are to facilitate the meeting between the customary community and the holders of Forest Permit (HPH) / Timber Utilization Permit (IUPHHK).
6. Regarding the demands of compensation by the customary community to the holders of Forest Permit (HPH) / Timber Utilization Permit (IUPHHK) that operates in the territory of customary community, the compensation should not necessarily in the form of compensatory money, but can be in the form of new livelihood, involvement in forest management or cultivation, or construction of public / social facilities that will benefit the community, and are within reasonable limits / not excessive, nor extortive, for the goal is to improve the welfare of the indigenous community.
7. With the compensatory claims by the customary community to the holders of Forest Permit (HPH) / Timber Utilization Permit (IUPHHK), the Governor / Regent / mayor may facilitate the meeting between the related parties to resolve the problems through "musyawarah" and "mufakat". *(TL Note: "musyawarah" and "mufakat" is an Indonesian concept of settling problems through friendly discussions involving all parties involved where everyone may speak their minds, and the goal is to find a resolution that may benefit all parties involved. It is a very idealistic concept that is hard to find in the cities, but still practiced regularly in the rural areas, and I honestly do not know the English equivalent of this term. "Discussion" and "agreement" would be the closest, but those terms do not convey the "friendliness" and "for the common good" pretext that exist in the original, Indonesian*

term.) If the meeting does not result in resolution, it is recommended to proceed to legal proceedings, by filing a civil lawsuit in the General Court.

Original Source: <https://nenytriana.wordpress.com/2012/05/07/hutan-adat/>

Application process of village forest



Source: Borneo Orangutan Survival Foundation

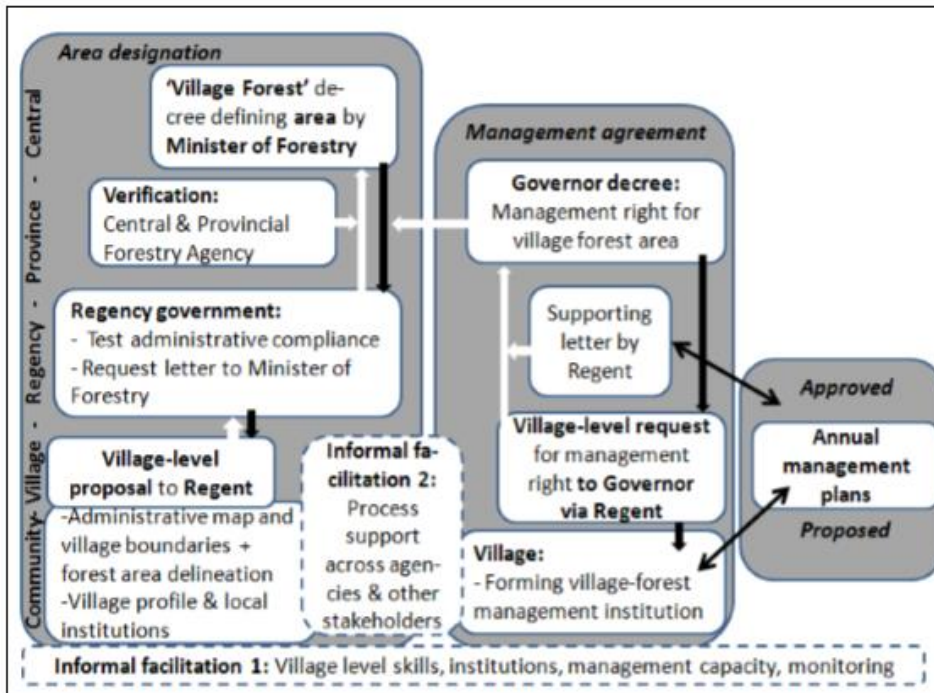
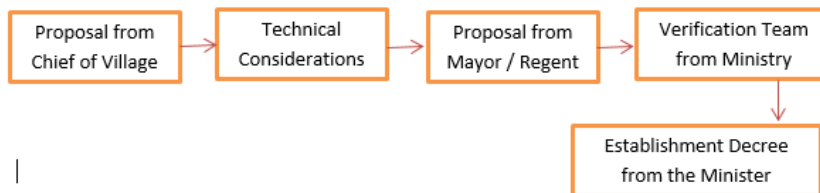


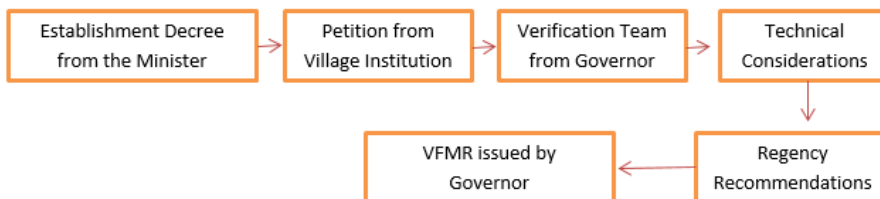
Figure 2: Process of obtaining a Hutan Desa designation, management rights and annual management plans for a village forest.

Source: Akiefnawati et al: 2010: 6

K. Petition of VF Establishment Flowchart :



L. Village Forest Management Rights (VFMR) Flowchart:



Source: Kapuas District Government, Department of Plantation and Forestry Service