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USAID LESTARI

LESSONS LEARNED TECHNICAL BRIEF

LAND USE LICENSING REFORM IN INDONESIA

MARCH 2019



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Cover Photograph: Palm oil and rainforest in Boven Digoel District, Papua Province, 2017 (*photo credit: Nanang Sujana, Gecko Project*)

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LAND USE LICENSING IN INDONESIA: IMPLICATIONS FOR ASSISTANCE PROGRAMS

MARCH 2019

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ACRONYMS AND ABBREVIATIONS

AMEP	Activity Monitoring and Evaluation Plan
ATR	Ministry of Agrarian Affairs and Spatial Planning
BIG	Geospatial Information Agency
BKPRD	Regional Coordination Agency for Spatial Planning
BPDPKS	Indonesian Oil Palm Estate Fund
CSO	Civil Society Organization
FMU	Forest Management Unit
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
FWI	Forest Watch Indonesia
GHG	Greenhouse Gas
GISTARU	Geographic Information System for Spatial Planning
GNP-SDA	National Movement for Saving Indonesia's Natural Resources
GOI	Government of Indonesia
HGU	Right to Cultivate
IUP	Plantation License (<i>Perkebunan</i>)
IUP	Mining License (<i>Pertambangan</i>)
KPK	Indonesia's Corruption Eradication Commission
MoEF	Ministry of Environment and Forestry
NGO	Non-Governmental Organization
NSPK	Norms, Standards, Procedures, and Criteria
OSS	Online Single Submission
PDGA	Aceh Geospatial Data Agency
PPO	Papua Online Licensing System
PTSP	One-Stop Investment Licensing Center
PUPR	Public Works and Spatial Planning Agency
RSPO	Roundtable on Sustainable Palm Oil
RTRWP / RTRWK	Provincial / District Spatial Plan
SAPA	Aceh Licensing Application System
SEA	Strategic Environmental Assessment
SIAT	Aceh Integrated Spatial Information System
SIMTARU	Management Information System for Spatial Planning
SST	Sustainability Screening Tool
TKPRD	Regional Coordination Team for Spatial Planning
UKP4	Presidential Unit for Development Monitoring and Oversight
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

PURPOSE

USAID LESTARI (2015-2020) supports the Government of Indonesia to reduce greenhouse gas (GHG) emissions and conserve biodiversity in carbon rich and biologically significant forest and mangrove ecosystems, including through improved land use governance. Indonesia's land use licensing system is compromised by both technical flaws and corruption. However, a number of governance reforms are now being implemented and are likely to improve the system. Effective support for more sustainable land use governance in Indonesia requires a solid understanding of the underlying dynamics behind land use licensing, alignment with the recent reforms, and effective adaptation to the variety of decentralized contexts across the archipelago. This paper analyses current developments specifically in land use licensing governance in Indonesia and draws out the implications for the work of donors such as USAID supporting land governance programs.

STRUCTURE

Introduction: Indonesia's land use licensing system. This section outlines the impacts of weak land use licensing; some relevant shifts in land use licensing governance since Indonesia's decentralization of 1998; the main features of spatial planning and the land use licensing system; and some evidence of the deeply compromised nature of land use permitting.

Reforms. This section outlines recent changes affecting licensing governance, in particular changes regarding government authority, data management, spatial planning, permit systems, and permit reviews. A summary of the changes is given, and challenges and gaps in implementation of the reforms are identified.

Implications for donors. This section draws out the implications of the above analysis, in order to identify areas of focus for donors overall. It then recommends approaches in each LESTARI province - Papua, Aceh, and Central Kalimantan - which can effectively make use of each provincial context. Finally, it mentions some implications for LESTARI's Activity Monitoring and Evaluation Plan (AMEP).

INTRODUCTION: INDONESIA'S LAND USE LICENSING SYSTEM

Poor land governance is a key driver behind unsustainable land use in Indonesia, contributing to land and forest degradation as well as deforestation. Poor land/forest governance includes:

- Unclear land tenure, lack of recognition of indigenous rights, forest zone boundaries not established through mandated process with stakeholders, lack of Free, Prior and Informed Consent (FPIC) in land acquisition, and widespread land conflict.
- Uncoordinated, unclear or overlapping authorities between sectors and levels of government.
- Spatial planning and land use permit processes which are not transparent and fail to protect forests, peatlands, and community rights.
- Weak and inconsistent enforcement of environmental safeguards to stop unsustainable illegal practices.

Many of these factors are related to, and play out through, Indonesia's land use licensing system. The land use permitting process is undermined by corruption and rent-seeking, with a number of convictions by the Corruption Eradication Commission (KPK) demonstrating plantation and mining companies paying bribes to political leaders, with money available for

use in funding electoral campaigns and patronage networks. In administering licensing processes, corporate interests often take precedence over environmental protection and social safeguards (in particular FPIC). Accountability mechanisms are compromised, enabling companies to operate without legal permits, to break the requirements of their permits, cause environmental damage and negative social impacts without punishment, and acquire land from communities without verified negotiation processes based on information, secure legal rights, and consent.

Large scale plantation and mining concessions remain a prominent strategy for economic development in Indonesia's outer islands, rather than supporting small-scale agriculture based on clarity of tenure (for both local communities as well as indigenous people). Economic benefits (in terms of government revenue and job-creation) are claimed but not systematically analyzed and weighed against the negative impacts, which can include conflicts between communities and companies, underpayment of government revenues, reduction of land access and food security, influxes of labor migrants and rising communal tensions, loss of forests, pollution of rivers, and greenhouse gas emissions.

Reforms are now underway across a number of aspects of governance, which, if implemented, could fully reform the land use licensing system. Implementing these reforms will be an arduous process, with political will, government staff expertise, and budgets needed to drive implementation, meaning that it may not occur quickly. It is likely that the implementation process will play out differently in different provinces, because of differences in political will and bureaucratic capacity. What is certain is that reforms to land use governance will face resistance from economic and political elites currently benefiting from weak land use licensing, and whose interests are thereby threatened by improved governance. Bureaucratic as well as technical hurdles will emerge. Nevertheless, these reforms come as a long overdue and much needed source of hope for improved land governance and are the result of dedicated and sustained advocacy by many stakeholders.

REFORMS

Government Authority. This section notes a number of relevant regulations which structure or alter government authority in ways which potentially impact upon land use permit governance. These include the division of authority between national, provincial and district governments, Special Autonomy arrangements in Aceh and Papua, changes in village governance and authority, the development of Forest Management Units, the growing momentum for social forestry initiatives, the recognition of indigenous land rights stemming from a Constitutional Court decision, and agrarian reform.

Data Management. Lack of clear, authoritative, and transparent land use permit information (including maps) needs to be addressed in order to improve the permit system. It has long been known that Indonesia's development is hindered by inaccurate data multiple versions of data, and the failure to utilize the same set of data across government. The 2008 Public Information Law provides a basis for transparency but does not yet in practice guarantee permit information is accessible. Reform has been in the works for years and now has the potential to address these issues - in particular via the One Map policy, the One Data policy, and the Electronic Governance policy. These could ensure that permit systems are all on-line, permit maps are consolidated into one publicly accessible map, and information on existing permits is well organized. However, progress is slow, and information is not yet transparent.

Spatial Planning. Reforms are underway on ongoing implementation of the 2007 Spatial Planning Law; institutional shifts which affect spatial planning supervision at the national and regional level; and the role of public participation. Spatial planning is improving and integrating environmental considerations more effectively; reform of spatial planning

monitoring is underway, and the basis for public participation in spatial planning monitoring is clear although it is not yet implemented in practice.

Permit Systems. Processes for obtaining new land use permits and information on existing land use permits have not been managed well. Transactions occur behind closed doors with rumors of bribes. Political leaders can issue permits to small companies set up by their associates and then sell the companies; companies operate without having the full set of permits; permit information is not maintained by local governments or made available to the public; and supervision based on this information is thus hampered. There are two key reforms regarding permit systems which are now underway and have the potential to greatly improve this situation. One is the development of on-line permit application systems, via the Online Single Submission system (OSS), which is currently being rolled out across the country. The second reform is the SICANTIK system, a cloud database to store information on existing permits. However, implementation proceeds slowly.

Permit Reviews. The need for complete review of land use permits in Indonesia has been known for some years but has been bureaucratically and politically very difficult to accomplish. A review of permits should cover data consolidation, a legal compliance review, and restitution and administrative, civil or criminal sanctions. A new Presidential Instruction requires a thorough oil palm permit review and could be an impetus for change, if it is implemented.

IMPLICATIONS FOR USAID AND OTHER DONORS: AREAS OF OVERALL FOCUS AND IN EACH PROVINCE

Assistance programs should ensure that support for improved permit systems conforms to several principles:

- Pivot from a focus on district level permitting systems to provincial level permitting systems due to revised decentralization regulations shifting the bulk of these authorities from the district to provincial level per Law 23/2014.
- Do not support new innovations that are likely to be superseded in short order.
- Seek opportunities to accelerate the implementation of the current reforms
- Fashion support to each particular provincial context.
- Contribute to local stakeholder capacity, including both government and non-government.
- Address the accountability gap by strengthening existing government oversight mechanisms, improving transparency of permit information, and improving civil society capacity to monitor permit governance and impacts on forests.

Activities which could be undertaken, if there is support from local stakeholders, include:

- Offer support to spatial data management for permit information, while ensuring that a multi-stakeholder approach will be taken, and information will be available to the public in accordance with existing regulations and precedent.
- Support government to accelerate implementation of OSS and SICANTIK systems down to district level.
- Support capacity on spatial plan monitoring and monitoring of existing licenses.
- Support the development and effective implementation of citizen reporting mechanisms related to permit infractions and forest damage, and civil society capacity to create such reports.
- Support transparent multi-stakeholder permit reviews, where there is political will from provincial and/or district governments.

Papua

- In order to support effectiveness of the SIMTARU system, coordinate with KPK and Bappeda to strategize how to achieve updating of SIMTARU data, stable on-line capacity, and transparency of the layers of permit data.
- Continue to support SST as a mechanism for preventing overlapping licenses in the future, and also ensure that SST can be used to review existing licenses.
- Support Bappeda, in collaboration with the TKPRD, to develop a grievance portal attached to SIMTARU, and to also strengthen existing spatial plan monitoring practices.
- Contribute to improved capacity of CSOs for permit monitoring and forest monitoring, including adat leaders, church networks, local leaders (*kepala distrik*), and the *Majelis Rakyat Papua*.
- Support SIMTARU, SST, OSS, and SICANTIK to be used in LESTARI districts, especially Boven Digoel.
- Utilize the momentum of recent exposés to support a comprehensive permit review in Boven Digoel, and the development of district level regulations to strengthen permit governance, focusing on social safeguards and FPIC.

Aceh

- Accelerate public engagement and implementation of the reforms underway, and enhance public participation in spatial planning monitoring, using public multi-stakeholder discussions to identify hurdles and agree on next steps.
- Support PUPR on spatial data capacity and a grievance portal for public participation.
- Accelerate OSS and SICANTIK training at district level, and active use of the systems.
- Support implementation of the new provincial regulation on the SIAT system, if it directly improves spatial data management and transparency.
- Support provincial government and key districts to implement Inpres 8/2018 if there is political will.
- Support civil society forest monitoring and permit monitoring capacity.

Central Kalimantan

- Avoid being overly ambitious.
- Build capacity on spatial data management if possible (among government and CSOs).
- Work through FMUs, for instance by improving their capacity to carry out their monitoring mandates
- Build capacity on community-based monitoring of forests within social forestry initiatives.

Implications for LESTARI Targets. It is possible the AMEP indicator 4 may not adequately capture LESTARI's progress if aimed primarily at provincial level. The focus of this work is to improve licensing systems as they impact upon LESTARI districts, but this may be done by focusing on provincial licensing systems rather than district licensing systems. LESTARI remains focused on how to achieve the greatest impact on improved licensing systems, in accordance with changing circumstances and opportunities.

RINGKASAN EKSEKUTIF

TUJUAN

USAID LESTARI (2015-2020) mendukung Pemerintah Indonesia dalam menurunkan emisi gas rumah kaca (GRK) dan konservasi keragaman hayati pada hutan yang kaya karbon dan memiliki nilai biologi yang signifikan serta ekosistem hutan mangrove (bakau), termasuk perbaikan tata kelola pemanfaatan lahan. Sistem perizinan pemanfaatan lahan menjadi longgar karena kesalahan teknis dan korupsi. Namun, dengan reformasi tata kelola yang dilaksanakan pemerintah saat ini, diharapkan dapat memperbaiki sistem. Dukungan yang efektif untuk tata kelola pemanfaatan lahan di Indonesia yang berkelanjutan memerlukan pemahaman yang kuat mengenai dinamika dibalik perizinan pemanfaatan lahan, penyelarasan dengan proses reformasi dan adaptasi terhadap ragamnya konteks lokal terkait desentralisasi. Makalah ini menganalisis perkembangan terkini khususnya tata kelola perizinan pemanfaatan lahan di Indonesia dan merangkum implikasi untuk program kerja donor seperti USAID dalam mendukung penguatan tata kelola lahan.

STRUKTUR

Pengantar: Sistem Perizinan Pemanfaatan Lahan di Indonesia. Bagian ini menjelaskan mengenai dampak dari lemahnya perizinan lahan; beberapa perubahan dalam hal tata kelola perizinan lahan sejak desentralisasi di Indonesia 1998; fitur utama dalam hal penataan ruang dan sistem perizinan lahan; dan beberapa bukti penyimpangan dari proses perizinan pemanfaatan lahan yang seharusnya.

Reformasi. Bagian ini menjelaskan perubahan baru yang mempengaruhi tata kelola perizinan, terutama perubahan mengenai wewenang pemerintah, pengelolaan data, penataan ruang, sistem perizinan, dan evaluasi perizinan. Rangkuman dari perubahan disajikan, dengan penjelasan terkait tantangan dan kesenjangan dalam melaksanakan reformasi.

Implikasi bagi donor. Bagian ini menyajikan implikasi dari analisis tersebut di atas untuk dapat mengidentifikasi arena yang sebaiknya dijadikan fokus oleh para donor. Kemudian disajikan rekomendasi pendekatan untuk tiap provinsi yang bekerjasama dengan LESTARI - Papua, Aceh, dan Kalimantan Tengah – yang dapat berkontribusi efektif di dalam masing-masing konteks provinsi. Terakhir, bagian ini menjelaskan beberapa implikasi untuk Rencana Kegiatan Monitoring dan Evaluasi LESTARI (AMEP).

PENGANTAR: SISTEM PERIZINAN PEMANFAATAN LAHAN DI INDONESIA

Tata kelola lahan yang lemah merupakan kunci terjadinya pemanfaatan lahan yang tidak berkelanjutan di Indonesia, yang menyebabkan degradasi lahan dan hutan serta deforestasi. Tata kelola lahan/hutan yang lemah mencakup:

- Tidak jelas hak tenurial lahan, kurang pengakuan hak-hak adat terhadap lahan, batas zonasi hutan tidak ditentukan berdasarkan proses partisipatif dengan para pemangku kepentingan, kurangnya PADIATAPA (FPIC) pada proses pembebasan lahan dan tersebarnya konflik lahan.
- Tumpang tindih wewenang yang tidak jelas koordinasinya antar sector dan jenjang pemerintah.
- Perencanaan penataan ruang dan proses perizinan lahan yang tidak transparan dan tidak dapat melindungi hutan, lahan gambut dan hak masyarakat.

- Penegakan hukum yang lemah dan inkonsisten dalam menjalankan upaya perlindungan lingkungan hidup yang seharusnya menghentikan praktik pelanggaran yang merusak lingkungan hidup.

Faktor-faktor tersebut di atas terwujud di dalam pelaksanaan sistem perizinan lahan di Indonesia. Proses perizinan lahan dibayang-bayangi korupsi dan pencarian rente (*rent-seeking*) yang terlihat dari beberapa kasus hukum korupsi yang diproses oleh KPK menunjukkan terjadi penyuaipan kepada pimpinan politik oleh perusahaan perkebunan dan pertambangan, yang dapat menggunakan dana untuk kampanye dan untuk memelihara jaringan pendukung. Dalam proses melayani permohonan izin, seringkali kepentingan korporasi lebih diutamakan daripada perlindungan lingkungan hidup dan praktik perlindungan sosial (terutama PADIATAPA), dan ini mengakibatkan buruknya perlindungan lingkungan hidup dan social. Mekanisme akuntabilitas tidak dijalankan, sehingga perusahaan swasta dapat beroperasi tanpa izin lengkap, dapat melanggar persyaratan izin yang menyebabkan kerusakan lingkungan dan dampak sosial yang negatif tanpa terkena hukuman, dan dapat menguasai lahan masyarakat tanpa melalui proses negosiasi yang berbasis informasi yang terverifikasi, serta jaminan hak-hak masyarakat berdasarkan kesepakatan.

Konsesi perkebunan dan pertambangan skala besar masih tetap menjadi strategi utama dalam pembangunan ekonomi di kepulauan terluar Indonesia, daripada mengembangkan usaha pertanian skala kecil berdasarkan hak tenurial yang jelas (baik untuk masyarakat setempat maupun masyarakat adat). Manfaat ekonomi (dalam hal ini pendapatan pemerintah dan penciptaan lapangan pekerjaan) disebut sebagai justifikasinya, tetapi tidak dianalisis secara sistematis dan tidak diperhitungkan dampak negatifnya. Dampak negatif dapat meliputi konflik antara masyarakat dan perusahaan, pendapatan pemerintah yang hilang, akses lahan dan ketahanan pangan yang kurang, masuknya buruh migran dan munculnya ketegangan di antara masyarakat, kehilangan hutan, polusi sungai, dan emisi gas rumah kaca.

Reformasi sedang dilaksanakan pada berbagai aspek tata kelola pemerintahan yang jika dilaksanakan dengan baik, akan berdampak pada reformasi sistem perizinan lahan. Reformasi ini menjadi proses yang susah, dan membutuhkan kemauan politik (*political will*), kapasitas birokratik, dan alokasi anggaran yang cukup, maka belum tentu akan berjalan lancar dan cepat. Selain itu, nampaknya di tiap provinsi proses pelaksanaan reformasi akan berbeda karena perbedaan kemauan politik, kemampuan birokrat dan lain-lain. Namun yang pasti adalah bahwa reformasi tata kelola penggunaan lahan dapat mengalami resistensi dari para elit yang berkepentingan secara ekonomi maupun secara politik yang saat ini menerima keuntungan dari kelemahan pengurusan izin lahan, karena kepentingannya akan terancam oleh peningkatan kualitas tata kelola. Hambatan teknis maupun hambatan birokratis akan muncul. Namun, reformasi ini sudah lama dibutuhkan dan menjadi sumber harapan perbaikan tata kelola lahan, dan muncul sebagai hasil upaya keras para pemangku kepentingan yang sudah lama mengadvokasikan.

REFORMASI

Wewenang Pemerintah. Bagian ini membahas regulasi yang membentuk atau mengubah wewenang pemerintah yang berdampak pada perizinan lahan. Ini termasuk pembagian wewenang di antara pemerintah pusat, provinsi dan kabupaten; isu Otonomi Khusus di Aceh dan Papua; perubahan tata kelola pemerintah desa dan otoritasnya; pembentukan Kesatuan Pengelolaan Hutan (KPH); menguatnya momentum untuk perhutanan sosial; dan pengakuan atas hak masyarakat adat berdasarkan keputusan Mahkamah Konstitusi dan reforma agraria.

Manajemen Data. Agar menguatkan sistem tata kelola perizinan, diperlukan peningkatan di aspek data dan informasi (termasuk data pemetaan), termasuk aspek transparansi. Sudah sejak lama diketahui bahwa pembangunan di Indonesia terhambat akibat kurang akuratnya data atau terdapat multiple versi data yang berbeda, di mana pemerintah tidak selalu menggunakan sumber data yang sama. Undang-undang Keterbukaan Informasi Publik tahun 2008 memberikan dasar bagi prinsip transparansi, namun dalam praktiknya tidak menjamin tersedianya informasi yang dapat diakses secara mudah. Reformasi telah lama didorong hingga saat ini sudah lebih berpotensi untuk mengatasi masalah-masalah ini – terutama kebijakan *One Map policy*, *One Data policy*, dan kebijakan *E-Government*. Dengan kebijakan-kebijakan ini, ada potensi bahwa sistem perizinan dilakukan secara *on-line*, peta perizinan dikonsolidasi menjadi satu peta yang dapat diakses, dan informasi perizinan yang telah terbit dikelola dengan baik. Namun kemajuan reformasi ini masih berjalan lambat dan informasi perizinan belum sepenuhnya transparan.

Rencana Tata Ruang. Reformasi terus berjalan seiring dengan pelaksanaan Undang-undang Penataan Ruang tahun 2007; terdapat perubahan kelembagaan yang berdampak pada pengendalian tata ruang di tingkat pusat dan daerah; dan peran partisipasi masyarakat. Perencanaan tata ruang semakin efektif dengan mengintegrasikan perlindungan lingkungan hidup; sedangkan reformasi pengendalian penataan ruang tengah dilaksanakan, dan dasar hukum untuk partisipasi masyarakat dalam pengendalian penataan ruang sudah jelas walaupun tidak sepenuhnya dipraktikkan.

Sistem Perizinan. Proses untuk memperoleh perizinan lahan, dan informasi mengenai izin yang sudah terbit, belum dikelola dengan baik. Transaksi kadang terjadi di ruang tertutup dan ada 'rahasia umum' terkait penyuaipan. Pemimpin politik dapat menerbitkan izin kepada perusahaan yang dimiliki rekan-rekannya, kemudian menjual perusahaannya; perusahaan dapat beroperasi tanpa izin yang lengkap dan memenuhi syarat; informasi mengenai perizinan lahan tidak dikelola dengan baik oleh pemerintah daerah, atau tidak tersedia kepada publik sehingga pengawasan publik berdasarkan keterbukaan informasi menjadi terkendala. Terdapat dua kunci utama reformasi perizinan yang sedang dilaksanakan dan berpotensi memperbaiki sistem yang dijalankan pemerintah secara signifikan. Salah satu adalah dengan sistem permohonan izin secara elektronik yakni melalui sistem *Online Single Submission* (OSS), yang saat ini sedang digencarkan di seluruh tanah air. Yang kedua adalah sistem SICANTIK yakni sistem *cloud database* yang menyimpan informasi perizinan yang diterbitkan. Namun, pelaksanaan sistem ini masih membutuhkan waktu lama.

Evaluasi Perizinan. Sebenarnya keperluan untuk dilakukan kajian evaluasi mengenai perizinan lahan di Indonesia sudah diketahui sejak lama, namun nampaknya sulit dilaksanakan akibat hambatan birokratis dan politis. Kajian evaluasi perizinan seharusnya mencakup konsolidasi data, uji kepatuhan hukum, dan dilakukan restitusi, dan sanksi administratif, perdata atau pidana. Sudah ada Instruksi Presiden (Inpres) baru yang mewajibkan adanya kajian evaluasi perizinan kelapa sawit, maka ini dapat menjadi pencetus perubahan, jika dilaksanakan dengan baik.

IMPLIKASI BAGI USAID DAN DONOR LAIN: ARENA YANG DAPAT MENJADI FOKUS KESELURUHAN DAN DI TIAP PROVINSI

Program bantuan sebaiknya pastikan dukungan untuk peningkatan sistem perizinan mengikuti beberapa prinsip:

- Jika semula fokus utama ada pada sistem perizinan di tingkat kabupaten, maka focus perlu digeser menjadi focus di tingkat provinsi sebagai akibat dari revisi terhadap aturan desentralisasi, di mana UU no.23/2014 telah mengalihkan beberapa wewenang dari tingkat kabupaten ke provinsi.

- Jangan memperkenalkan suatu inovasi baru yang kemungkinan besar akan cepat pudar dalam waktu pendek.
- Mencari peluang untuk mempercepat reformasi yang tengah berjalan.
- Memberi dukungan kepada setiap provinsi sesuai konteks masing-masing.
- Memberi bantuan dalam membangun kapasitas para pemangku kepentingan setempat baik pihak pemerintah maupun non-pemerintah.
- Mengatasi kesenjangan dalam hal tanggung gugat (*akuntabilitas*) dengan cara memperkuat mekanisme pengawasan pemerintah, meningkatkan transparansi informasi perizinan, dan meningkatkan kapasitas masyarakat sipil untuk memantau tata kelola perizinan serta dampaknya pada hutan.

Kegiatan yang dapat dilakukan, jika ada dukungan dari pemangku kepentingan setempat antara lain:

- Tawarkan dukungan pengelolaan data spasial terkait perizinan, dan memastikan bahwa pendekatan multi-pihak dijalankan, serta informasi akan tersedia buat publik sesuai ketentuan dan aturan yang berlaku.
- Mendukung pemerintah untuk mempercepat pelaksanaan sistem OSS dan SICANTIK hingga ke tingkat kabupaten.
- Meningkatkan kapasitas untuk memantau penataan ruang dan perizinan yang telah diterbitkan.
- Dukung pengembangan dan pelaksanaan secara efektif sistem pelaporan warga, terkait pelanggaran perizinan dan kerusakan hutan, dan membangun kapasitas masyarakat sipil untuk membuat laporan tersebut.
- Mendukung kajian evaluasi perizinan oleh multi-pihak, jika ada kemauan politik dari pemerintah provinsi dan/atau kabupaten.

Papua

- Guna mendukung efektivitas sistem SIMTARU, perlu berkoordinasi dengan Bappeda dan KPK dalam menyusun strategi untuk mencapai pemutakhiran data SIMTARU, ketersediaan sistem *on-line* yang stabil, dan terkait transparansi lapisan data perizinan.
- Melanjutkan dukungan SST sebagai mekanisme untuk mencegah tumpang tindih perizinan, dan memastikan SST dapat digunakan untuk mengkaji perizinan yang sudah terbit.
- Mendukung BAPPEDA dan TKPRD untuk membangun portal pengaduan di SIMTARU, dan dalam penguatan pengendalian penataan ruang.
- Mendukung peningkatan kapasitas OMS dalam melakukan pemantauan perizinan dan pemantauan hutan, termasuk melibatkan ketua-ketua adat, jaringan gereja, *kepala distrik* dan *Majelis Rakyat Papua*.
- Mendukung SIMTARU, SST, OSS, dan SICANTIK agar digunakan di wilayah proyek LESTARI, termasuk di Boven Digoel.
- Menggunakan momentum yang ada sekarang untuk mendukung kajian evaluasi perizinan komprehensif di Boven Digoel, dan mendukung penguatan regulasi tata kelola perizinan, yang mengutamakan upaya perlindungan sosial dan PADIATAPA.

Aceh

- Mendukung percepatan pelaksanaan reformasi yang sedang jalan, dan meningkatkan partisipasi masyarakat dalam pengendalian penataan ruang, melalui diskusi multi-pihak untuk mengidentifikasi hambatan dan menyepakati langkah-langkah penyelesaian.
- Mendukung Dinas PUPR dalam kapasitas data spasial dan pembuatan portal pengaduan untuk partisipasi masyarakat sipil.

- Mempercepat pelaksanaan pelatihan OSS dan SICANTIK di tingkat kabupaten dan mendorong penggunaan sistem tersebut secara aktif.
- Mendukung pelaksanaan Perda SIAT, jika hal ini akan memperkuat pengelolaan data spasial serta transparansi.
- Mendukung pemerintah provinsi dan kabupaten tertentu untuk melaksanakan Inpres 8/2018 jika terdapat kemauan politik.
- Mendukung kapasitas masyarakat sipil dalam pemantauan hutan dan pemantauan perizinan.

Kalimantan Tengah

- Hindari ambisi yang terlalu tinggi.
- Jika memungkinkan, membangun kapasitas pengelolaan data spasial (baik pada pemerintah maupun LSM).
- Bekerja melalui KPH, misalnya meningkatkan kapasitas staff dalam tugas pemantauannya.
- Membangun kapasitas pemantauan hutan berbasis masyarakat pada desa yang menjalankan perhutanan sosial.

Implikasi bagi Target LESTARI. Kemungkinan indikator 4 AMEP tidak secara lengkap menggambarkan kemajuan LESTARI jika hanya melihat pada tingkat provinsi. Fokus utama dari upaya-upaya ini adalah memperbaiki sistem perizinan agar berdampak pada tingkat kabupaten di mana LESTARI bekerja, tetapi ini dapat dilakukan dengan meningkatkan sistem di tingkat provinsi daripada pada tingkat kabupaten. LESTARI tetap focus agar bagaimana mencapai dampak yang paling besar dalam memperbaiki sistem perizinan sesuai perubahan kondisi dan peluang yang ada.

PURPOSE

USAID LESTARI (2015-2020) supports the Government of Indonesia to reduce greenhouse gas (GHG) emissions and conserve biodiversity in carbon rich and biologically significant forest and mangrove ecosystems.¹ This is achieved through improved land use governance, enhanced protected areas management and protection of key species, sustainable private sector and industry practices, and expanded constituencies for conservation among various stakeholders. Weak land governance is the key driver of unsustainable land use in Indonesia, including deforestation and fires. Specifically, Indonesia's land use licensing system is deeply compromised by both technical flaws and corruption.

However, over the past decade this problem has been increasingly recognized, and a number of governance reforms designed at the national level are now being implemented across the country and are likely to improve the system. Effective support for more sustainable land use governance in Indonesia requires a solid understanding of the underlying dynamics behind land use licensing, alignment with the recent reforms, and effective adaptation to the variety of decentralized contexts across the archipelago. LESTARI thus has a need to continually adapt its approach to improving land use governance (and licensing in particular) to these changing dynamics. This paper analyses current developments specifically in land use licensing governance in Indonesia and draws out the implications for LESTARI's ongoing work on land use licensing.

INTRODUCTION: INDONESIA'S LAND USE LICENSING SYSTEM

Unsustainable land use in Indonesia is a globally significant environmental concern. Indonesia has one of the highest rates of tropical deforestation in the world², a host of endangered species being driven near extinction, and annual cycles of peatland fires, some of which have led to national emergencies which have led to a spike in deaths from respiratory illnesses as well as extremely high greenhouse gas emissions (notably in 2015 leading to USD 16bn in damages). The impacts on human development are also significant: unclear land tenure and thousands of land conflicts which reduce access to land and restrict livelihood opportunities of the poor, denial of indigenous land rights and access to forest livelihoods, squandering of Indonesia's forest resources with little government revenue and concomitant reduction of livelihood opportunities for the next generation, health impacts of the peat fires, as well as the host of human impacts which come from excessive greenhouse gas emissions and resulting climate change.

Indonesia's post-1998 decentralization process introduced additional challenges to land use licensing governance. While the Suharto regime had used logging concessions as rewards in a web of patronage designed to keep powerful military and bureaucratic allies on side, post-1998 decentralization saw certain authorities delegated from the national government to provincial and district governments, alongside the rise of oil palm plantations and small-scale mining enterprises (especially coal). An initial experiment in decentralization authority for forestry led to a rapid recentralization after chaotic exploitation resulted. By the time 2014 arrived, district governments had used their authority to issue thousands of mining and oil palm plantation permits, and the central government was generally unable to adequately track and monitor them (or even to know how many and where they were). The Presidential Unit for Development Monitoring and Oversight (UKP4) had attempted to collect permit data and review it, starting with pilots in Central Kalimantan, East Kalimantan and Jambi, but this

¹ For more information about USAID LESTARI, visit www.lestari-indonesia.org.

² See for example Margono et al. 2014.

had proved extremely difficult, due to inadequate data as well as resistance from regional stakeholders (rightfully) concerned that they could be subject to criminal sanctions. In 2014, the Law on Regional Governments led to further recentralizing of authority for land use permitting, as will be described below.

Poor land governance is known to be a key driver behind unsustainable land use in Indonesia.³ This results in land and forest degradation as well as deforestation. Poor land/forest governance includes:

- Unclear land tenure, lack of recognition of indigenous rights, forest zone boundaries not established through mandated process with stakeholders, lack of Free, Prior and Informed Consent (FPIC) in land acquisition, and widespread land conflict.
- Uncoordinated, unclear or overlapping authorities between sectors and between levels of government.
- Spatial planning and land use permit processes which are not transparent and fail to protect forests, peatlands, and community rights.
- Failure to implement and enforce environmental safeguards or to stop unsustainable illegal practices.

Box 1: Key points on Spatial planning in Indonesia

- Spatial plans contain maps designating where particular kinds of development can occur, including plantations, settlements, agricultural activities, and which areas must be protected.
- Law 26/2007 on Spatial Planning, and a number of implementing regulations. Law 26 contains stiff sanctions for government officials who issue land use permits which are not in accordance with the spatial plan
- Much of Indonesia's forests are included in the 'State Forest Zone', where forest function - for example Production Forest, Protection Forest, Conservation Forest, or Conversion Forest - are determined by the (now) Ministry of Forestry and Environment (MoEF). In practice this has been done haphazardly, with many millions of hectares of forest outside the State Forest Zone, and millions of unforested areas inside the State Forest Zone, and rights of communities and indigenous people ignored.
- Constitutional Court Decision 45 of 2012 (or MK45) stated that the government had designated forests incorrectly but was not retroactive. MK45 was launched by Bupatis in Central Kalimantan, who felt that the Ministry of Forestry's declaration of most of the province as State Forest Zone without adequate fieldwork and consultation hindered their ability to provide economic development. Central Kalimantan's spatial planning remains controversial, with the current Governor vowing to struggle for 45% of the area to be non-forest zone.
- Provincial spatial plans are required to follow the designations of the MoEF when designating areas for cultivation or protection. Also, district spatial plans should not contradict provincial spatial plans, and provincial ones should not contradict national spatial plans. However, in practice, district and provincial spatial plans are often not aligned with each other, and not necessarily aligned with the MoEF designation of forests (In Papua for example there are apparently 6m hectares of forest declared 'convertible' by MoEF but protected under Papua's 2013 provincial spatial plan.
- Political economy considerations do enter into these policy processes, with rumours of companies lobbying the MoEF to re-designate particular forest areas as convertible.
- There has been no systematic review of permits which has been able to systematically identify which ones are not aligned with the spatial plan, address identified problems, and enact sanctions against government wrongdoing where identified.

Many of these factors are related to, and play out through, Indonesia's land use licensing system. Companies wishing to develop logging enterprises, timber plantation, coal and other mining enterprises, and oil palm plantations must acquire a host of permits in order to do so legally. These permits are allocated according to spatial plans, which are supposed to also be in line with forest function as designated by the Ministry (protected forest, conversion forest) (see Box 1). Various government institutions play a role in these licensing processes, from the Ministry of Forestry and Environment, and Spatial Planning and Agrarian Affairs, to sectoral ministries such as Energy and Minerals and Agriculture (including plantations), to Provincial Governors and District Heads (Bupatis), to various agencies within those provincial and district governments. The series of permits needed for each type of land-

³ See World Bank 2014, also Abood et.al. 2015.

based enterprise, and the steps which must be undertaken to acquire them, is exceedingly complex.

Complex permit procedures can lead to strong accountability but can also create multiple rent-seeking opportunities as private sector actors attempt to access land, forest and mining resources. The following are the key manifestations of this dynamic:

- The land use permitting process is undermined by corruption and rent-seeking, with a number of convictions by the Corruption Eradication Commission (KPK) demonstrating plantation and mining companies paying bribes to political leaders, with money available for use in funding electoral campaigns and patronage networks.⁴
- In administering licensing processes, corporate interests often take precedence over environmental protection and best-practice social safeguards (in particular FPIC), leading to poor performance on the implementation of environmental and social safeguards.
- Accountability mechanisms are compromised, enabling companies to operate without legal permits, to break the requirements of their permits, cause environmental damage and negative social impacts without punishment, and acquire land from communities without verified negotiation processes based on information, secure legal rights, and consent.⁵
- Although large scale agribusiness does bring economic development, district governments tend to embrace this model of concession-driven development without clear cost-benefit analyses covering environmental and social costs, and economic opportunities and impacts for local and indigenous people. The economic benefits (in terms of government revenue and job-creation) are claimed but not systematically analyzed and weighed against the negative impacts, which can include conflicts between communities and companies, underpayment of government revenues, reduction of land access and food security, influxes of labour migrants and rising communal tensions, loss of forests, pollution of rivers, greenhouse gas emissions, and so on. More balanced development models are needed, including small-scale agriculture based on clarity of tenure (for local communities and indigenous people), based on fuller analyses of environmental, social and economic impacts.

The key parts of the land use licensing system in Indonesia cover spatial plans, land use licenses, and the monitoring of their implementation. There are a host of other permits required to cover various forest enterprises, for example for using timber (*izin pemanfaatan kayu*). For the purposes of this paper, the most relevant aspects are:

- **Forest function designations** (from Ministry of Forestry and Environment): designation of state forest zone areas as protection forest, production forest, conservation area (national parks, nature reserves, wildlife reserves, etc.) or conversion forest (forest available for conversion). Forest function designations are issued as Ministerial Decisions, for each province, and are updated/ revised.
- **Spatial plans:** Rencana Tata Ruang Wilayah Propinsi (RTRWP), and Rencana Tata Ruang Wilayah Kabupaten (RTRWK). There are also higher-level spatial plans (RTRW pulau, RTRW nasional) and more detailed, lower level plans (rencana detail

⁴ Sjafrina, Widoyoko and Abid 2013. See also Mietzner 2013, Berenschot 2016 and Varkkey 2013.

⁵ In a 2014 review of mining permits by the KPK and the Ministry of Mining and Energy Resources, 40% of the total of approximately 10,000 permits were found to be non-compliant on a short list of factors checked. 3,202 of the companies holding permits were not able to demonstrate that they possessed a tax number. See <https://finance.detik.com/energi/d-3524710/kpk-3202-perusahaan-tambang-di-ri-tak-punya-npwp>. See also see also ICEL's review of permit compliance at <https://programsetapak.org/wp-content/uploads/2016/10/Permit-Review-versi-Bahasa-Indonesia-ICEL-Dec-2013.pdf>. On companies escaping fines, see <https://tirto.id/11-perusahaan-perusak-lingkungan-rugikan-negara-rp18-triliun-dgZ6>.

tata ruang, or RDTR), although the latter have so far been formulated mostly for urban areas. RTRW can be revised every five years.

- **Sectoral permits for land use, environmental permits, and business permits:** depending on the desired use - timber plantation, logging, oil palm plantation, mining, or communal forestry for example - each sector has a regime of permits needed, administered by local governments or by sectoral ministries (including the National Land Agency within the Ministry for Agrarian Affairs and Spatial Planning). A list of the most relevant types of permits for those sectors most related to large-scale land use is given in Box 2.

Box 2: Permits related to sectoral land use

Logging and timber plantation permits

- IUPHHK-HTI: timber plantation permit
- IUPHHK-HA: natural forest logging concession

Permits for mining. Mining governance has gone through multiple changes, with large mining permits issued from Jakarta, and smaller scale permits issued by local governments. The Mining Law (Law 4 of 2009) reformulated the process of mining permits, which includes:

- designation of areas allowable for mining (*wilayah pertambangan*) before permits are issued
- IUP eksplorasi: issued by regional government Mining Agency
- IUP operasi-produksi: issued by regional government Mining Agency
- izin lingkungan: environmental permit, based on an environmental and social assessment (amdal), must be obtained from the regional government's Environment Agency
- izin pinjam pakai kawasan hutan, or borrow-use permit for the forest zone: must be obtained from the Ministry of Forestry and Environment for areas in the forest zone

Permits for oil palm

- location permits (izin lokasi) - from Bupati
- environmental permits (izin lingkungan) - from district/provincial Environment Agency
- plantation permits (IUP) - from district/provincial Agriculture Agency
- business permits (HGU) - from National Land Agency
- forest release (izin pelepasan hutan) - from Ministry of Forestry and Environment

Permits for social forestry

- Hutan Desa
- Hutan Kemasyarakatan
- Hutan Tanaman Rakyat
- Kemitraan
- Kerjasama (specific to Aceh)
- IUPHHK-MHA - indigenous logging permit - under Papua's Special Autonomy law

For more information on these permits, and other permits involved in mining and plantations, and the changes to these requirements over the past decade or two, can be obtained from a host of other publications (e.g. Paoli et.al. 2013; World Bank 2014; Daemeter 2015; Ardiansyah et.al. 2015).

This paper does not discuss various sustainability standards, such as FSC and RSPO (which are voluntary), or ISPO (which is compulsory). These standards can be expected to play a positive role on land use licensing governance, for example the RSPO has declared that permit maps should be made public; RSPO requires free, prior and informed consent (FPIC) for land acquisitions and new oil palm plantations and has grievance mechanisms to deal with conflicts involving RSPO member companies.

The weaknesses in this system of licensing are both technical and political, but technical aspects can be difficult to strengthen when this would reduce the space for rent-seeking. The rent-seeking underlying Indonesia's land use licensing system, and the importance of this as a driver of Indonesia's deforestation, greenhouse gas emissions and land-related

social injustices, is now increasingly recognized (see earlier citations). Donors - especially those which utilize political economy analysis as the basis of governance program design - increasingly recognize the importance, and difficulty, of addressing corruption underlying land use licensing systems.⁶

Indonesia's Corruption Eradication Commission (KPK) has recognized this and is paying increasing attention to the natural resources sector, not just through investigation and arrests but through their analytical and corruption prevention initiatives.⁷ A recently released KPK video on oil palm, for example, clearly lays out the importance of corruption in the licensing system, and the losses of government revenue (see Box 3).

Box 3: KPK on Oil Palm Corruption (<https://www.youtube.com/watch?v=vyvVopVpbOQ>)

- The licensing supervision system is not accountable and is unable to ensure business compliance. There is no effective spatial system for license planning. This leads to conflict, fires, business licenses on peat domes, corruption, loss of state revenue.
- There is ineffective export tax control. Biofuel subsidies mostly benefit three large companies (Wilmar, Musim Mas, Darmex). There is no systematic checking of taxes paid vs. export volumes, which could result in fines. The Oil Palm Estate Fund (BPDPKS) lacks sufficient funds to carry out its mandate for re-planting, research and sustainability, because of under collection and overspending on the biofuel subsidy.
- The collection of tax by the Directorate-General of Taxation is weak, because it is not integrated with production volume data. This leads to under-collection and insufficient funds for development of the sector.

The KPK has arrested a number of regional leaders - including Governors and District Heads - for corruption related to land use licensing. However, what needs to be fully understood is that corruption cases that happen do not represent 'a few bad eggs' in an otherwise functioning system; instead the scale of arrests merely reflect the limited capacity of the KPK to investigate, and the difficulty in catching political leaders red-handed.

The dynamics behind permit governance have been exposed recently in detail through a series of investigations by the Gecko Project, entitled 'Indonesia For Sale'. One investigation focused on a District Head in Central Kalimantan acquiring oil palm licenses, and a second (released 28 November 2018) described how a huge land deal to enable legal deforestation in Boven Digoel, Papua, involved high level politico-business networks, murky corporate structures, and the importance of deforestation in company valuations related to clearing for oil palm plantations (see Box 4).⁸

⁶ See for example Asia Foundation 2011, and USAID LESTARI's political economy analysis (2017), which has been updated in 2018 in the form of one provincial briefs for Aceh, Central Kalimantan and Papua.

⁷ See <https://www.kpk.go.id/id/berita/berita-kpk/582-selamatkan-sumber-daya-alam-kpk-evaluasi-gnp-sda> and <https://acch.kpk.go.id/id/evaluasi-gnp-sda-2018> for news updates on these initiatives.

⁸ The box is taken from the articles on Seruyan (<https://thegeckoproject.org/how-corrupt-elections-fuel-the-sell-off-of-indonesias-natural-resources-c9ae7521d0ee>) and Boven Digoel (<https://thegeckoproject.org/the-secret-deal-to-destroy-paradise-715b1ffc0a65>).

Box 4: Indonesia for Sale: Key Findings from the Gecko Project

In an article entitled “political corruption in oil palm licensing”, Prof Hariadi weighs in on the negative environmental impacts of oil palm in Indonesia, saying that “the root of the problem is bad [permit] governance, which is never discussed or seriously remedied” (p44). He goes on to explain the five ‘roots of the problem’, all related to corruption and a lack of transparency in permitting.

- “The corrupt sell-off of land and resources by politicians, often to raise money for expensive political campaigns, is a major driver of Indonesia’s deforestation and land rights crisis”.
- “Some government officials trade business licenses for cash bribes, while others engage in more complex schemes. There is every indication that permit selling in the agribusiness and extractive sectors is rife across Indonesia, even if the true extent remains hidden.”
- Land use permits are often issued in secret, with questionable legal compliance and systematic neglect of indigenous rights, and then the permits are not publicly accessible. Since beneficial ownership of companies holding plantation licenses is not yet transparent, it is difficult to gather the evidence needed to expose the patronage networks at play behind these land deals which can lead to legal deforestation and land dispossession.

This journalistic effort is also supported by analysis by Indonesia’s leading forest policy academic, Professor Hariadi Kartodihardjo, who frequently describes corruption in land use licensing as the key issue underlying Indonesia’s high rates of deforestation (see Box 5 below).

Box 5: Prof. Kartodihardjo’s analysis of corruption in land use licensing (from Kartodihardjo 2018; see also Kartodihardjo 2017).

In an article entitled “political corruption in oil palm licensing”, Prof Hariadi weighs in on the negative environmental impacts of oil palm in Indonesia, saying that “the root of the problem is bad [permit] governance, which is never discussed or seriously remedied” (p44). He goes on to explain the five ‘roots of the problem’, all related to corruption and a lack of transparency in permitting.

- Unclear data on the extent of oil palm, showing that permitting is not working as a control mechanism.
- Lack of transparency of permit information, with the example of Forest Watch Indonesia’s (FWI) successful Supreme Court case against the Ministry for Agrarian Affairs to release HGU permit information. FWI won, but the data was still not released.
- “Pseudo-legal networks”, exposed through the work of the National Movement to Save Natural Resources coordinated by the KPK. Loyal networks of permit granters-receivers-overseers arise due to structural flaws in system, leading to transactional permit politics - as evidenced in the Gecko project investigations.
- High levels of corruption in public service, with little protection for whistle blowers, as shown by the Integrity Evaluation Survey 2018 (KPK). Widespread illegalities in oil palm enterprises, for instance 1.8m ha of illegal oil palm in Riau province.
- The draft Oil Palm Bill, which would shift risks from the private to public sector, without supporting smallholders and adat communities, is evidence of systematic political corruption - that is, corrupt policy making leading to new laws which defend the corrupt politico-business networks’ interests.

This section will end with a brief description of some key ‘good governance’ indicators for a successful land use licensing system. A strong system for land use licensing might have the following features, related to transparency, public participation, and accountability:

- Spatial plans have been produced based on accurate data on land conditions, in order to allocate future land use in ways which preserve environmental functions and limit negative impacts of development.
- New land use permit applications are channeled through a single online portal; on-line to reduce opportunities for rent seeking, a single portal to enable data management.
- A systematized process for reviewing permit applications. This should include verifying key information (e.g. applicants tax number), requirements for the permit to

be given (e.g. environmental impact analysis), as well as verification that the land use is in line with spatial planning for the location in question.

- Complete permit information is stored in a 'living' database, including information on all existing permits as well as new ones granted, enabling the system to ensure that overlapping permits are not issued.
- This database, including spatial data, is available for the public to see/access.
- Government systems for accountability function effectively, so that corporate malfeasance in the field is reliably identified and addressed.
- Public participation in spatial plan monitoring is empowered, via reporting mechanisms and mechanisms for handling reports quickly, effectively, and transparently.

These features would strengthen good governance in land use permitting, and thus should be a part of donor interventions to improve permitting systems. Note that none of these properties currently hold true for Indonesia's licensing system, although the reforms described below could address all of them.

RECENT CHANGES AFFECTING LICENSING GOVERNANCE

While up until recently, Indonesia's land use licensing systems would have scored very low on all of the above characteristics (a-g above), more recently there has been growing momentum to reform these systems. Drawing strength from a number of earlier legal reforms, gathering momentum via the work of the Presidential Unit for Development Monitoring and Oversight (UKP4), and propelled by the One Map initiative, momentum has gathered for improved spatial information management related to permits, stronger permit application processes, development of a permit database with attention to transparency, strengthened standards for sustainable business practices, greater scrutiny of business compliance, and improved law enforcement.

Reforms are now underway across a number of aspects of governance, which, if implemented, could fully reform the land use licensing system. Implementing these reforms will be an arduous process, with political will, government staff expertise, and budgets needed to drive implementation, meaning that it may not occur quickly. It is likely that the implementation process will play out differently in different provinces, because of differences in political will, bureaucratic capacity, and so on. What is certain is that reforms to land use governance will face resistance from economic and political elites currently benefiting from weak land use licensing, and whose interests are thereby threatened by improved governance. Bureaucratic as well as technical hurdles will emerge. Nevertheless, these reforms come as a long overdue and much needed source of hope for improved land governance and are the result of dedicated and sustained advocacy of many stakeholders.

This section will describe these recent changes, focusing on the key aspects of governance where reforms are currently underway and will impact directly upon land use permitting systems, which are: a) Government authority; b) Data management; c) Spatial planning; d) Permit systems; e) Permit reviews. Box 6 provides a run-down of the key topics covered under each section.

GOVERNMENT AUTHORITY

Before discussing aspects of governance more directly related to land use permits, this section notes a number of relevant regulations which structure or alter government authority in ways which potentially impact upon land use permit governance. These include the division of authority between national, provincial and district governments, Special Autonomy arrangements in Aceh and Papua, changes in village governance and authority, the development of Forest Management Units, the growing momentum for social forestry initiatives, the recognition of indigenous land rights stemming from a Constitutional Court decision, and agrarian reform. While a detailed review of these regulations is beyond the scope of this paper, it is worth mentioning the key relevant changes.

- Indonesia’s decentralization process emerged alongside the transition to democracy following the end of the Suharto regime in 1998. Decentralization laws emerged in 1999 and were revised in 2004. The Law on Regional Governments of 2014 was a further revision of these arrangements, strengthening the role of provincial governments as an arm of the national government as well as a politically autonomous region in itself, and rejigging some of the authorities held by district and provincial governments. Article 14.1 established that “*Management of government affairs in forestry, marine affairs, energy and mineral resources is divided between central and provincial governments*”, which mostly ended the role of district governments in these sectors (Daemeter Consulting 2015, op.cit.). This re-centralization of certain authorities related to land use governance appeared to be (at least partly) a reaction to how poorly district governments managed these authorities, although authority for issuing oil palm plantation permits was not re-assigned, and thus remains with district government for plantations that do not cross district boundaries (with the exception of provinces with Special Autonomy arrangements).
- It should also be noted that government authorities are different in provinces with ‘special autonomy’ laws, which includes Papua (in 2001) and Aceh (in 2006) provinces. Under these laws, certain authorities are granted to the provincial government which are held at district level or national level for other provinces. For

Box 6: Outline of recent reforms related to land use licensing

Government Authority

- Post 1998 decentralization and 2014 re-centralization
- Special Autonomy laws in Aceh and Papua
- Village Law of 2014
- Creation of field-level Forest Management Units
- Social forestry initiatives

Data Management

- One Map initiative
- One Data initiative
- Public Information Law of 2008

Spatial Planning

- 2007 Spatial Planning Law: ongoing implementation challenges and progress
- Spatial plan implementation and enforcement
- Ministry of Spatial Planning and Agrarian Affairs created in 2014
- Regulations on regional spatial planning coordination, enforcement, and public participation

Permits Systems

- Online Single Submission system for permit applications
- SICANTIK cloud-based database for permit information

Permit Reviews

- Primary Forest and Peat Moratorium 2011
- KPK permit reviews
- Presidential Instruction 8/2018 on oil palm permit review
- Free Prior Informed Consent (FPIC)

instance, in Aceh and Papua the provincial government has authority to issue oil palm plantation licenses, not the district government. Certain forestry authorities are also held by the provincial governments rather than by the national government, although both provincial governments claim (and complain) that these authorities have in practice not been effectively devolved and remain with the MoEF. In mining, unclear authority has led to mining permits being issued by both district governments (under the previous decentralization of authority) and provincial government (under the special autonomy law) for the same land, leading to disputes.⁹

- The Village Law of 2014 (Law 6/2014) recognized villages as political entities with expanded authority, provided an important push for bottom-up development planning and the basis for a substantial increase to village budgets. This had led to the need for strengthened village development planning processes, as well as capacities to manage the increased budget. It also includes the possibility of spatial planning at the village level, which could constrain where large scale land use licenses are able to be granted by local governments.
- Authorities related to forestry have been shifting in two additional ways. First, momentum has been growing for full implementation of Forest Management Units (FMU), which will act as a field-based authority, responsible for planning and supervision of forest areas, and able to engage in partnerships in order to manage forests for profit. FMUs are described under Law 41 of 1999 on Forestry, article 17, but implementation has been very slow since 1999. This represents another partial decentralization of national authority over forests to the provincial level, since FMUs (with the exception of those for conservation areas) fall under the provincial government. Secondly, an indigenous lobby group won a case in the Constitutional Court in 2013 which established that indigenous forests are not to be managed by the state. This has opened the door to recognition of indigenous rights to manage their forest areas, if the indigenous group itself is formally recognized by local regulations, and their forest areas area delineated. Implementation of this decision has been slow, with only a few groups so far achieving 'indigenous forest' designation for their forest areas (which removes it from state control, although keeping it subject to forest function designation and other regulations).¹⁰
- President Jokowi has since his election in 2014 also pushed for more rapid implementation of social forestry initiatives, and a program of agrarian reform, in order to ensure that local communities have access to forest land (through social forestry) and agricultural land (through an agrarian land redistribution program called TORA). Also relevant is Presidential Regulation 88 of 2017, which gives instructions on how to resolve occupation of the forest zone by communities; in cases where the forest zone boundaries were established after communities were present, the regulation will enable the land to be granted to those communities. Relevant regulations are listed in Box 7. These programs should have the effect of counterbalancing and limiting the scope of large scale agro-industrial plantation concessions, but implementation has been slow so far, with progress falling far behind the President's laudable targets of 12.5m hectares of forest land and 7.6m hectares of agrarian land. Much more support is needed for social forestry in particular, in order to empower and prepare communities to develop successful sustainable forestry enterprises, thereby mitigating the threat to forests from large-scale concessions.

⁹ Each Special Autonomy Law also has lower level regulations which specify in more detail how these authorities will operate; for instance an Aceh provincial regulation on Forestry (Qanun 7/2017) describes a social forestry mechanism specific to Aceh. In Papua, there are three key special autonomy regulations (*perdasus*): *perdasus* 21/2008 on sustainable forest management, *perdasus* 22/2008 on natural resources protection and management for indigenous Papuans, and *perdasus* 23/2008 on individual and communal land rights for indigenous Papuans.

¹⁰ More description of these developments can be found in Daemeter Consulting 2015 among others.

DATA MANAGEMENT

Lack of clear, authoritative, and transparent land use permit information (including maps) needs to be addressed in order to improve the permit system. It has long been known that Indonesia's development is hindered by inaccurate and multiple versions of data, and the failure to utilize the same set of data across government.¹¹ The 2008 Public Information Law provides a basis for transparency but does not yet in practice guarantee that permit information is accessible. Reform has been in the works for years, and now has the potential to address these issues - in particular via the One Map policy, the One Data policy, and the Electronic Governance policy (see Box 8). Recent developments on this front are as follows.

- On 11 December 2018, the President launched the One Map Geoportal, which is aimed at making spatial data related to spatial planning and permits more accurate and accountable. 83 of the mandated 85 thematic maps have been compiled and integrated, and are available for use by government agencies via the geoportal¹² (see <https://www.ekon.go.id/berita/view/geoportal-kebijakan-satu-peta.4440.html>). Currently the provinces and sectoral ministries are still developing their geoportals (which will be linked to the national geoportal), and these are not yet accessible by the public. Issues of overlapping boundaries between permits, and permits which violate spatial plans, have not yet been resolved, but are being identified for resolution; The President stated that overlaps cover 19.3% of the land in Kalimantan.¹³ The next step should be systematic resolution of the overlaps via inclusive and transparent processes. It is not clear how this will proceed, or whether the geoportals will be accessible to the public for improved oversight. At the launch, the President explained the long delays in launching the One Map Geoportal as due to “many interests, many fears”, and said that under the policy, land ownership by political elites will become known.¹⁴
- One such sectoral geoportal was launched by the Ministry of Agrarian Affairs and Spatial Planning in August 2018. It is called GISTARU (*geographic information system for spatial planning*) and is intended to also support local and national

Box 7: Key policies related to government authority

- Law 23 of 2014 on Regional Governments. <https://www.hukumonline.com/pusatdata/detail/lt543df13291bf4/nprt/lt511c7ca43835e/undang-undang-nomor-23-tahun-2014>
- Law 11 of 2001 on Special Autonomy for Aceh Province. Available at <https://pih.kemlu.go.id/files/UU%2011-%202006.pdf>
- Law 21 of 2001 on Special Autonomy for Papua Province. Available at <http://www.bphn.go.id/data/documents/01uu021.pdf>
- The Village Law (Law 6 of 2014). Available at http://www.dpr.go.id/dokjdi/document/uu/UU_2014_6.pdf
- Constitutional Court Decision 35 of 2012 (MK35/2012). Available at https://www.forestpeoples.org/sites/fpp/files/news/2013/05/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf
- Presidential Regulation 88 of 2017 on Handling Land Occupation in the Forest Zone. Available at <http://peraturan.go.id/perpres/nomor-88-tahun-2017.html>
- Presidential Regulation 86 of 2018 on Agrarian Reform. Available at <http://sipuu.setkab.go.id/PUUdoc/175620/Perpres%20Nomor%2086%20Tahun%202018.pdf>
- Ministry of Forestry and Environment Regulation 83 of 2016 on Social Forestry. This regulation consolidates and replaces earlier regulations on the various forms of social forestry: village forests (*hutan desa*, or HD), community forests (*hutan kemasyarakatan*, or HKm), community plantation forests (*hutan tanaman rakyat*, or HTR), and forestry partnerships (*kemitraan kehutanan*). Available at http://www.forda-mof.org/files/P.83_2016.pdf

¹¹ See for example <https://www.wri.org/tags/understanding-indonesias-onemap-initiative>.

¹² The two exceptions are the National Oceanic Spatial Planning Map, and the Administrative Border Map for Villages, which requires more effort to resolve.

¹³ <https://bisnis.tempo.co/read/1154253/kebijakan-satu-peta-lama-terrealisasi-jokowi-banyak-yang-takut>

¹⁴ *ibid.*

government agencies in considering land use permit applications, which will be submitted through the OSS (Online Single Submission) system (see below).¹⁵

- A Presidential Regulation on “One Data” has been prepared in draft form but has not yet been signed into law. This regulation is needed to address problems of inaccurate government data, multiple non-authoritative versions of data, and failure to use the most accurate or official data sources. It aims to establish what data must be maintained, which agency is to be responsible for maintaining the accepted version of each data type, and how other agencies must refer to the official versions of data. It will mandate the establishment of a number of electronic data systems, which should include data on spatial planning and permits, from the forestry, plantations, and mining sectors, among other things. This could clarify the mandate for the creation and operation of permit information databases attached to definitive maps of permit areas (on the Geoportal). One Data implementation would be linked to implementation of the new Presidential Regulation on Electronic Governance (Perpres 95 of 2018), issued in October 2018, and aimed at developing electronic governance infrastructure and management, to support bureaucratic efficiency and accountability, and improved public service. version of each data type, and how other agencies must refer to the official versions of data. It will mandate the establishment of a number of electronic data systems, which should include data on spatial planning and permits, from the forestry, plantations, and mining sectors, among other things. This could clarify the mandate for the creation and operation of permit information databases attached to definitive maps of permit areas (on the Geoportal). One Data implementation would be linked to implementation of the new Presidential Regulation on Electronic Governance (Perpres 95 of 2018), issued in October 2018, and aimed at developing electronic governance infrastructure and management, to support bureaucratic efficiency and accountability, and improved public service.

Box 8: Key policies related to data management

- *ONEMAP: Presidential Regulation 9 of 2016 on Acceleration of the Implementation of the One Map Policy for 1:50,000 scale maps (PP9/2016)*, available at <http://peraturan.go.id/perpres/nomor-9-tahun-2016.html>. The purpose is to develop 1:50,000 scale maps for all of Indonesia, with the same standards and data sources, to be used as the reference for all sectors of government and linked to spatial planning. The implementation is led by the Coordinating Ministry for Economic Development, the Presidential Staff office, and the Geospatial Information Agency (BIG). The Regulation contains an appendix laying out the action plan for 2016-2019 in order to get this done, including the required 85 thematic maps. The policy intends to address and resolve existing ambiguities, whereby different ministries and levels of government use different base maps and fail to coordinate adequately to resolve ambiguities. Successful implementation is expected to improve the investment climate (improving certainty for investors), improve development planning, and provide certainty related to land use permit boundaries, which could address negative impacts such as land dispossession, conflicts between companies, grey areas which provide opportunities for corruption, and weak law enforcement. Required thematic maps include Forest Zone designation, logging permits (IUPHHK-HTI and IUPHHK-HA), mining permits, indigenous land, location permits, spatial plans, forest cover, peatlands, Business Permits (HGU).
- The Public Information Law (UU KIP; UU 14/2008), available at <http://www.icnl.org/research/library/files/Indonesia/UU14th2008.pdf>. This was a landmark law, mandating the management and provision of public information, detailing the responsibilities of government agencies, the categories of public information (always available, regularly released, etc.), the allowable justifications for not releasing certain information, the creation of Information Commissions with Commissioners selected by parliament and the ability to rule on information grievances, and the sanctions for government officials who do not carry out their responsibilities under this Law.
- Presidential Regulation 95 of 2018 on Electronic Governance; available at: <http://sipuu.setkab.go.id/PUUdoc/175612/Perpres%20Nomor%2095%20Tahun%202018.pdf>
- Governor Regulation 63 of 2017 on Aceh’s Network Node (Pergub 63/2017 tentang Penyelenggaraan Simpul Jaringan Aceh), which stemmed from Presidential Regulation 27 of 2014 on National Geospatial Information Network.

¹⁵ GISTARU is available at <http://gistaru.atrbpn.go.id/rtronline/>

- Regional governments (provincial and district) will need to take action to prepare their own systems to implement the One Map and One Data initiatives; progress on this front varies from province to province. Papua and Aceh provide examples, where progress is relatively more advanced in Papua and less so in Aceh.
- For One Map, each provincial government must develop a geoportal containing the relevant maps which is then linked to the national geoportal. In Papua, the existing (LESTARI-supported) SIMTARU system is being used to populate Papua province's geoportal, while in Aceh there is not yet clarity about which provincial agency will drive the development of Aceh's geoportal. An old geospatial data unit, PDGA, was housed at Bappeda, and has gone through a process of collecting permit-related data and maps, although this information is now out of date, is not being maintained, and does not seem to be systematically used by other agencies nor is it accessible to the public. The Aceh Governor produced a regulation to develop Aceh's geoportal in 2017 with Bappeda in charge,¹⁶ but progress has not been clear, and there are now indications that PDGA may be disbanded and the authority moved from Bappeda to the Public Works and Spatial Planning Agency or the Information Agency. Bappeda is currently fighting to retain this unit, and a decision is due at any time on this matter.
- For One Data, Aceh is developing their own provincial policy on government data, through the creation of a system called SIAT, or Aceh Integrated Information System. The SIAT program was part of the political platform of Governor Irwandi when he came to office in 2017 and is aimed at ensuring that government data is accurate, transparent, and integrated, in order to drive effective development planning and implementation in Aceh. The draft Governor Regulation is being finalized now (with LESTARI support) and can lay the foundation for more accurate and transparent data on land use in Aceh.
- Indonesia's Public Information Law (UU KIP) arrived in 2008, but implementation has been slow and difficult. During 2012-2014, information requests for land use permit information were submitted by CSOs across a number of high-forested districts. Transparency of permit information across these districts was extremely low (see ICEL and Seknas Fitra 2015). Information grievances were registered with the Information Commissions (as is the recourse under the Public Information Law); grievance processes led to decisions upholding the accessibility of information such as HGU permits, location permits, and plantation licenses. However, in some cases government agencies still failed to deliver the requested information, and often fail to respond to subsequent requests for the same information - unfortunately precedents are not systematically followed. Regional governments and ministries often issue Public Information Lists of what information can be shared with the public, but CSOs can still request other information and if refused, can challenge this decision through the Information Commission. In practice, in order to obtain permit information, the public often has to undertake (time consuming) official grievances, and even upon winning, some information is still not delivered (for example, HGU permits). Putting whatever permit information has been declared publicly available into a database, connected with the geoportal, and making it publicly accessible, would solve these problems.

SPATIAL PLANNING

Reforms associated with spatial planning can be described in three broad categories: ongoing implementation of the 2007 Spatial Planning Law; institutional shifts which affect spatial planning supervision at the national and regional level; and the role of public

¹⁶ This was Governor Regulation 63 of 2017 on Aceh's Network Node (Pegub 63/2017 tentang Penyelenggaraan Simpul Jaringan Aceh), which stemmed from Presidential Regulation 27 of 2014 on National Geospatial Information Network.

participation. This section will describe these developments. See Box 1 for further information.

The Spatial Planning Law was passed in 2007 but has not yet been fully implemented. Several key issues are as follows:

- Developing provincial spatial plans proved politically contentious in many provinces because provincial governments and the MoEF could not agree on the extent of the forest zone (which is stipulated by MoEF and must be used as a basis for the provincial spatial plan). This led to protracted negotiations, and a Constitutional Court case launched by district heads protested the power of MoEF to dictate the forest zone boundaries (which they won).
- Spatial planning should be in line with forestry planning (via MoEF designation of forest function) and consider environmental impact (through Strategic Environmental Assessments). However, it has only been in the past year or two that Strategic Environmental Assessments are undertaken to strengthen Spatial Plan formulation or revision.
- The basis for zonation should be a 'detailed spatial plan' (*rencana detail tata ruang*) at district level (article 14-6) and zonation must be issued as a local regulation, with a scale of 1:5,000 or better; Indonesia's districts have not yet developed detailed spatial plans.
- Oversight should be carried out by local governments, including cancelling permits which are not in line with the spatial plan or were obtained via improper procedure. If the local government does not do this, then the higher level of government will take over and do it. Civil servant investigators will assist in handling infractions.
- There are stiff criminal sanctions for infractions against the spatial plan, including for government officials who issue permits not in line with the spatial plan (for the latter, up to five years in prison and a fine of Rp 500m/USD 34,300 - see article 73). These are applied rarely since systematic permit reviews have not been done (see section 2e).

Several institutional changes have also been underway:

- The Ministry of Spatial Planning and Agrarian Affairs was formed early after President Jokowi's 2014 election and includes the National Land Agency (which is now well known for not releasing HGU permit information even after having been ordered to do so by the Supreme Court). It has a directorate for supervision of spatial use and land control, but for a number of reasons this unit is not currently prioritizing supporting district and provincial governments to conduct oversight and enact sanctions.
- A new regulation from the Home Affairs Ministry has replaced the Spatial Planning Coordination Agency with a Spatial Planning Coordination Team (TKPRD), run by the agency in charge of spatial planning. This regulation (see Box 9) was issued in November 2017 and regions have one year to implement it. The TKPRD has a host of responsibilities (see article 8) including ensuring that zonation guides permit issuance; issuing recommendations to the PTSP on whether a new permit application should be approved; investigate problems in spatial use and supervision and recommend sanctions and other measures (via a Working Group on spatial use

and supervision); receive reports from the public about spatial plan infractions (e.g. use without permit or use with permit but not in accordance with zonation).

Box 9: Key policies related to changes in spatial planning

- The Spatial Planning Law (Law 26 of 2007). See Box 1 for more explanation. Available at <https://www.hukumonline.com/pusatdata/downloadfile/f152198/parent/26897>.
- Government Regulation 15 of 2010 on Spatial Planning Implementation (PP15/2010). This is the key implementing regulation which provides more detail than Law 26. Available at <https://jdih.esdm.go.id/peraturan/PP%20No.%2015%20Thn%202010.pdf>. Note that spatial planning supervision (pengendalian) is considered part of spatial planning implementation (along with planning and use) and is further regulated via PP 15/2010 articles 147-197. It can involve administrative sanctions for use which is not in line with the spatial plan, or not in line with the permit or its conditions (see articles 182-197). Spatial planning monitoring, on the other hand, is carried out for all aspects of spatial plan implementation (planning, use and supervision), is further regulated via PP 15/2010 articles 197-206, and covers the achievement of spatial planning objectives, law enforcement, and spatial plan implementation quality.
- Government Regulation 68 of 2010 on Form and Procedures of Community Role in Spatial Planning (PP68/2010). Available at https://sawitwatch.or.id/download/Peraturan%20Pemerintah/128_PP%20No%2068%20Th%202010_Masyarakat%20Dlm%20Penataan%20Ruang.pdf
- Ministry of Spatial Planning and Agrarian Affairs Regulation 9 of 2017 (ATR 9/2017) on Guide for Monitoring and Evaluation of Spatial Planning. Available at: <http://ditjenpp.kemenkumham.go.id/arsip/bn/2017/bn1184-2017.pdf>
- Ministry of Home Affairs Regulation 116 of 2017 on Regional Spatial Planning Coordination. Mandates a Team for spatial planning coordination. Available at: <http://ditjenpp.kemenkumham.go.id/arsip/bn/2017/bn1854-2017.pdf>

- At provincial level, spatial planning responsibilities are being transitioned from Bappeda to the Public Works Agency; this has already happened in Aceh and may happen in Papua in the near future. In Aceh, the Public Works Agency is now called Public Works and Spatial Planning, but the officials responsible for spatial planning are new to the topic, and many are away receiving training currently. An additional transition has been from BKPRD (an agency) to TKPRD (a special team), which is in different stages of rollout in provinces/districts (see Box 9 point #5). This has meant that the spatial planning coordination and supervision functions described above are not being carried out. In Papua, Bappeda reported that the BKPRD was under their authority, but that it was not able to vet new permit applications for approval based on spatial analysis, and lacking capacity to investigate reports of spatial plan infractions. Thus, it appears that spatial plan supervision, in terms of monitoring both existing and new permits for alignment with the spatial plan, is very dependent on provincial government political will and capacity, and may not take place at all. It remains to be seen if it becomes more effective under the new institutional arrangements.

The public has the right to information on spatial planning, and to participate in all aspects of spatial planning, including monitoring implementation.¹⁷ Article 199 of PP15/2010 states that the public can also monitor, and so that this is effective, the government should prepare a mechanism for the public to convey their findings. Public participation is further detailed via Government Regulation 68 of 2010 on Form and Procedures of Community Role in Spatial Planning (PP68/2010). This covers the right to give input into zonation, permitting, and sanctions; to conduct monitoring of spatial plan implementation; and to submit reports to government. The government must give a response to these inputs, provide information on supervision to enable community participation, and provide a mechanism to facilitate the

¹⁷ On public participation in spatial planning, see articles 60 and 65 in the Spatial Planning Law, article 2-2 in Government Regulation 45 of 2017 on Public Participation in Regional Governance, and article 6-2 in ATR/BPN Regulation 9/2017, the Guide for Monitoring and Evaluation of Spatial Planning.

submission of reports of public monitoring (article 18d). However, it appears that public participation in spatial plan supervision and monitoring is currently very weak, due to:

- lack of well-organized and transparent permit data
- inactive BKPRD/TKPRD, low budgets and capacity for monitoring, including lack of assigned civil servant investigators (PPNS)¹⁸
- entrenched interests and widespread irregularities in permit compliance

It is possible, but not certain, that new possibilities for strengthened public participation will emerge, as the reforms described in this paper proceed - in particular, transparent permit databases, responsive TKPRDs, and government-driven permit reviews.

PERMIT SYSTEMS

Processes for obtaining new land use permits, and information on existing land use permits, have not been managed well, leading to the problems described in the first section of this paper. Transactions occur behind closed doors with rumours of bribes abounding, political leaders issue permits to companies that their relatives own and then sell the companies, companies operate without having the full set of permits, permit information is not maintained by local governments or made available to the public, and supervision based on this information is thus hampered. There are two key reforms regarding permit systems which are now underway and have the potential to greatly improve this situation. One is the development of on-line permit application systems. At the national level, the Online Single Submission system (OSS) is currently being rolled out across the country. Related to this, some provinces also developed their own online permit application systems, for instance Papua Perizinan Online (PPO) in Papua and SAPA (Sistem Aplikasi Perizinan Aceh) in Aceh. The second reform is the SICANTIK system, a cloud database that stores information about existing permits. Both are described below.

Over the past few years, momentum for online permit governance has been increasing, and has culminated in the June 2018 release of Government Regulation 24 of 2018 (PP24/2018) on Integrated Electronic Business Licensing Service. The purpose is to reform business licensing, to improve public service on business licensing issuance, and make it more accountable. A key part of the regulation is the development of an 'OSS' system, which will act as a portal through which applications will be made and then verified and approved through coordination with the various government agencies which hold authority over that process. The OSS is under the authority of the Coordinating Ministry for Economic Affairs.

The OSS system is already online, and applicants can apply for licenses on it. However, some parts of the system are not yet working properly. Currently provincial permit offices (DPM-PTSP) have been trained in its use but many district governments have not. It could be considered to be in a pilot phase, although not an official one.

- Annexes to the regulation provide lists of permits which now must be processed through the OSS system. In terms of land use, it includes location permits, forestry permits, and plantation licenses.
- The OSS does not yet handle mining permits, which are currently still under the authority of the Mining and Energy Ministry and the regional Mining offices under provincial governments (in line with Law 23 of 2014 on Regional Governments).

¹⁸ Note that the responsibility for monitoring existing permits does not lie with the One Stop Integrated Permitting Office (PTSP) which manages on-line application processes, but with the sectoral agency - plantations, mining or forestry; the TKPRD also has responsibility to monitor for spatial planning infractions associated with permits. Problems can be reported to the PTSP, but they will involve sectoral agencies and TKPRD as needed in handling them.

- When an applicant submits an application through the online OSS system, a process of verification ensues, and can involve off-line processes conducted by the relevant authorities. This includes assessing whether the proposed license area is in accordance with the spatial plan. This is still referred by the DPM-PTSP to the TKPRD (see previous section), who may still check this manually (by visiting sectoral offices to check existing permits and spatial plans to ensure that the proposed area does not overlap) or may issue the recommendation without properly checking due to various gaps (in budget, data availability, capacity or will).
- In cases where there is a valid district-level ‘detailed spatial plan’ on file, the permit may be issued automatically, without requiring such verification. These ‘detailed spatial plans’ presumably provide enough detail, at a fine scale, that manual verification is no longer needed. Few of these spatial plans yet have been completed.

The second system is the ‘SICANTIK’ cloud database. This system has been pitched as a supporting system for the OSS and appears to be organized as a database for permit information, much of which is not systematically stored within OSS, which is oriented towards the permit approval process. SICANTIK stands for ‘integrated permit service application for the public’ (*aplikasi layanan perizinan terpadu untuk publik*) and aims to be efficient, transparent, accountable, and to remove face-to-face interaction and provide faster more effective public service. It is a cloud system with the database and data stored remotely on servers at the Ministry of Communication and Information in Jakarta, rather than in provincial or district databases. It is based on the policies described in Box 10. Regional PTSP offices will be able to connect to OSS via SICANTIK.

Box 10: Key policies related to changes in permit systems

- Government Regulation 24 of 2018 (PP24/2018) on Integrated Electronic Business Licensing Service. This regulation comes with a series of annexes which detail the types of permits which will be handled through OSS, covering sectors of agriculture/plantations (IUP), environment and forestry (IUPHHK-HA, IUPHHK-HTI, borrow-use permit for mining, forest release permit for plantations), but not mining. Available at https://peraturan.bkpm.go.id/jdih/userfiles/batang/PP_24_2018_OSS_dan_Lampiran_HVS.pdf. Sectoral ministries have then issued ministerial regulations adapting their permit processes to the OSS; examples are Ministry of Forestry and Environment Regulation 22 of 2018, and Ministry of Agriculture Regulation 29 of 2018.
- Minister of Home Affairs Regulation 138 of 2017 on Implementation of Regional One Stop Integrated Service (PTSP). Available at <http://ditjenpp.kemendikham.go.id/arsip/bn/2017/bn1956-2017.pdf>
- Papua Governor Regulation 14 of 2017 on Permitting services by the DPM-PTSP agency. Contains the mandate for the PPO, Papua’s online permitting system. Available at <https://bit.ly/2BKcFjs>
- Aceh Governor Regulation 32 of 2017 on Permitting services by the DPM-PTSP agency. Contains the mandate for the SAPA system. Available at <https://bit.ly/2CCq4fi>

- If regional governments have already created online permit portals, then they are able to retain them as long as they build connections to SICANTIK and OSS (this requires an additional system called Mantra to render the local systems compatible with the new national systems). Alternatively, regional governments could drop their own system and directly utilize SICANTIK and OSS. Papua province has chosen to retain their online permit system, called PPO. Aceh has chosen to drop theirs, called SAPA, and use SICANTIK and OSS directly, as officials have stated that it would be easier because the national government would provide most of the support to set this system up.
- SICANTIK implementation has not progressed very far. Coordination between the Ministry of Communication and Information (which is developing SICANTIK) and the Coordinating Ministry of Economic Affairs (which has been developing OSS) appears

to have been weak. It also appears that some implementing guidelines (NSPK) have not yet been produced. It appears that training for districts and provinces will be taking place in 2019. Currently most provincial governments seem to be confused about SICANTIK. Provinces and districts can utilize SICANTIK (and Mantra) if they write to the Ministry of Communication and Information to request support, but given the confusion this process may not be proceeding rapidly.

- While SICANTIK could be set up to act as a repository for all new permit information related to permits awarded through OSS, it is not clear yet whether or how existing permit information would be obtained and uploaded to SICANTIK, so that it can act as a comprehensive permit database for all permits currently in effect (of the types which it handles). See the next section for an update on some of the challenges surrounding existing permit data.
- SICANTIK does not have a spatial component. This means that it stores information on the type of permit, permit holder, permit area (etc.), and could include a jpeg copy of a permit area map, but this does not spatial analysis, such as overlaying permit data with other permits or spatial plans. Thus, it is not clear how SICANTIK would be integrated with spatial data systems such as the OneMap Geoportal and the GISTARU system recently launched by the Ministry of Agrarian Affairs and Spatial Planning.

The development of provincial-level online permit portals had already begun before the emergence of the OSS and SICANTIK, following President Jokowi's reforms towards one-stop public services for permitting and e-governance. Papua had developed the Papua Perizinan Online (PPO) and Aceh had SAPA (Sistem Aplikasi Perizinan Aceh). As explained above, SAPA has now been dropped, but PPO may continue to operate, and become integrated with OSS and SICANTIK.

Together, these two systems, if implemented, have strong potential to change the landscape of permit governance for the better. They can improve not just efficiency and processing times for permits, but also transparency and accountability. In the first section, seven characteristics of a strong permit governance system were given. The reforms described here could specifically address at least four of them (b, c, d, and e), on single online portal, systematic review of new permit applications, complete database of existing permits, and transparency.

However, it is not clear how quickly OSS and SICANTIK will be running smoothly at provincial and district level; when the two systems will be well integrated; how complete SICANTIK will be in terms of existing permit information; whether they will be integrated with spatial data in Geoportal/One Map and/or GISTARU; and what public access will be provided to OSS and SICANTIK or the permit maps. In the short term, there are also risks during the transition to a new system; for instance the OSS poses some processing deadlines where if local agencies fail to vet applications properly (for instance due to lack of budget or capacity), they can be automatically approved once the deadline arrives. Given the potential impact of these systems, and these current hurdles, it is well worth attempting to support accelerated implementation.

PERMIT REVIEWS

The need for complete review of land use permits in Indonesia has been known for some years but has been bureaucratically and politically very difficult to accomplish. A review of permits should cover data consolidation, a legal compliance review, and restitution and administrative, civil or criminal sanctions. Specifically permits should be reviewed to:

- a) Develop a definitive list of which permits in the mining, forestry, and plantations sectors are currently in effect.
- b) Verify that the permits were obtained legally, i.e. that various legal requirements were met, including that they are in line with the spatial plan, that they hold environmental permits, and forest release if applicable.
- c) Consolidate related data on ownership, legal requirements, results of monitoring, payment of government revenues and taxes, and ensure that transparency requirements are met.
- d) Verify that the land area used conforms to what is in the permit.
- e) Verify what revenues have been paid to government (taxes, land rent, other royalties), compared to what should have been paid (e.g. according to production data).
- f) Verify that concession holders are fulfilling their legal obligations, including fulfilling commitments to local communities and indigenous people, and handling any grievances.
- g) Based on the review, cancel permits as needed, and apply legal sanctions including criminal charges and fines, as well as financial compensation to communities as needed.

In practice, there has been some effort towards a), b) and e), mostly through efforts supported by the Corruption Eradication Commission (KPK), with only partial success. More background is given below (and see Box 11).

- In 2011 the President of Indonesia issued a two-year moratorium in primary forests and peatlands, with the intention of supporting permit governance reviews and improvements, to lay the foundation for Indonesia's REDD+ program. The moratorium was extended in 2013, 2015 and 2017. The moratorium was a step in the right direction, but critics have argued that its coverage was too narrow and has been declining through revisions of the moratorium map; monitoring of its implementation has been weak; and the governance reforms have not progressed or have been overly slow (see <http://www.mongabay.co.id/2017/07/24/akhirnya-perpanjangan-inpres-moratorium-izin-hutan-keluar/>, Mudyarso et.al. 2011, and Austin et.al. 2014).
- Some political leaders have issued local moratoria on issuance of permits. For instance, the Aceh Governor issued a moratorium on the issuing of mining permits in 2014, and oil palm plantation permits in 2016. These were extended most recently in 2017 (via Governor Instructions 4 and 5 of 2017) for six months. Around the time when a further extension would have been needed (mid-2018), the Governor was arrested for corruption, so they are both no longer valid.
- All of these moratoria also mandated reviews of existing permits, but the reviews have been only partially effective. Permit reviews for mining and plantations were piloted by the UKP4 in Central Kalimantan but stalled due to difficulties in obtaining permit data from district and provincial sectoral agencies. The precise extent to which agencies were unable or unwilling to provide the data was not made clear, but both were relevant factors. The momentum behind permit reviews increased due to the intervention of the KPK (Corruption Eradication Commission), which supported a multi-stakeholder effort entitled the National Movement for Saving Indonesia's Natural Resources (or GNP-SDA, see <https://acch.kpk.go.id/id/gn-sda>). This has played out over the past nine years, with the most recent multi-stakeholder progress evaluation taking place in October 2018 (see <https://acch.kpk.go.id/id/evaluasi-gnp-sda-2018>). Through KPK's intense and sustained focus on the need for reviews of existing permits, and their ability to galvanize action by national ministries and local governments, there has been progress: hundreds of mining permits have been

cancelled, and significant lost government revenues have been recovered. The GNP-SDA has now turned its attention to the oil palm sector, where a permit review has never been done systematically but is much needed, to reduce deforestation and other environmental damage, recover lost government revenues, and resolve grievances with local communities.

- In March 2018 the KPK brought the GNP-SDA to Papua Province and developed 'Action Plans' to reform governance in the forestry and oil palm plantation sectors, together with local government stakeholders. For the oil palm sector, the Action Plan covers data consolidation concession, a permit compliance review, accelerated implementation of the One Map policy for the oil palm sector, optimization of government revenue from oil palm, and collection of data on oil palm-related land conflicts. The forestry Action Plan is similarly thorough and ambitious and includes mapping community lands and strengthening *adat* communities on sustainable forest management. However, the Action Plans were not detailed, and following the declaration, there has been little evidence of progress on the ground. The KPK has recently been meeting the provincial government to review progress, but it remains to be seen whether this initiative will be implemented.
- In September 2018 a Presidential Instruction 8 was issued, on *Postponement and Evaluation of Oil Palm Plantation Permits and Oil Palm Plantation Productivity Improvement* (Inpres 8/2018). This Instruction mandates a comprehensive review of the governance of the oil palm sector, with involvement of all key ministries along with provincial and district governments. Based on the findings of the review, there will be permit cancellations, compensation payments, legal consequences, and other follow-up. This Instruction is comprehensive and much needed, and if implemented, could lead to improved oil palm permit governance, and resolution of various problems caused by poor permit governance. In several provinces (including West Kalimantan, Riau and North Sumatra), the Governor has formed task forces to initiate implementation of the Instruction, but in Aceh, Central Kalimantan and Papua, implementation does not appear to have begun.
- Many discussions about the need for permit reviews mention the widespread land conflicts between communities and companies as one sign of poor governance which needs to be addressed, particularly as it affects community access to land and food security, as well as signaling human rights transgressions in the form of land grabbing. The notion of Free, Prior and Informed Consent (FPIC) has been gaining ground in Indonesia over the past decade, particularly since it is a requirement of the RSPO for new plantations, but overall it remains poorly understood by companies, governments, and communities, and there are few examples of it having been implemented and maintained effectively. Much of the focus in discussing land conflicts is on resolving them, rather than preventing new ones through mandatory implementation of FPIC for land-based enterprises. Aside from requiring FPIC and stipulating how it should be carried out in specific contexts in Indonesia (e.g. Papua), a review of FPIC could also be a part of any broader permit review, in order to identify and evaluate the social processes and negotiations which led to the land acquisition, and ongoing operations.

Box 11: Key policies related to permit reviews

Presidential Instruction 6 of 2017 on Postponement and Improvement of New Permit Issuance Governance for Primary Forest and Peatland areas. Available at http://perpustakaan.bappenas.go.id/lontar/file?file=digital/170715-%5B_Konten_%5D-Inpres%20No%206%20Tahun%202017.pdf

Aceh Governor Instruction 10 of 2016, on Moratorium on Principle Permits for Domestic and Foreign Investment in the Oil Palm Plantation Sector.

Aceh Governor Instruction 4 of 2017, on Extension of Moratorium on Principle Permits for Domestic and Foreign Investment in the Oil Palm Plantation Sector.

Aceh Governor Instruction 11 of 2014, on Moratorium on Mineral and Coal Mining Permits

Aceh Governor Instruction 9 of 2016, on Moratorium on Mineral and Coal Mining Permits

Aceh Governor Instruction 5 of 2017, on Extension of Moratorium on Mineral and Coal Mining Permits

Energy and Mining Ministerial Regulation 43 of 2015 on Procedures for Evaluation of Mining Permit Issuance.

Presidential Instruction 8 of 2018 on Postponement and Evaluation of Oil Palm Plantation Permits and Oil Palm Plantation Productivity Improvement (Inpres 8/2018). This Instruction aims at improving oil palm permit governance and legal certainty, protecting the environment and reducing greenhouse gas emissions, and improving support for and productivity of oil palm smallholders. It provides detailed instructions to:

- Halt new permits, and review plantation IUPs, HGUs, and location permits, and forest release
- Guide actions by the Coordinating Ministry for Economic Affairs, the Forestry and Environment Ministry, the Agriculture Ministry, the Agrarian Affairs and Spatial Planning Ministry (which includes the National Land Agency, the Ministry of Home Affairs, the Investment Coordination Board, Governors and Bupatis
- Support the One Map Policy by synchronizing and verifying permit spatial data
- Cancel permits and return land to the forest zone if released non-procedurally, and legal redress and/or compensation for Forest Zone areas used illegally for oil palm plantations
- Review the protection of High Conservation Value areas
- Verify the requirement to allocate 20% of permit area for smallholders, and accelerate realization of this requirement
- Collect data on oil palm smallholders, and supporting them to improve productivity
- Support certification under Indonesian Sustainable Palm Oil (ISPO) standards for all plantations
- Report progress to the President every six months with completion within three years

IMPLICATIONS FOR USAID AND OTHER DONORS

This section draws out implications from the above analysis for donors providing assistance on land use licensing governance (including for USAID LESTARI's final year). The first section describes the general conclusions for improving permit systems; the second draws out implications in each province where LESTARI operates; and the third discusses the extent to which LESTARI's Activity Monitoring and Evaluation Plan (AMEP) is aligned with these developments.

AREAS OF OVERALL FOCUS

Given the above account of reforms underway, support for improved permit systems conforms to several principles:

- Pivot from a focus on district level permitting systems to provincial level permitting systems, because of the shift in government authority under Law 23 of 2014.
- Do not support new innovations that are likely to be superseded in short order by the reforms described above.
- Seek opportunities to accelerate the implementation of the reforms described above given that many may roll out slowly or require additional training or oversight.
- Fashion support to each particular provincial context, since progress on these reforms, and political will for them, varies significantly.

- Make contributions to local stakeholder capacity, including both government (in order to be able to implement the reforms) and non-government (in order to be able to enhance public participation).
- Where possible, address the accountability gap by strengthening existing government oversight mechanisms, improving transparency of permit information, and improving civil society capacity to monitor permit governance and impacts on forests.

Given these principles, indicative activities which could be undertaken, assuming there is support from local stakeholders, include:

- Offer support to spatial data management for permit information, while ensuring that a multi-stakeholder approach will be taken, and information will be available to the public in accordance with existing regulations and precedents (e.g. related to information grievance decisions). This could take the form of supporting provincial implementation of the One Map initiative.
- Identify where implementation of OSS and SICANTIK down to district level may be slow or partial, and support socialization and training on the new systems and training of both government and non-government actors, including through facilitating visits by officials from the Ministries driving the reform, and facilitating multi-agency coordination to implement the reforms.
- Identify weakness in spatial plan monitoring, especially where spatial planning authorities are being transitioned from one agency to another, and offer capacity support, focused on supporting key monitoring functions (e.g. verification that new permits are in line with the current spatial plan and not overlapping existing licenses, and monitoring of existing licenses).
- Support the development and effective implementation of citizen reporting mechanisms related to permit infractions and forest degradation in the field. Also, support capacity of local NGOs, CSOs, journalists, and adat groups to be able to submit such reports. They could be facilitated to report infractions to the TKPRD, the PTSP office, sectoral agencies (such as Plantations), general mechanisms (e.g. the national government's LAPOR portal) or through media.
- Where provincial and/or district governments demonstrate political will to implement a permit review - either following Presidential Instruction 8/2018 on oil palm, or more generally across sectors in accordance with KPK recommendations - offer significant resources to support the review, under the conditions that CSOs will be involved and results will be transparent.

LAND USE LICENSING APPROACH IN PAPUA, ACEH, AND CENTRAL KALIMANTAN

Papua

- Although SIMTARU has already been handed over to the Papuan government (Bappeda), it is often off-line and is not yet updated with recent permit data. Since KPK has recognized the importance of SIMTARU and SST, coordinate with KPK and Bappeda to strategize how to achieve updating of SIMTARU data, stable on-line capacity, and transparency of the layers of permit data. This will also require engagement with the Papuan Information Commission and NGOs that are currently engaged in information grievances against the provincial government for not releasing permit information.
- Continue to support SST as a mechanism for preventing overlapping licenses in the future, and also ensure that SST can be used to review existing licenses. This means

building relationships with CSOs who are interested in doing so and gauging political will to implement the Presidential Instruction on Oil Palm Permits.

- Support Bappeda, in collaboration with the TKPRD, to develop a grievance portal attached to SIMTARU, and to also strengthen existing spatial plan monitoring practices. If spatial planning authority shifts to the Public Works Agency, offer to support Public Works and the TKPRD on multi-stakeholder engagement to improve permit transparency and spatial plan monitoring.
- Contribute to improved capacity of CSOs for permit monitoring and forest monitoring, including engagement with adat leaders, church networks, local leaders (*kepala distrik*), and the *Majelis Rakyat Papua* (the MRP is Papua's second representative body, for special autonomy matters).
- Support SIMTARU, SST, OSS, and SICANTIK to be used in LESTARI districts, especially Boven Digoel. Connect SIMTARU Mimika to SIMTARU Papua in order that the SST system can also be used. Give special consideration to developing off-line capacities for these e-systems, given the paucity of internet access in Papua.
- Utilize the momentum of recent exposés to support a comprehensive permit review in Boven Digoel, and the development of district level regulations to strengthen permit governance, focusing on social safeguards and FPIC as that is a key concern of the district government at the moment (conflict prevention), and involving the provincial government in order to engage for uptake of this initiative.

Aceh

Currently a number of shifts are underway in Aceh, including:

- OSS and SICANTIK are being instituted in Aceh, with OSS ahead of SICANTIK, and neither yet well introduced at district level.
- The previous unit responsible for spatial data management - PDGA at Bappeda - now has an uncertain future, as it may be disbanded or moved to the Information Agency.
- The Onemap initiative is also underway, but the agency responsible for Aceh's geoportal has not yet been clearly designated.
- Spatial Planning responsibilities have recently been shifted to the Public Works Agency (now called Public Works and Spatial Planning), but it is still in a transition phase developing internal capacity.

Given these developments, it is premature to devote significant effort to developing SST. SST, in order to function effectively, would need a hosting institution, a primary user (e.g. Public Works and Spatial Planning Agency - PUPR - who must verify new permit applications are in line with the spatial plan), and a living database to connect to. All of these things are currently in flux in Aceh. In the coming months if Aceh's spatial database is officially established (the geoportal), then SST could be offered to PUPR, to be housed at the Information Agency, and built into the new procedures surrounding OSS. It is also possible that with these national-level reforms, an SST-like tool may be created at national level.¹⁹

In the meantime, the focus should be on initiatives such as:

- Accelerate public engagement and implementation of the reforms underway and enhance public participation in spatial planning monitoring. One way to start would be through public multi-stakeholder discussions (if key provincial agencies are interested in participating) to galvanize public interest, share progress, identify

¹⁹ For instance, the Ministry of Agrarian Affairs and Spatial Planning (ATR) has a new 'GISTARU' database system, which could potentially be connected to the geoportals from sectoral ministries and provincial governments which are being set up under the One Map Initiative. This would enable ATR to build an SST-like function into GISTARU, linked to permit application procedures through the OSS. In other words, before a permit is issued through the OSS, the ATR Ministry could check its spatial suitability against spatial plans and existing permits.

hurdles, and agree on steps to accelerate and strengthen the process, including oversight.

- Support PUPR on spatial data capacity and a grievance portal for public participation.
- Accelerate OSS and SICANTIK training at district level and follow through to support active use of these systems.
- Support implementation of the new provincial regulation on the SIAT system, part of Governor Irwandi's platform, which will support integrated data management and use by the provincial government, along with public access to information. SIAT implementation should be supported if it directly improves spatial data management and transparency.
- Support provincial government and key districts to implement Inpres 8/2018 if there is political will.
- Support civil society forest monitoring and permit monitoring capacity.

Central Kalimantan

The current Governor has so far displayed little enthusiasm for land governance reforms, instead focusing on re-classifying land area as non-forest in order to legalize existing land use and enable further development. Currently the non-forest area is 21% of the total area, but the mid-term regional development plan has set a target of 45% (see Political Economy Assessment, USAID LESTARI 2017). Millions of hectares of oil palm are said to be within the forest zone currently, which means the plantations are illegal, while the provincial government is pushing to have this land recognized as non-forest zone. In the current political context, it is unlikely that land use licensing governance reforms will proceed rapidly in Central Kalimantan. In this context, LESTARI has oriented Year 4 work around accelerating implementation of Forest Management Units, social forestry initiatives and fire prevention. In terms of land use licensing, it is important to:

- Avoid being overly ambitious.
- Build capacity on spatial data management if possible (among government and CSOs).
- Work through FMUs, for instance by improving their capacity to carry out their monitoring mandates (which include monitoring licensed private sector activities within their areas).
- Build capacity on community-based monitoring of forests within social forestry initiatives.

IMPLICATIONS FOR LESTARI'S AMEP

LESTARI's AMEP was developed early on in the program, based on the Scope of Work, written at the time when much authority for permits was devolved to the district level. As a result, the AMEP included Indicator 5 on *Number of sub-national governments with improved licensing and permitting mechanisms*, with a target of eight sub national governments, and an ambitious definition of what 'improved' would entail. As described above, the context for permit systems has changed in Indonesia, in two key ways. First, Law 23 of 2014 re-centralized authority over a number of natural-resources related licensing from the district level to the provincial level. Second, reforms aimed at improving licensing governance driven by the national government are being implemented primarily at provincial level.

For these reasons, LESTARI's work on improving licensing systems and practices is mostly focused at provincial level, and primarily in Papua and Aceh, in accordance with the recommendations above (also see the LESTARI Year 4 Work Plan). The focus of this work is to improve licensing systems as they impact upon LESTARI districts, but this may be done by focusing on provincial licensing systems rather than district licensing systems. The target

of eight sub national governments was agreed upon with district governments in mind. If licensing systems in Papua and Aceh are improved at province level, this will impact upon the four LESTARI districts in Aceh and the six in Papua, meaning that a total of twelve sub national governments have been affected (ten districts and two provinces). However, it is possible that AMEP indicator 4 (*Number of sub-national public policies implemented*) will fail to adequately capture LESTARI's progress if aimed primarily at provincial level. LESTARI remains focused on how to achieve the greatest impact on improved licensing systems, in accordance with changing circumstances and opportunities.

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