



The Forest and its Biodiversity: Assessing challenges and prospects in the implementation of biodiversity laws in Indonesia

**Laely Nurhidayah
Indonesian Institute of Sciences
APCEL Visiting Fellowship Seminar
NUS Law
12 October 2018**

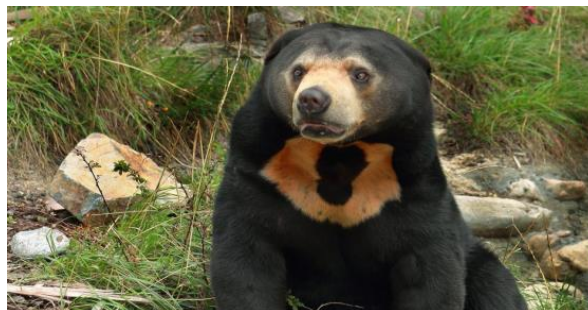


OUTLINE

- Introduction
- International Framework
- Indonesian legal/institutional Framework
- Opportunity
- Challenges
- Way Forward
- Conclusion

INTRODUCTION

- Indonesia rainforest is a home of rare and mega fauna and highest biological diversity.
- Indonesia has 54 national parks covering 16.232.132,17 million ha from 120 million ha forest areas.
- 552 terrestrial protected areas (27,140,384.54 ha) and 76 marine protected areas (13,529,197.66 ha).
- 54 National Parks, 214 Nature Reserves, 79 Game Reserves, 11 Hunting Parks, 54 Grand Forest Parks, and 131 Nature Tourism Parks.
- 1,500 species of algae, 80,000 fungal species, 595 species of lichens, 2,197 fern species, and 30,000 – 40,000 of spermatophyte species, accounting for 15.5% to the world flora
- 8,157 fauna species of mammal, bird, reptile, fish and 1,900 butterfly species accounting for the 10% species on the earth

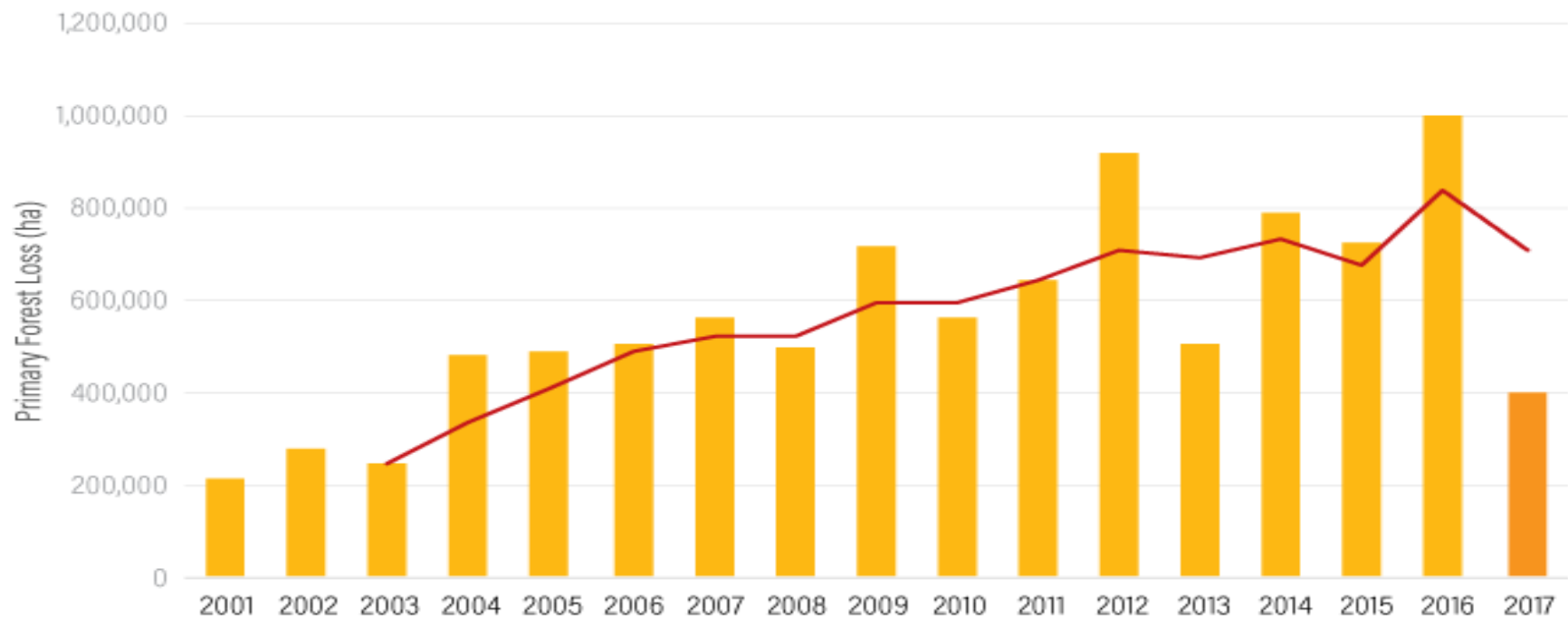


- Threat from environmental crimes include: deforestation (conversion of forest into oil palm plantation and timber concession), illegal logging, illegal mining, national park encroachment, poaching, illegal wildlife trade, and forest fires.
- Indonesia lost more than 28 million hectares of forest between 1995 to 2005.
- Indonesia's deforestation dropped 60% in 2017
- Between 1990-2010 oil palm plantation area has been increased from 3.5 to 12.9 million hectares
- 48,8 million or 22 percent of 219,9 million people living in around forest areas.
- Wildlife Crimes rank No 3 after drug and human trafficking with transaction values 13 Billion Rupiah



Deforestation

Indonesia Primary Forest Loss

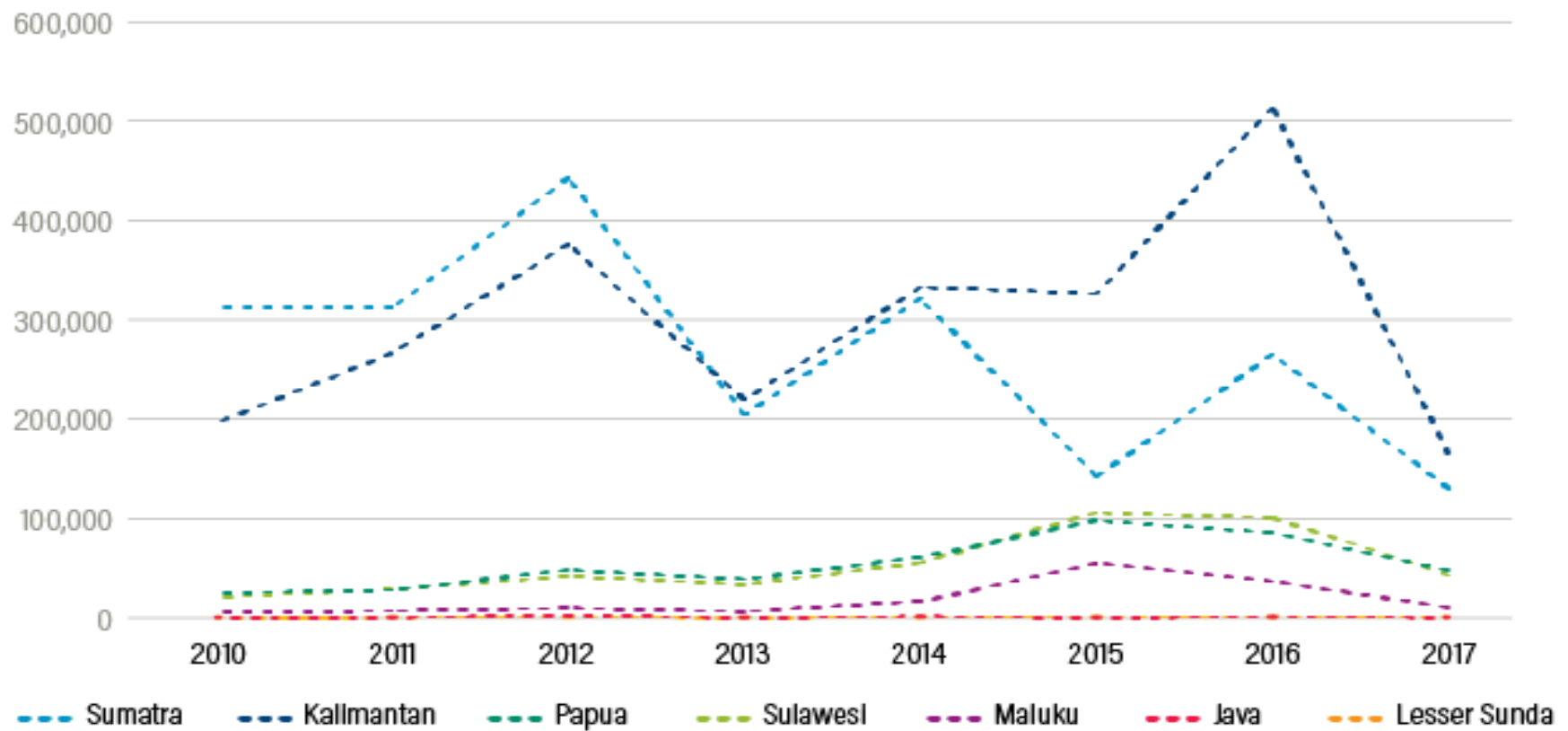


— Three-year moving average. The three-year moving average may represent a more accurate picture of the data trends to uncertainty in year-to-year comparisons. All figures calculated with a 30% minimum tree cover canopy density.



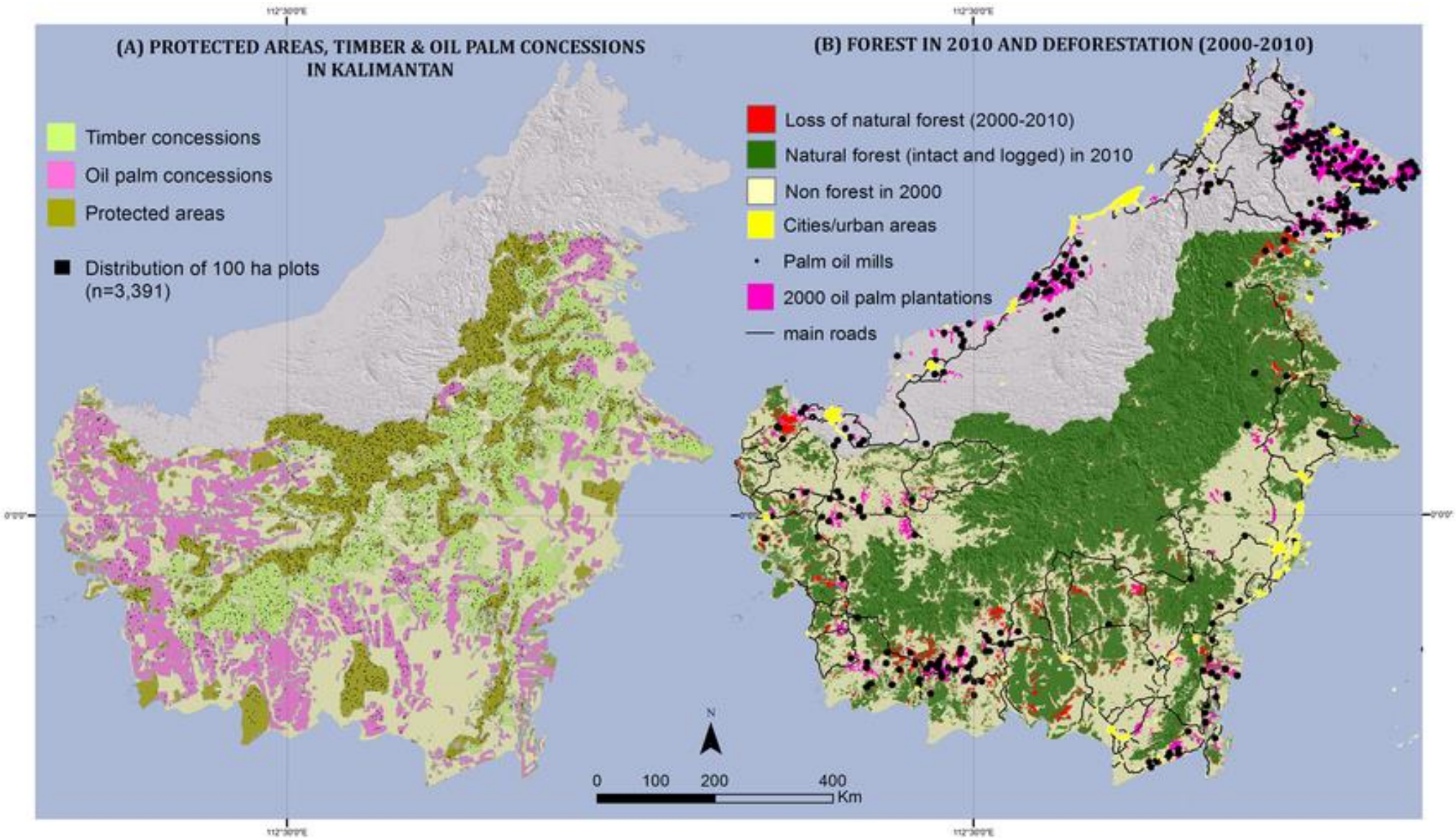
WORLD RESOURCES INSTITUTE

Indonesia primary forest loss by island



Source: WRI Indonesia.

Deforestation Kalimantan



International Framework

- Convention on Biological Diversity 1992
 - Aims: conservation through *in situ* and *ex situ* and sustainable use of biological diversity and benefit sharing of utilization of genetic resources
 - Biological Diversity means “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems” (art 2)
 - Obligations: Article 6 (a) Develop national strategies, plan or programmes for the conservation and sustainable use biological diversity.
 - In situ conservation article 8 (a): Establish a system of protected areas. Article 8 (j) Subject to national legislation respect, preserve and maintain knowledge, innovations, practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity
- CITES (Convention on International Trade in Endangered Species)
- States are and should be the best protectors of their own wild flora and fauna
- Principles: Appendix I (all species threatened with extinction), II (not necessarily threatened), III (subject to regulations)
- **RAMSAR Convention 1971 (conservation and sustainable use of wetland)**

National Legal Framework

- **Law No 5/1990 on Conservation on Living Resources and Their Ecosystem.**
- Aims: maintain ecological processes which support continued existence of living organism.
- Article 8 government decide certain areas as protected areas
- Article 20 plants and animals are classified into protected and unprotected.
- Article 21 prohibitions: (1) Any persons are prohibited to take, cut, keep, destroy, care, transport, trade in protected plants or part of it in live or dead conditions
- (2) Any persons are prohibited to catch, injured, kill, keep posses, care of, transport and trade in protected wildlife.
- Sanction: Criminal punishment
- Whoever violate the article 21 (1) (2) shall be liable to 5 years imprisonment and a fine max 100.000.000 million rupiah.
- Critique(s): centralization in approach, it does not cover protection of genetic resources and traditional knowledge on genetic resources under The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, not fully effective in the implementation as too little sanctions applied.

Government Regulation No 7/1999 on Preserving Flora and Fauna

- Article 5 any species of flora and fauna that are endemic to the country, have a small population or its population decline significantly are required to be included in the protected class.
- List of flora and fauna protected
- There are 294 protected flora and fauna in 1999 and 921 this year.

Directorate General KSDAE Decision No 180/2015

- 25 Wild priority of endangered species
- Sumatran tiger
- Sumatran elephant
- Javan Rhinoceros
- Banteng
- Owa
- Orang utan
- Bekantan/proboscis monkey
- Komodo dragon
- Jalak Bali
- Maleo
- Babi Rusa
- Anoa
- Eagle
- Parrot
- Macan Tutul Jawa
- Rusa Bawean
- Cendrawasih
- Surili
- Tarsius
- Julang Sumba
- Nuri Kepala Hitam
- Penyu/turtle
- Kangguru pohon
- Celpuk Rinjani

Law No 41/1999 on Forestry Law

- Aims: Conservation of forest and maximum prosperity of the people
- Important provisions:
 - All forest are controlled and managed by the state
 - Article 1 (6) customary forests are *state forests* located in the areas of custom-based communities.
 - The Constitutional Court Decision Case No 35/PUU-X/2012 on customary forest. The Constitutional Court's ruling deletes the word "state" from that sentence.
 - There is mechanism through Perda (local regulation) to be recognized as Adat community
 - There are *9 adat forest* has been recognized by government. 2 adat forest are inside national parks.
 - Forest has three functions: conservation, protection and production.
 - Management of forest: national, provincial, district/town, management unit level (KPH)
 - Forest area extent which shall be maintained shall be at least 30% (thirty percent) of river shed and or island area
- Change of forest designation and function shall be stipulated by the Government based on integrated research findings.
- Forest area utilization can be made to all forest areas except natural conservation forest as well as core zone and forest zone in national park.
- Protected forest can be utilize for environmental services and collection of non-timber forest products

- **Prohibition Article 50:**

- (1) No one shall damage forest protection infrastructure and facilities.
- (2) No holder of area utilization operation permit, environmental service utilization operation permit, timber forest produce utilization operation permit, non-timber forest produce utilization operation permit, timber forest produce collection permit, and non-timber forest produce collection permit shall commit anything resulting in damage to forest
- (3) No one shall:
 - a. exploit and or use and or occupy forest area illegally;
 - b. encroach forest area.
 - d. burn forest
- mobilize heavy and or other equipment commonly or reasonably alleged to use to transport forest produce in forest area without any consent of competent authorities

- **Sanctions**

- Anyone whomsoever intentionally violating Article 50 (1) or Article 50 paragraph (2) shall be subjected to imprisonment of maximum 10 (ten) years and penalty of maximum Rp 5,000,000,000.00 (five billion rupiah);
- Anyone whomsoever intentionally violating Article 50 paragraph (3) item d shall be subjected to imprisonment of maximum 15 (fifteen) years and penalty of maximum Rp5,000,000,000.00 (five billion rupiah);
- **Critiques:** creating land/forest conflict with indigenous local community. *Adat* forest.
- It does not cover corporate crimes.

Government Regulation in Lieu of Law No 1/2004 on changes of Law No 41/1999

- Allow 13 existing mining concessions inside forest until their permit expired.
- Obligations: pay compensation for cutting down the trees, reforestation fee, reclamation fee, land swap, working plan

Spatial Planning Law No 26/2007

- Article 29 30 % of green spaces
- National, provincial, municipal/city spatial planning.
- In practice *Forest Map Governance Agreement* is not coherence with provincial and municipal spatial planning.

Law No 32/2009 on Environmental Protection and Management

- Aims: control pollution, sustainable development, conservation of ecosystem.
- Article 5 ecoregion
- Article 14 Strategic Environmental Assessment (KLHS) and Environmental Impact Assessment (EIA/AMDAL).
- Article 69 prohibition. (h) opening the land with fire.
- Sanction: Article 108 anybody committing land burning shall be subject to 3 years minimum and 10 years max. and fine 3 billion rupiah min and 10 billion max.

Law No 23/2014 on Local Government

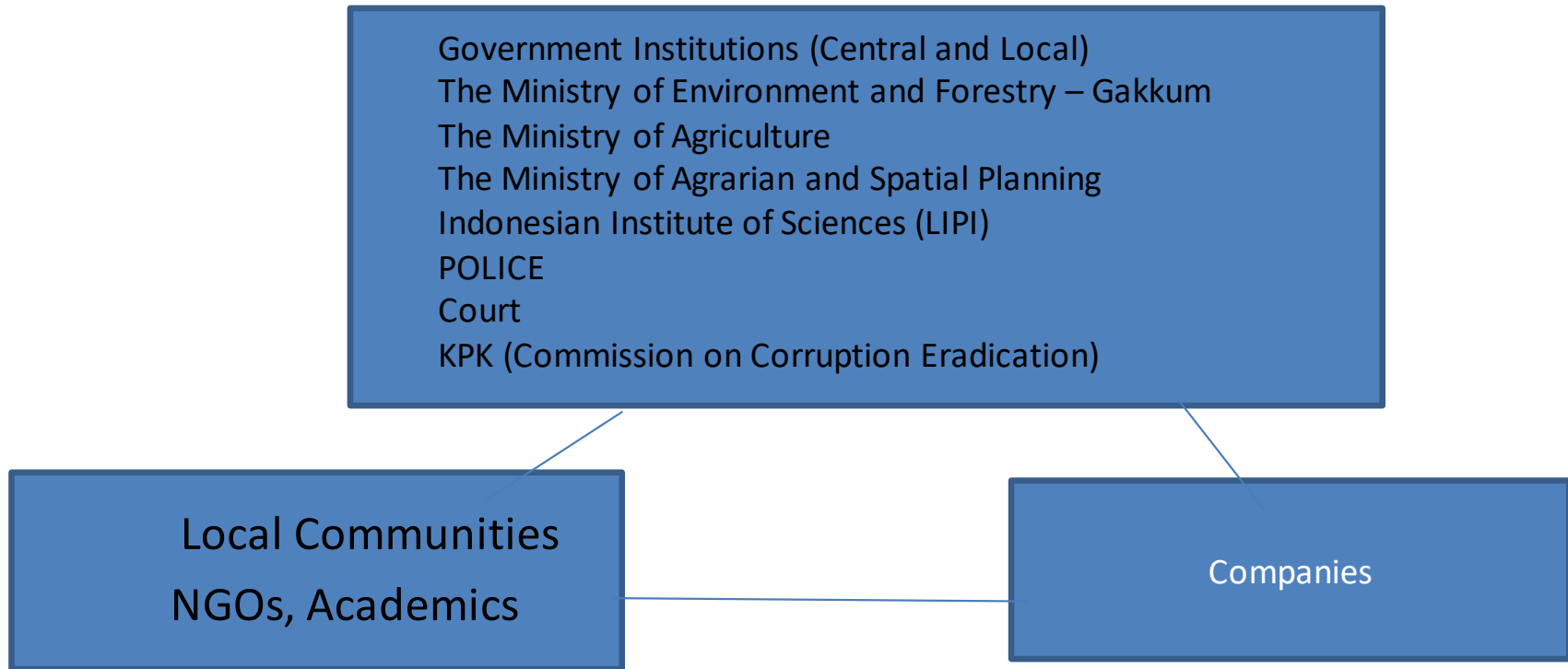
- Aims: Sharing powers and authority between central and local
- Article 14, In the Implementation of Government Affairs in forestry, marine, and energy and mineral resources sectors are shared between the Central Government and the provincial government.
- Government Affairs forestry sector relating to the management of forest park (*tahura*) is under district/municipal level.

POLICY

Moratorium with REDD+ Initiative

- Presidential instruction No 10/2011 regarding Suspension of Granting of New Licenses and Improvement of Governance of Natural of Primary Forest and Peatland
- Presidential Instruction No 6/2013 and Presidential Instruction No 8/2015 Suspension of Granting of New Licenses and Improvement of Governance of Natural of Primary Forest and Peatland.
- Presidential instruction No 6/2017 on New License Moratorium and Improvements to Management of Primary/Natural Forest and Peatlands. With exception of license before Presidential instruction No 10/2011, national vital developments (electricity, oil and gas , food security (rice, corn etc)).

Institutional Framework

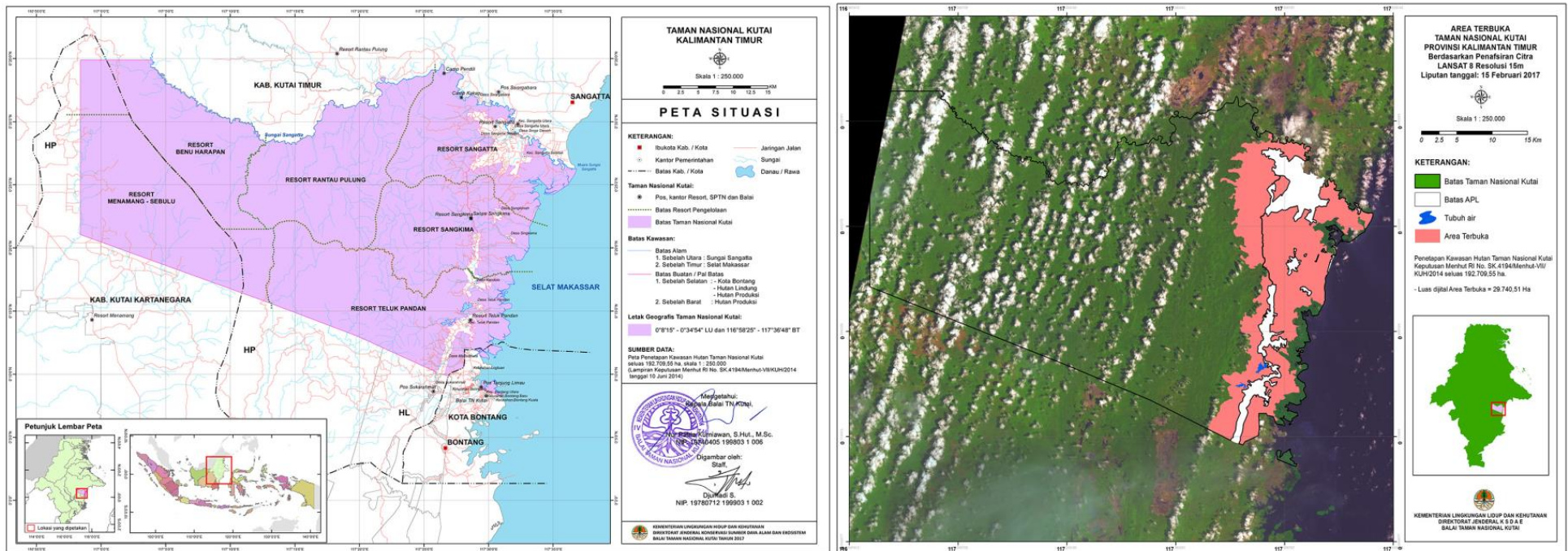


LAW ENFORCEMENT in Wildlife crimes

- Lack of deterrent effects
- Shooting orangutan in East Kalimantan the court rule 7 months imprisonment
- Trading of illegal elephant tusk in Aceh punished by 10 months imprisonment
- Sea turtle trading in Padang judges are hesitant to imprison them due to humanitarian reasons.

CASE STUDY

- Kutai National Park (Previously 2.000.000 hectares during Dutch colony. Now 192,709 ha.) BTN national park authority does not have any authority for law enforcement.



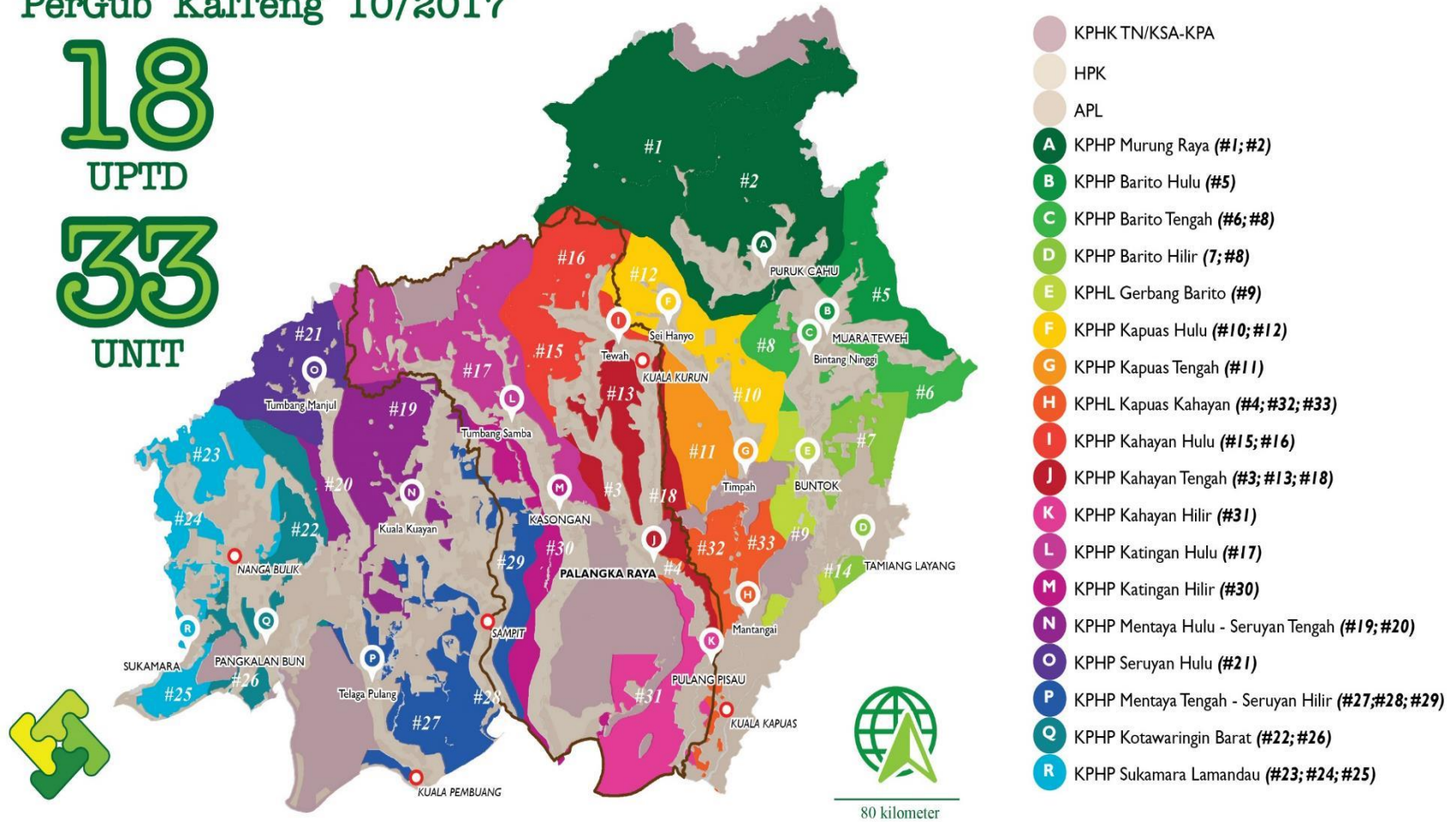
Opportunities

- Forest Management Unit (KPH).
- Peatland Restoration
- One Map Policy
- Moratorium
- Revision of Law No 5/1990
- Social Forestry

KPH is a landscape platform which allows conservation, rehabilitation, economic and socio cultural activities which address both ecological problems as well as socio economic and tenurial conflicts.

PerGub Kalteng 10/2017

18
UPTD
33
UNIT



Sumber : Peraturan Gubernur Kalimantan Tengah Nomor 10 Tahun 2017 tentang Pembentukan, Susunan, Organisasi, Tugas, Fungsi dan Tata Kerja Unit Pelaksana Teknis Kesatuan Pengelolaan Hutan pada Dinas Kehutanan Provinsi Kalimantan Tengah

Peatland Restoration



- Presidential Regulation No 1/2016 on Peatland Restoration Agency (BRG)
- BRG mandated to plan and implement the peat ecosystem restoration for a period of 5 (five) years of approximately 2,000,000 (two millions) hectares of degraded peatland.
- 7 Priority provinces (Riau, Jambi, South Sumatra, West Kalimantan, Central Kalimantan, South Kalimantan and Papua)
- 3 R (Rewetting (Canal blocking, backfilling, deep wells), Revegetation (endemic plants), Revitalization of livelihood.)
- Community based peatland restoration (1000 villages until 2020)
- The influence of oil palm industries on regulation is shown by the Supreme Court's decision that revoked the Ministry of Environment and Forestry No 17/2017 on Industrial Forest Plantation. This suit was brought by labour unions, which argued that local livelihood would be harmed by this regulation. This regulation has ordered the companies to protect carbon-rich peatland by retiring plantation in 30 percent of their deep peatland areas.



Peatland Hydrological Unit (PHU) in 7 Provinces (22.7 million ha)

Non Peat
(6.7 mio ha)

Peatland
(15.9 mio ha)

Cultivation Land
(12.9 mio ha)

Unidentified/
water body
(0.74 mio ha)

Protected Areas
(2.2 mio ha)

Rehabilitation
(0.74 mio ha)

Properly-
managed
(3.3 mio
ha)

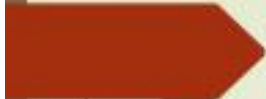
Restoration
Priority
(2.4 mio ha)

Moratorium
(6.4 mio ha)

Rehabilitation
(0.25 mio ha)

Restoration
Priority
(0.41 mio
ha)

Properly-
managed
(1.6 mio ha)



One Map Policy

ONE MAP POLICY

- A policy framework to establish one single integrated map solution for overlapping land use claims.
- One map policy consist of one reference, one standard, one geo database and one geoportal with the scale accuracy 1:50.000
- 2010: SBY through UKP4 (Presidential Working Unit for the Supervision and Management of Development) Presidential Office KSP currently initiate one map policy in order to reduce deforestation.
- Under Jokowi administration one map policy aims include: clarify administrative boundaries, resolve land use conflicts, improve conservation and disaster management, create better planning for economic development.

PROCESS

TIME
LINE



Revision of Law No 5/1990

- Protection of traditional knowledge on genetic resources
- *Adat* community conservation areas
- Stricter law enforcement
- It has been stopped by the government

Social Forestry



- The management and protection of forest and afforestation of barren and deforested lands with the purpose of helping environmental, social and rural development. (income generation, food security, recovery of land).
- The policy is partly based on the determination to reduce the rate of deforestation,
- Part of agrarian reform and forest tenure reforms
- Targets the allocation of 12.7 million 2019 hectares based of social forestry indicative maps
- Realistic target 4,38 million (dispute and overlapping tenure, not clean and clear status)
- Presidential Regulation No 88/2017 on Settlement of possession of Land in forest Territory. (social forestry-agroforestry-less than 20 yrs, resettlement-protected forest, land/forest swap, enclave-more than 20 yrs)

Challenges

- Overlapping and incomprehensive laws
- lack of stricter law enforcement,
- corruption
- lack of capacity at local level
- and lack of awareness within local people

Way Forward

- Improve legal Framework
- Improve coordination among stakeholders
- Improve community participation
- Improve Law enforcement
- Role of Industry (Sustainable Forest Management)

Conclusion

- There are changing landscape of legal regime in Indonesia and have positive implications on the protection of forest and its biodiversity.
- On the other hand, there is still strong influence of industry to regulatory framework hinder the effort of conservation.
- Strengthening institutional framework and collaboration
- We need to empower community and involve them in conservation.