



LAW & REGULATION ON REDD IN INDONESIA

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Presentation Structure

1. Background
2. International Negotiation
3. Legal Research
4. Indonesian Legal System
5. REDD
6. Carbon Ownership

Background

- There is now scientific consensus that global warming is taking place and that the burning of fossil fuels has contributed to it.
- In 2007, the Ministry of Forestry launched a REDD pilot project
- The debate over International negotiation on Climate Change & REDD is largely about economic development, benefit sharing, conservation and International trade
- Law and legal institutions in Asia changed in response to economic policies

Copenhagen Accord

- COP recognized the crucial role of reducing emission from deforestation and forest degradation (REDD-plus)
- COP agreed on the need to provide positive incentives to such actions: mechanism including REDD-plus.
- COP decided to pursue various approaches: to use markets, to enhance the cost-effectiveness of, and to promote mitigation actions.
- Scaled up funding to enable and support REDD-plus, adaptation, technology development and transfer and capacity-building.

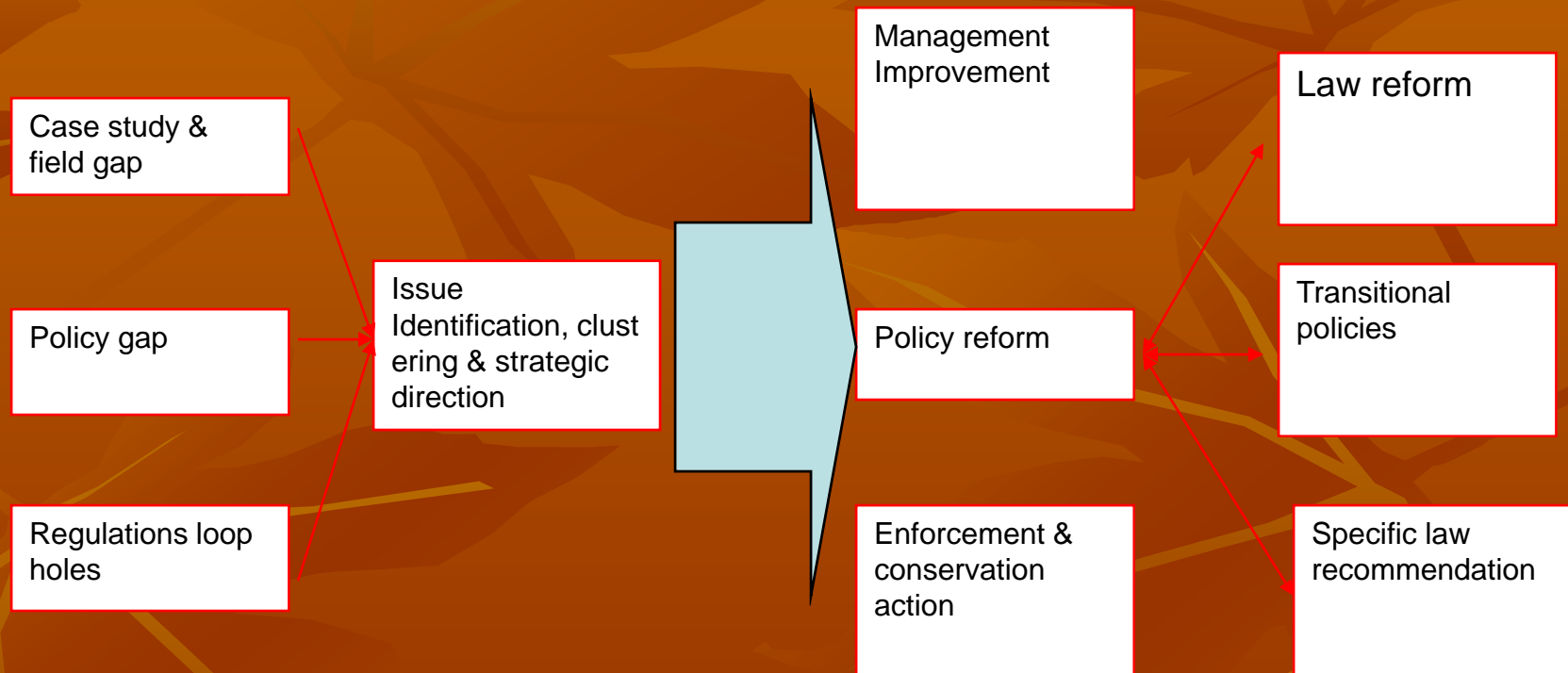
Copenhagen Result

- *Parties is encourages* to develop of forest reference emission and guidance for effective engagement of indigenous peoples and local communities in monitoring and reporting;
- At present, there are no agreed rules on REDD at the international level and the structure of a REDD mechanism is unclear

The Purpose of Study

1. to hold Gap Analysis on Law & Policy concerning REDD activities
2. to identify some of the legal issues raised by REDD activities
3. to identify the risks and benefits of the various options which are available, including making policy recommendations where possible, and
4. to describe how a demonstration project for local owned company-REDD activities might be developed.

Legal Research



Legal Issues – Key Questions

1) Land tenure and land ownership?

2) Bundle or unbundled system?

3) Carbon ownership system?

4) Investment risk & legal certainty on REDD?

5) Contract assurance on sales and purchase?

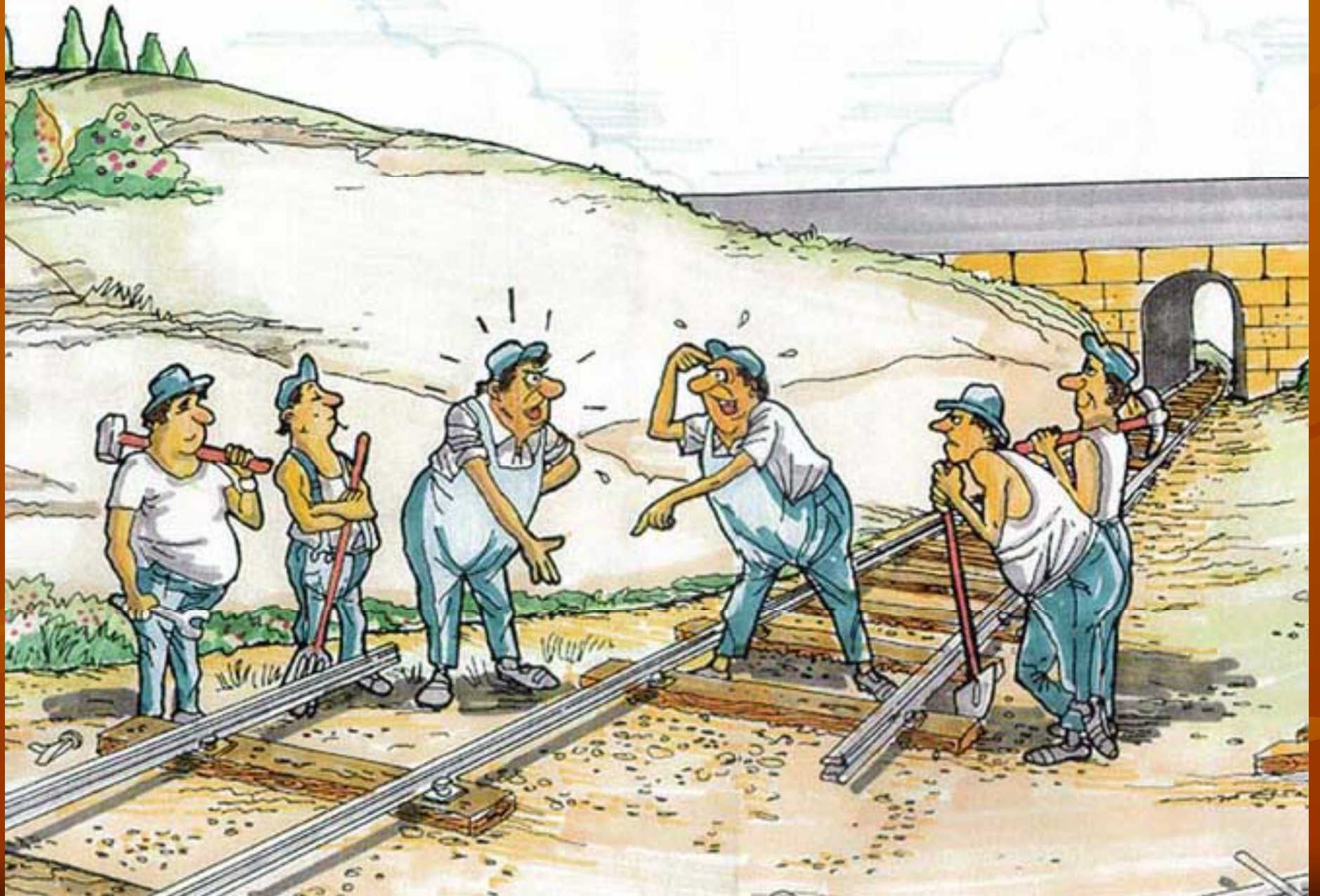
6) Equitable & fair benefit sharing mechanism?

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Role of Science

- The credibility of laws & regulations depends on the science and analysis underlying those regulations.
- Ensuring that our regulations have a sound analytical foundation reduces controversy.
- Science increases the likelihood of compliance by the regulated community
- Science is often viewed as objective, value-neutral, and concrete, and many feel that if science can support a decision it will be non-controversial and acceptable to the broadest range of stakeholders.

Team Work



Law & Regulation on Climate Change

Law & Regulation on Climate Change

Climate change law at the area of intersection between these three fields toward development that can last.

Environmental Law

(Atmosphere, Land, Water, Biodiversity)

Social & Human Right Law

(Human Rights, Social Development, Health Law)

Economic & Investment Law

(Trade, Investment, Competition, Natural Resources)

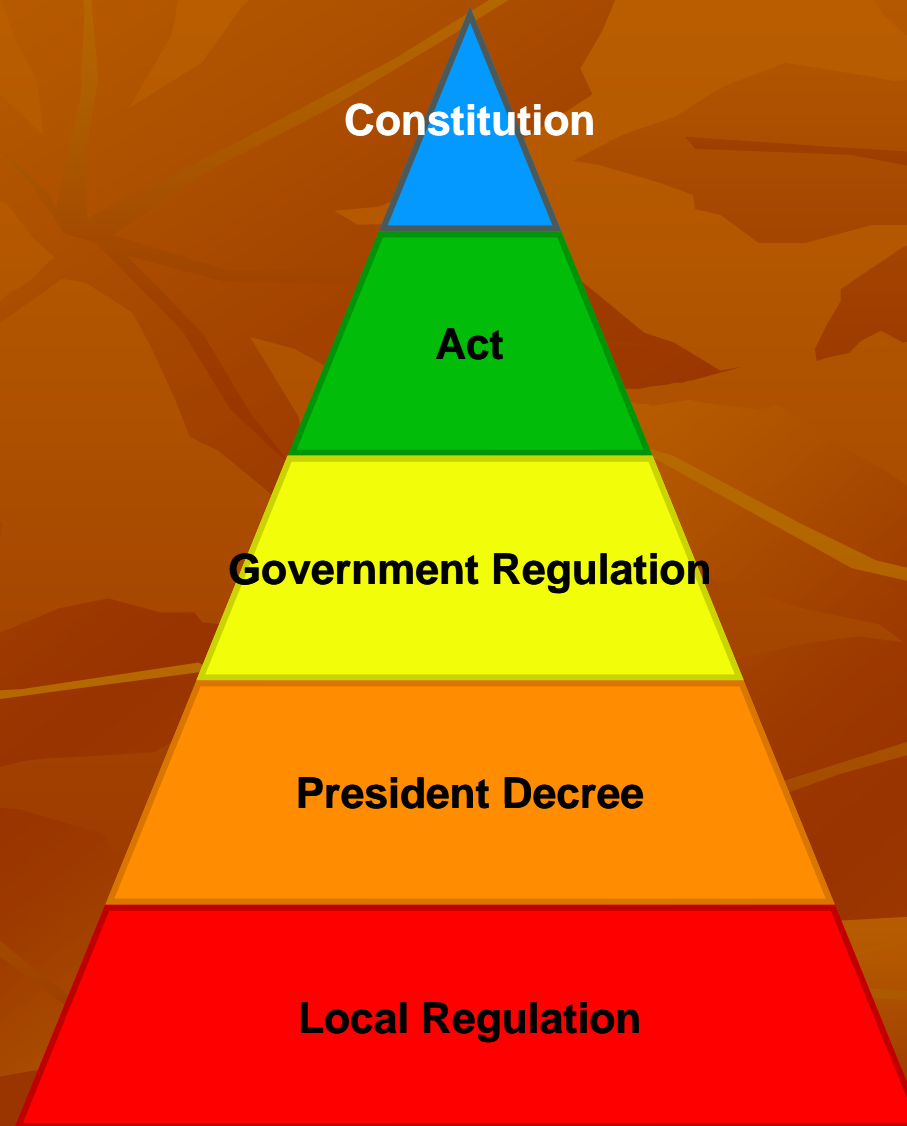
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International Law - Principle

- The duty of States to ensure sustainable use of natural resources
- The principle of equity (inter and intra-generational equity) and the eradication of poverty
- The principle of common but differentiated responsibilities
- The principle of the precautionary approach to human health, natural resources and ecosystems
- The principle of public participation, access to information and to justice
- The principle of good governance
- The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives



Indonesian Legal System



Art 7 (1) Law No. 10
of 2004

Legal Basis

Act No. 5 of 1960 on BAL
Act No. 6 of 1994 on Ratification on the UNFCCC
Act No. 20 of 1997 on Non Tax State Revenue (PNBP)
Act No. 41 of 1999 on Forestry
Act No. 34 of 2000 on Local Tax
Act No. 17 of 2003 on State Budget
Act No. 1 of 2004 on State Treasury
Act No. 17 of 2004 on Ratification on the Kyoto Protocol
Act No. 32 of 2004 on Local Government
Act No. 33 of 2004 on Financial Balance
Act No. 25 of 2007 on Investment
Act No. 26 of 2007 on Spatial Planning
Act No. 40 of 2007 on Ltd
Act No. 32 of 2009 on Protection & Environment Management



Legal Basis

- GR 23/2005 on BLU
- GR 58/2005 on Local Budget Management
- GR No. 6 of 2007 on Forest Planning (amend by GR No. 3 of 2008)
- President Decree No. 46 of 2008 on DNPI
- MOF Decree No. 30 / Menhut-II/ 2009 on The Implementation Procedures of Reducing Emission From Deforestation and Forest Degradation
- MOF Decree No. 36 / Menhut-II/2009 License Procedures of Utilization of Absorb and/or Storage Carbon in Production Forest and Protected Forest.
- MOF Decree No. 68 / Menhut-II/ 2008 Demonstration Activities of REDD

Classifications of Forest

- Conservation Forests
- Protected Forests
- Production Forests

Forestry and Carbon Rights in Indonesia

- Some forest management responsibilities devolved but clarification of rights and responsibilities of different levels of government is required
- IUPJL (environmental services license) can utilization of carbon
- IUPJL can also give expectation of durable carbon storage, but need long (eg 100 year) terms to protect carbon forests
- Need to ensure land tenure and benefits are shared with both local and broader communities
- Improved forest monitoring and law enforcement
- Sophisticated risk buffer management

REDD Demonstration Project

- Reducing Carbon Emissions from Deforestation in the Ulu Masen Ecosystem - Carbon Conservation; Fauna and Flora International (FFI)
- REDD and HTI – Partnerships for Avoided Emissions -APRIL
- Kuala Kampar REDD Pilot Project – WWF
- Tesso Nilo REDD Pilot Project – WWF
- Harapan Rainforest Project - Burung Indonesia; The RSPB; Birdlife International
- Berbak Carbon Value Initiative - ERM; The Zoological Society of London; Berbak National Park
- Conservation of the UGRer Kapuas Lakes System - FFI; PT Macquarie Capital Securities Indonesia
- Kalimantan Forests and Carbon Partnership (KFCP) - Australian Government
- Katingan Conservation Area: A Global Peatland Capstone Project - Starling Resources
- Mawas Peatland Conservation Area Project - The BOS; The Dutch Royal Government; Shell Canada
- Central Kalimantan Peatland Project – REDD - World Wide Fund for Nature; Deutsche Post; BOS Mawas Program; Wetlands Int'l Indonesia Program; Care Int'l Indonesia; Palangka Raya University

Indonesian Legal System

Modern Indonesian legal system is influenced by:

- Adat (customary) law & Islamic law and;
- Civil law (Roman-Dutch) traditions.

Adat (customary) law

- Customary law provided that natural resources is owned by community.

Civil law (Roman-Dutch) traditions

- Roman-Dutch civil law was imported to Indonesia in the sixteenth century via the Dutch colonization of the Indonesian archipelago.
- The Romans believed there were different kinds of property.
- Some belonged to the state, some to the gods, some belonged to individuals, and some were common property.
- In Roman law, there is a long history of state control over water use to promote the public interest.

The Framework of Roman Natural Resources law

- Things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea; (The Institutes of Justinian)

Carbon Ownership Concepts

Tenure Regime	Definition	Examples
<i>Res Communes</i>	Things open to all by their inherent nature (CO ₂ in the atmosphere)	Air, sea (open access)
<i>Res Publicae</i>	Things belonging to the public and open to the public by law (C in the lithosphere)	Roads, navigable rivers (public property)
<i>Res Universitatis</i>	Property belonging to a private or public group in its corporate capacity (Forest C?)	Private university, condominium (community property)
<i>Res in Patrominium</i>	Things that could be privately owned by an individual (Forest C on private land?)	Land under private ownership
<i>Res Nullius</i>	Things belonging to no-one (C in the ocean)	Unclaimed land, fish or game

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Carbon Ownership - Indonesian Constitution

- The Indonesian 1945 Constitution, Article 33.3, placed land, water and airspace including the natural resources, within the “control” of the state, to be used for the people’s prosperity.
- The legal theory is that “control” is different from “own”.
- It implies no domain, but that the state should determine everything in regard to land.
- The Law gives the Government power to define and regulate legal relationships between a person and land water and airspace or natural resources.
- Carbon is part of natural resources that controlled by the State.

Control by State

The State thus has authority to create policy, aimed at administering, managing, regulating and supervising certain sectors, including:

1. to regulate and implement the appropriation, the utilization, the reservation and the conservation of carbon
2. to determine and regulate the legal relations between persons and carbon
3. to determine and regulate the legal relations between persons and legal acts concerning carbon.

These authorities are based on the State's sovereignty as exercised in order to achieve the maximum benefit of the people.

Basic Agrarian Act

- The BAA mentioned that the relationship between the Indonesian nations to the earth, water and airspace is of an eternal nature
- The BAA amplified the constitution by putting the earth, water and airspace under the control of the state.
- The wording in Article 2(1) is similar to the Constitutional provision:

“Lland, water and airspace, including the natural resources contained therein, are in the highest instance controlled by the State, being the Authoritative Organization of the whole People”

Carbon is bundle or severed right resources?

- The BAA regulates land, water and airspace as bundle natural resources.
- The doctrine of unbundled system (mining, forestry, oil & gas)

Key Elements of Carbon ownership

1. where (the identity of the source of carbon) - the object
2. what (the consequences of ownership) – the right
3. who (the identity of the owner) – the subject.

Key Legal Issue on Carbon Rights

- How to allocate carbon rights and its utilization – on what criteria?
- What is definition of use rights of carbon (license vs. Right)?
- How long is duration of carbon rights?
- How to resolve carbon ownership conflicts?
- How are the carbon access rights?
- How is to alienate of carbon from other resources?
- Is there public Interest in the carbon rights?

REDD – Business Transaction

- Project finance (arrangement of invest, debt, equity, refinancing, etc.)
- Lease Agreement
- Joint Operating Agreement (JOA)
- Carbon Credit (VER) Purchase Contract

Carbon Ownership – Business Transaction

- How can the buyer be sure that seller has legal title over the Carbon credits?
- Legal due diligence (analysis of contract, license, etc)
- Representation and warranties
- Transfer of legal title upon delivery
- Physical transfer of Carbon Credit

Benefit Sharing

No	License Holder	Distribution / Benefit sharing		
		Government	Local Community	Project Proponent
1.	IUPHHK-HA	20%	20%	60%
2.	IUPHHK-HT	20%	20%	60%
3.	IUPHHK-RE	20%	20%	60%
4.	IUPHHK-HTR	20%	50%	30%
5.	Hutan Rakyat	10%	70%	20%
6.	Hutan Kemasyarakatan	20%	50%	30%
7.	Hutan Adat	10%	70%	20%
8.	Hutan Desa	20%	50%	30%
9.	KPH	30%	20%	50%
10.	KHDTK	50%	20%	30%
11.	Hutan Lindung	50%	20%	30%

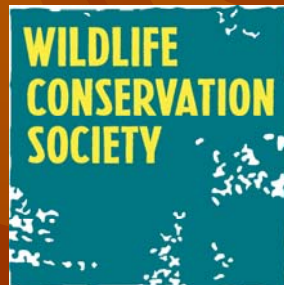
Government

Distribution / Benefit sharing Among Government		
Central	Province	District
40%	20%	40%

Benefit Sharing

License Holders	Aka	Explanation	C	P	D
Concession fee	IUPH	Concession application fee	20%	16%	64%
Pajak Bumi dan Bangunan	PPB	Land and building tax, paid annually on land area	10%	18%	72%
Pajak Pertambahan Nilai	PPn	Value added Tax, paid annually on applicable revenue	80%	8%	12%
Provisi Sumber Daya Hutan	PSDH	Forest resource fee, paid per cubic metre wood removed	20%	16%	64%
Dana Reboisasi	DR	Rehabilitation fund fee, paid per cubic metre wood removed	60%	0%	40%
Izin Usaha Pemanfaatan Jasa Lingkungan	IUPJL	Environmental service license fee, varies by location.	TBC	TBC	TBC
Pajak Penghasilan	PPh	Income tax on salaries	80%	8%	12%
Iuran Hasil Hutan Non-Kayu	IHPH	Non-timber forest product use fee, paid annually on applicable revenue	20%	16%	64%

Thank You



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