

Working paper

Implementing SVLK in customary forests

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Key message

A 2013 ruling of the Indonesian Constitutional Court allows customary groups to claim forest ownership. So far, only small areas of customary forest have been recognised but customary claims could exceed two million hectares nationwide. Amending the timber legality assurance system in Indonesia (or SVLK) to integrate newly-recognised customary forests is timely and would open livelihood opportunities for customary groups. It would also promote sustainable forest management and protect against forest conversion.

Highlights

- In Indonesia, the Forestry Law of 1999 classified indigenous peoples' traditional forests as state property. A 2013 decision of the Indonesian Constitutional Court¹ invalidated provisions of the law that defined state forests to encompass customary law forests. The decision provides the opportunity for customary groups to assert their claims to forests and for these areas to be relinquished from state forestland. Different legal pathways exist to achieve the objectives of the ruling. However, they result in different forms of recognition, with land either staying within state forestland or being excised.
- The change in ownership accompanying customary forest recognition and relinquishment from state forestland has important implications for timber legality licensing. Without recognition under the Indonesian timber legality assurance system (*Sistem Verifikasi Legalitas Kayu - SVLK*), forest owners cannot legally sell or transport timber.
- The SVLK is the timber legality assurance system accepted under the Voluntary Partnership Agreement (VPA) between the European Union (EU) and Indonesia on Forest Law Enforcement, Governance and Trade (FLEGT). The VPA and the SVLK regulation foresee that changes in the procedures for utilisation and/or administration of timber from customary forests to implement the Constitutional Court ruling be introduced after the adoption of related implementing legislation.²
- Several ministries have issued regulations for formal recognition of customary forest rights. However, the procedures are inconsistent and not in line with the SVLK regulation.
- The process set out under Forestry Law currently offers the best developed route for customary forest recognition. It has already been applied to recognise some 18 customary forests covering 16 400 hectares.³ This constitutes an initial step in

¹ Constitutional Court Decision 35/PUU-X/2012, reviewing Law 41 of 1999 on Forestry, issued 20 March 2013.

² VPA Annex V: Changes in the procedures for utilisation and/or administration of timber from Customary Forests, to address implementation of Constitutional Court Decision (MK) No. 35/PUU-X/2012, shall be introduced after the adoption of related implementing legislation.

³ At the time of writing, nine customary forest areas had been recognised in addition to the original nine, bringing the total area of customary forest to 16 400 hectares:

<https://news.mongabay.com/2017/11/indonesian-president-recognizes-land-rights-of-nine-more-indigenous-groups/>

President Joko Widodo's efforts to distribute 12.7 million hectares to indigenous communities and landless peasants.

- To date, the customary forest recognition process has been slow. Regulatory clarifications, as well as institutional and/or financial support will be necessary to expedite the process. Clarification and strengthening of the role of provincial governments in recognising customary claims is also needed.
- Customary groups whose forests have been recognised under Forestry Law are delivered a customary forest recognition letter. This letter does not constitute proof of ownership or user rights to forests as required for SVLK certification. For the letter to be recognised as such a proof, the SVLK and VPA would need to be amended.
- Customary forests are considered private forests under Forestry Law. However, this designation triggers SVLK requirements that may go beyond the financial and technical capacity of customary groups. Additional clarification is also needed on how the Constitutional Court ruling would be implemented in customary forests located within timber concessions.
- With more clarity on the pathway to change ownership of state forests to customary forests, it seems timely that national stakeholders discuss and agree on the role of customary forests in the SVLK. This would promote the use of timber harvested on these forest lands as it would enable its recognition as legal and its licensing as FLEGT timber under the Indonesian-EU VPA.
- The Constitutional Court ruling has particular resonance for the West Papua province where forest cover remains high, rates of deforestation are low and customary groups claim large areas of land. The province is also one of the poorest in Indonesia and indigenous Papuans make up the majority of the poor.
- Through its Special Autonomy status, West Papua enjoys some flexibility in land and forest governance. Regulations recognising customary groups could be developed more rapidly than in other regions. Accelerated implementation of the Constitutional Court ruling could provide countrywide lessons on customary land recognition and integration of customary forests into the SVLK and VPA.

1. Introduction

The Forestry Law passed in 1999 reaffirmed previous regulations that placed the control of all state forestland in Indonesia under the Ministry of Environment and Forestry (MoEF). Within state forestland classified as production forest, the MoEF has the right to issue licences for companies to extract timber, including in forests claimed by customary groups. Under such arrangements, indigenous peoples receive some benefits through compensation payments.

In May 2013, the Indonesian Constitutional Court issued a landmark decision overriding the provisions of the 1999 Forestry Law that defined state forests to encompass customary law forests. The Constitutional Court Decision 35/PUU-X/2012, reviewing Law 41 of 1999 on Forestry,⁴ removed customary forests from the definition of 'state forest,' redefining them as 'forest located within a customary law community area'.

The Customary Forest case provides the opportunity for customary groups to establish their claims to forests and for these areas to be relinquished from state forestland. By recognising customary groups as legal subjects and enabling their ownership of customary forests, the ruling laid an important milestone in the history of forest governance in Indonesia.

While the decision was widely seen as a major victory for indigenous peoples' rights, its implementation has been slow. The first trial of customary forest recognition took approximately two years. Delays have resulted from, among other reasons, the need for implementing regulations to be developed and conflicts between customary groups over ownership. They are also due to a lack of clear allocation of responsibilities among relevant ministries, of institutional capacity among responsible agencies, and of resources. Some argue that the MoEF is creating administrative barriers to returning control over customary forestland to indigenous communities.⁵ However, the Ministry and past experience from the early days of decentralisation point to the high risk of business interests taking advantage and causing rampant deforestation. Aware of these delays, the MoEF promulgated a regulation on 1 August 2018 that provides for the creation of a multistakeholder working group to accelerate the process of customary forest recognition.⁶

A 2009 report from the MoEF and the Central Statistics Agency states that across Indonesia, 1 500 villages are located within forest areas while 8 662 are located on their borders. Another 30 697 villages are highly dependent on forests. In Papua and West Papua provinces, more than 60 per cent of villages are located within or on the borders of forest areas, and more than 50 per cent of the population resides in forest areas.

Further to the Constitutional Court ruling, the MoEF adopted regulation 32/2015 on private forests, which sets out the requirements for the recognition of customary forests.⁷ At the end

⁴ Constitutional Court Decision 35/PUU-X/2012, reviewing Law 41 of 1999 on Forestry, issued 20 March 2013 (Customary Forest case (2012)).

⁵ Forestry Ministry reluctant to relinquish control over forests, Down to Earth, 2014, <http://www.downtoearth-indonesia.org/story/forestry-ministry-reluctant-relinquish-control-over-forests>

⁶ Decision of the Minister of Environment and Forestry No. SK.354/MENLHK/SETJEN/KUM.1/8/2018 regarding establishment of a working group to accelerate administration of indigenous forests.

⁷ Regulation of the Minister of Environment and Forestry Number P.32/Menlhk-Setjen/2015 regarding Private Forests (PermenLHK 32/2015).

of December 2016, President Joko Widodo handed customary forest recognition letters to indigenous communities based on procedures set out in this regulation. Some 13 100 hectares across nine locations and involving 5 700 families were recognised.⁸ According to the President, this was an initial step in distributing 12.7 million hectares of land to indigenous communities and landless peasants. Of this total area, claims for customary forest are estimated to amount to some 2.3 million hectares.⁹

The change in ownership accompanying customary forest recognition and relinquishment of forest from state forestland has important implications for timber legality licensing. In areas classified as production forests, new arrangements will be necessary for harvested timber to be included in the Indonesian timber legality assurance system (*Sistem Verifikasi Legalitas Kayu* - SVLK), if deemed appropriate by stakeholders.

The SVLK aims to ensure the legality of traded wood and wood products. It forms the backbone of the Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT) between Indonesia and the European Union (EU). The system requires proof of legality of rights to forests from which timber is harvested. It also imposes sustainability requirements on timber producers. Without SVLK certification, forest owners cannot legally operate a timber business. The VPA and the SVLK regulation foresee that changes in the procedures for utilisation and/or administration of timber from customary forests to implement the Constitutional Court ruling shall be introduced after the adoption of related implementing legislation.

While the Constitutional Court ruling provided the opportunity for customary groups to claim ownership of forests under forestry law,¹⁰ separate village, community and customary forest management models have also been developed under forestry law. These models assign rights and responsibilities for forest management to the local level, but without any transfer of ownership. Some experts believe that these models may be promoted to meet the intent of the Customary Forest case that aimed to allow customary groups to exercise their rights over customary forests.

Nonetheless, for communities to be able to legally sell timber from customary forests, these will need to be recognised under the SVLK unless a completely different approach to timber legality assurance is developed. The recognition of customary forest rights by the Constitutional Court could serve as an opportunity to develop simplified procedures for inclusion of customary forests relinquished from state forestland. These could use either the SVLK legality definition for privately-owned forests, or a new legality definition for customary

⁸ Jokowi grants first-ever indigenous land rights to nine communities/ Mongabay 4 January 2017: <https://news.mongabay.com/2017/01/jokowi-grants-first-ever-indigenous-land-rights-to-9-communities/>

⁹ Tata Cara Hutan Adat (Customary Forest Procedures), presentation by Bambang Supriyanto, Director General of Social Forestry and Environmental Partnership, Ministry of Environment and Forestry, during Session I of National Coordination for Addressing Tenurial Problem and Customary Forests, Ibis Budget Daan Mogot, Jakarta, 23 January 2018. AMAN calculates that 1.9m hectares of land, home to 607 indigenous communities, must be rezoned as ancestral forests: <https://news.mongabay.com/2018/04/bid-to-protect-indigenous-indonesians-hit-by-ministrys-doubts-over-rights-bill/>

¹⁰ Regulation of Minister of Environment and Forestry Number P.30/Menlhk/Setjen/PHPL.3/3/2016 concerning the Performance Assessment of Sustainable Production Forest Management and Verification of Timber Legality for Licence-Holders, Management Rights, or Private Forests (PermenLHK No. 30/2016)

forests existing outside of state forestland that would need to be developed. This new legality definition could draw on the SVLK legality definitions for community forests used to certify village, community and customary forest management within state forestland. Developing a specific legality definition for customary forests and related verification procedures could enhance social, economic and environmental benefits from customary forest management.

The Customary Forest case has particular resonance for the West Papua province, where forest cover remains high, rates of deforestation are comparatively low, and large areas of land are claimed by customary groups.

The EU REDD Facility and Yayasan Penelitian Inovasi Bumi (INOBU) have been collaborating since 2013 to explore opportunities in the West Papua Province to clarify tenure and land-use rights as a means of improving land and forest governance. With support from the EU REDD Facility, INOBU undertook a legal analysis to identify gaps that need to be addressed to apply the SVLK to newly-recognised customary forest areas in support of legal timber production and sustainable forest management.

The study examined regulations related to the recognition of customary rights, the timber trade and the SVLK. It encompassed legislation relevant to customary forests under Forestry Law and Agrarian Law, as well as laws pertaining to villages and a regulation issued by the Ministry of Home Affairs. Responsibilities held by national and subnational level government agencies were also assessed. Stakeholder consultations were held in West Papua province to assess local preferences regarding customary land recognition. Through the analysis, recommendations were developed for the implementation of the Constitutional Court ruling and integration of customary forests into the SVLK.

This brief is based on the results of INOBU's legal analysis. It provides an overview of the different legal pathways to obtain recognition of customary groups and their claims to customary forests. It then examines how customary forests could be included in the SVLK under the Indonesia-EU VPA. It includes a focus on the possible recognition of customary groups in the Province of West Papua. Based on these elements, this brief outlines some recommendations for the acceleration of the recognition of customary forests.

2. Recognition of customary forests

The Customary Forest case created the opportunity for customary groups to be recognised as legal subjects, and for them to manage forests under their control. However, the ruling can only be implemented through regulations that define requirements and procedures for the recognition of customary forests. A number of ministries have issued regulations according to their mandate in relation to customary rights recognition. As a result, customary forests could be recognised through a number of legal pathways that differ in terms of institutional responsibility, process and claim. These pathways are:

- Forestry regime - under which customary forests owned by customary groups are recognised as forest areas regulated under Forestry Law
- Agrarian regime - under which customary rights over communal land, forests and/or water are recognised under Agrarian Law
- Village regime - under which customary territory, including forests, is recognised as the property of customary villages
- Home Affairs regime - under which the claim to customary forests is not restricted and accommodates the local situation

These different routes vary in terms of legal basis, the criteria used for recognition of the customary group's legal status and of customary forest areas, and the entities deemed responsible for defining criteria and providing authorisations. The authorising authorities also provide different proofs of rights and the processes for recognition of the rights vary. These legal pathways have differing levels of compliance with the SVLK certification process.

Furthermore, these different pathways have been developed in relative isolation. Although the existing claims under these pathways are at different stages of completeness, they compete for creating precedence in terms of customary rights recognition.

By using the forestry regime to issue customary forest recognition letters, the Indonesian Government has recognised this pathway. Nonetheless, the agrarian and village legal regimes and the Ministry of Home Affairs regulation present alternative routes for claiming customary forest rights. Below is a brief description of these different pathways.

Forestry Law

According to forestry regulations issued after the Customary Forest case, forest areas include state forests, customary forests and private forests. Importantly, the MoEF regulation 32/2015 defines customary forests as forests located inside the territory of legal customary groups. Because customary forests are forest areas burdened with ownership rights, they are regulated as private forests over which legal customary groups have control.

To identify customary groups, the Forestry Law (41/1999) outlines criteria that include continued existence of a customary community together with its institutions, territory and subsistence forest use traditions. Formal recognition of customary groups may take place

through issuance of a district or provincial regulation (*Peraturan Daerah/Perda*),¹¹ which is developed based on consultations with customary law experts, local communities, indigenous leaders and government institutions.

MoEF regulation 32/2015 and a derivative regulation¹² define the ensuing process for customary forest recognition. This process requires submission of the regulation formally recognising the customary group together with evidence of the group's territory and forest, and proof of rights. A letter of consensus developed through consultation among key stakeholders and outlining the scope of authorities of the customary group is also required. Following satisfactory fulfilment of requirements and verification, a ministerial decree is issued. Amongst other things, the decree specifies the main functions of the forest and prohibits its sale.

MoEF regulation 32/2015 outlines the forest owner rights and responsibilities of private forest owners, which also apply to customary forests owners. These include rights to receive incentives, utilise timber and obtain timber legality certificates. Responsibilities include applying the principles of sustainable forest management and maintaining the protection, conservation or production function of the forest as indicated in forestry and spatial plans. Additionally, the regulation outlines government responsibilities to support forest management. These include facilitating acquisition of timber legality certificates and providing funding for first-time monitoring. The regulation also provides for smaller private forest owners to apply for timber legality verification in groups.

Agrarian Law

The Basic Agrarian Law of 1960 recognises communal rights to land. However, before the Customary Forest case, there was no viable legal pathway for rights recognition due to the unclear mandate of the Ministry of Agrarian Affairs and Spatial Planning to deal with land rights in state forestlands. Conflicts among customary communities resulting from past division of land rights among villages, sub-districts and districts have also hindered progress.

The Customary Forest case provided new opportunities to recognise land rights in forest areas. In 2014, the Minister of Home Affairs, the Minister of Forestry, the Minister of Public Works and the Head of National Land Agency adopted a joint regulation to resolve land control issues within state forestland.¹³ However, the MoEF blocked the approvals for areas proposed by the National Land Agency and the initiative failed.¹⁴ According to MoEF officials, approvals were denied because widespread regional level relinquishment of state forestland driven by business interests was seen as a significant risk to forest sustainability.

¹¹ A provincial regulation is required where a customary group spans two or more districts.

¹² Regulation of the Director General of Social Forestry and Environmental Partnerships No. 1/2016.

¹³ Regulation of the Minister of Home Affairs, Minister of Forestry, Minister of Public Works, and Head of National Land Agency of the Republic of Indonesia No. 79 Year 2014, Number PB.3/Menhut-II/2014, Number 17/PRT/M/2014, Number 8/SKB/X/2014, concerning Procedures to Resolve Land Control inside Forest Area (Perber 4 Menteri).

¹⁴ Mumu Muhajir, Satu tahun perber 4 menteri tentang penyelesaian penguasaan tanah dalam kawasan hutan, *Policy Brief of Epistema* Vol 2/2015 (Jakarta, Epistema Institute, 2015).

A subsequent regulation of the Minister of Agrarian Affairs outlines requirements for legal recognition of communal rights of customary groups to land areas classified as state forestland.¹⁵ The process starts when the customary group submits a proposal to the Head of the district, municipality or province.¹⁶ The customary group's existence and location within a forest area or plantation concession is then verified, and information is passed to the MoEF to request relinquishment of the area from state forestland. The Head of the district/municipality/province then forwards a letter of enactment of the customary group and communal land rights to the National Land Agency, which registers the land at the local land office.

The above process covers land recognition but not the form of proof of ownership or user rights. Communal land certificates based on certificates for individual ownership rights (freehold title) were trialled in West Sumatera and West Papua. However, the risk that customary group leaders may attempt to sell land using the certificates as proof of ownership prevented widespread promotion.

Village Law

The village legal regime includes provisions that define rights relevant to customary forests based on the notion of inherited rights integrated in the village system of governance. The Law on Villages (6/2014)¹⁷ includes recognition of customary village authority over customary territory. Future regulations under the Village Law are expected to take into account existing regulations in relevant sectors, including forestry.

To claim rights over forests, the customary village must be recognised as a legal entity through a district or provincial regulation (*Perda*) according to criteria outlined in Law No. 6/2014. These criteria include continued existence of the customary group and development in accordance with societal principles. Following legal status recognition, a study and inventory team develops a draft list of authorities of the village, including authorities related to forest and other natural resources. The draft list is then endorsed through a district/municipal regulation. Based on the enacted draft list of authorities, the village enacts a specific list of authorities at the village level.¹⁸

Ministry of Home Affairs

Further to the Customary Forest case, the Ministry of Home Affairs issued a regulation in 2014 to guide recognition of legal customary groups by districts and municipalities.¹⁹ Under the regulation, customary forests are considered property of legal customary groups. The

¹⁵ Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 10/2016 concerning the Procedure for the Enactment of the Communal Rights to Land of Legal Customary Groups and Communities Living in a Particular Area (Permen ATR 10/2016).

¹⁶ Depending on the location of the customary forest and jurisdictional responsibilities in the area.

¹⁷ Law No. 6 Year 2014 on Villages (Law 6/2014) issued by the Ministry of Villages, Underdeveloped Regions and Transmigration.

¹⁸ Regulation of Minister of Villages, Underdeveloped Regions and Transmigration Number 1 Year 2015 on Guidance regarding Authority Based on Inherited Rights and Local Authority at the Village Scale (Permendes 1/2015).

¹⁹ Regulation of the Minister of Home Affairs No. 52/2014 on the Guidance on the Recognition and Protection of Legal Customary Groups (Permendagri 52/2014).

regulation outlines the process for identification, verification and recognition of customary groups, through a decision letter from the Head of the district/municipality.

The customary group recognition process under the Ministry of Home Affairs' legal regime is similar to that under Forestry and Agrarian Law. However, in contrast with the forestry regime, recognition of customary rights is by the Head of the district/municipality rather than through a district or province level regulation (*Perda*). In addition, the process does not include explicit recognition of land and/or forest rights or relinquishment of forest from state forestland.

3. SVLK in customary forests

One of the basic requirements to achieve SVLK recognition is the provision of proof of legal ownership or user rights to forests. The pathways under Agrarian and Village Laws, the Ministry of Home Affairs regulation, as well as the village regime, do not fulfil this requirement.

Although the pathways under Agrarian Law and the Ministry of Home Affairs regulation of 2014 could be further developed, neither currently conform to the Forestry Law requirement²⁰ for legal recognition of customary groups through a district or provincial regulation (*Perda*). This discrepancy is likely to prevent relinquishment of claimed areas from state forestland and subsequent recognition of rights to forests. Various other inconsistencies between the SVLK requirements and Agrarian Law exist. These include the fact that: proof of rights to forests necessary for SVLK certification is unavailable, Agrarian Law only covers non-forestland, and current SVLK standard for privately-owned forests recognise individual rights to forests and not communal rights recognised under Agrarian Law. This is because the SVLK standards for community forest management and village forest management address communal rights.

While Village Law does provide for customary group legal status recognition through a district or provincial regulation (*Perda*), proof of rights to forests is based on history of claims and identified authorities. This is not in line with SVLK requirements, which include a range of possible forms of proof but not this particular formulation. Furthermore, relinquishment of customary forest from state forestland in accordance with MoEF regulations is still likely to be required before proof of rights to forests can be acquired.

In contrast, the Forestry Law pathway covers both the recognition of customary groups and of customary forests. It is therefore better suited to SVLK requirements than the processes set out under Agrarian Law, Village Law and the Ministry of Home Affairs regulation. In addition, the Indonesian Government has already applied the pathway covered by the Forestry Law. It therefore offers the best developed route.

Under the Forestry Law, customary forests are dealt with as private forests. The national level SVLK regulation could therefore be applied to customary forests in the same way it is applied to other types of private forests.²¹ However, customary groups are likely to face technical and financial difficulties in meeting SVLK verification requirements for private forest owners, in particular those related to applicable environmental issues and occupational safety and health. Indonesian stakeholders may want to explore amending the SVLK standard for privately-owned land to take the specific capacities of customary groups into account.

Additionally, and perhaps more importantly, MoEF customary forest recognition letters that have been provided to customary groups whose forests have recently been recognised do

²⁰ Regulation of the Minister of Environment and Forestry Number P.32/Menlhk-Setjen/2015 regarding Private Forests (PermenLHK 32/2015) and Regulation of the Director General of Social Forestry and Environmental Partnerships No. 1/2016 (Perdirjen PSKL 1/2016).

²¹ Regulation of the Director General of Sustainable Production Forest Management or Perdirjen PHPL 14/2016 and 15/2016

not necessarily constitute proof of ownership or user rights to forests as required under the SVLK. For these letters to constitute such a proof, the applicable SVLK standard would have to be amended. Otherwise, to acquire proof of rights to forests, customary groups may need to apply to the National Land Agency since the MoEF does not have responsibility outside of state forestland. As the National Land Agency has not yet issued any regulation to guide such an application, this process would likely take several years. In addition, coordination with the MoEF would be required as the ministerial decree recognising customary forests still designates the function of the relinquished forest according to the forest zone, for example conservation, production or protection forest. Harvesting rights applicable in different forest functional types following recognition of ownership of a forest by a customary group would therefore need to be clarified.

Clarification is also needed on how the Customary Forest case would be implemented in customary forests within production forest areas covered by concession agreements. In particular, decisions are needed over whether customary groups would need to wait until concession rights expire or whether concessions rights would be revoked or renegotiated.

Special considerations in West Papua

In West Papua, customary groups claim much of the land and timber concessions have often been opposed by indigenous communities. The Special Autonomy Law of 2001 recognises customary forests as part of indigenous territory. This provides the province with additional flexibility regarding administration of customary rights in state forestland.

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has committed to certify communal land rights in West Papua and has provided some communities with communal certificates. However, these certificates were delivered before the customary groups were legally recognised through a district or provincial regulation (*Perda*), as required under Forestry Law. This non-compliance with the Forestry Law is likely to hinder the relinquishment of customary forests from state forestland. As a result, customary groups with communal land certificates are unlikely to be able to obtain SVLK certification. The process for recognising communal land rights by the National Land Agency in West Papua (under the 2016 Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency)²² therefore needs to be synchronised with the SVLK regulation.

A Special Provincial Regulation to facilitate formal recognition of customary groups is currently under development and various initiatives are underway at the district level. In the Fakfak District, the District's seven clans submitted information to the Head of the District in 2015 as evidence for a *Perda* recognising these clans. This information included maps of land belonging to each of the clans and information on each of the clans. Areas claimed by clan sub-groups (*Marga*) are also being mapped. Once the district regulation is issued, application for communal land could be made through the pathway regulated by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. It is still unclear whether

²² Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 10/2016 concerning the Procedure for the Enactment of the Communal Rights to Land of Legal Customary Groups and Communities Living in a Particular Area (Permen ATR 10/2016).

under the Special Autonomy Law, approval from the MoEF will be needed to relinquish forests from state forestland.

Because of the lack of regulatory clarity and the length of the processes needed to access customary forest rights, customary groups are applying for village forest (*Hutan Desa*) status under Forestry Law. They manage the forests as state forestland while waiting for issuance of regulations and recognition of customary forest rights under Agrarian Law.

4. Conclusions and recommendations

There is a lack of clarity on how customary forests are best recognised under the Customary Forest case. The possible different legal pathways could potentially lead to different tenure arrangements and viable pathways still need to be completed and piloted. To expedite the recognition process, the following actions are recommended:

1. **Consolidating, clarifying and harmonising the legal framework:** Responsible ministries and subnational government agencies should coordinate to harmonise the legal and technical requirements under their mandate:
 - a. The roles of the Ministry of Agrarian Affairs, the Spatial Planning/National Land Agency and the MoEF regarding customary rights in state forestland should be clarified.
 - b. The discrepancies among the requirements of the various ministries for recognition of customary groups should be harmonised. For example, the MoEF requires a regional regulation (*Perda*) while the Ministry of Home Affairs, the Ministry of Agrarian Affairs and the Spatial Planning/National Land Agency require decrees issued by the district Head or provincial governor.
2. **Carrying out a multistakeholder process to explore integration of customary forests into the SVLK standard and verification procedures:** As provided in the VPA, the SVLK regulation should be amended to recognise all current forms of ownership or user rights to forests. Stakeholders would have to explore how timber from customary forests could be attested for legality, and how the SVLK could reflect proof of ownership or user rights to forests, such as the MoEF customary forest recognition letter. In this process, stakeholders may need to take into account the traditions, values, management practices, resources and capacities of indigenous peoples, as well as the risks of timber laundering through such sites.
3. **Clarifying customary groups' legal status:** the legal status of customary groups should be clarified to indicate whether these groups would constitute a public entity, such as a customary village, or a private entity, such as an association. This will help define the groups' governance systems, rights and responsibilities.
4. **Strengthening the role and capacity of subnational governments in support of the recognition and management of customary forests:** As customary forests are under the jurisdiction of sub-national governments, these should lead recognition of customary forests by enacting regulations, preparing guidance and establishing verification teams to administer the recognition process. Province and customary institutions should also be strengthened to support management of customary forests within the Forest Management Unit system.
5. **Issuing West Papua regulation:** Based on the mandate provided by the Special Autonomy Law, West Papua should issue a Special Provincial Regulation for the recognition of customary territory, including customary forests. Mapping methods should be published and responsible institutions should be identified.
6. **Expediting the recognition process:** The recognition of customary forests has been slow. To expedite it:
 - a. National and/or sub-national regulations should stipulate a role for NGOs in carrying out, among other possible tasks, participatory mapping, resolving conflict, meeting administrative requirements, providing forest management training, completing assessments, liaising with government, and so forth.

- b. Government agencies should allocate resources and play an active role in recognising customary forests as stipulated in relevant regulations. They should also cooperate during the recognition of customary forests and provide support following recognition.
- c. Online registration should be made possible.

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