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Assessing equity in national legal frameworks for REDD+: The case of Indonesia

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ABSTRACT

Schemes for reducing emissions from deforestation and forest degradation, and enhancing carbon stocks (REDD+) have raised concerns about their effects on forest communities and social equity more generally. National legal frameworks play a critical role in mediating these concerns within different country contexts, from the definition of fundamental constitutional rights to the articulation of specific REDD+ legislation. However, the complexity of REDD+ and its associated legal frameworks makes assessing the balance of rights, responsibilities, benefits and costs challenging indeed. This paper draws on a case study of Indonesia to illustrate how the application of an equity framework can help navigate this complexity.

The paper applies the McDermott et al. (2013) Equity Framework to assess core legal texts at multiple scales, including key articles of the UN Framework Convention on Climate Change, as well as Indonesia's Constitution, its REDD+ strategy and selected legislation. We find that these selected legal instruments address the procedural issue of who is considered a relevant REDD+ stakeholder, including forest-dependent communities and private and public actors. Policies in the form of Ministerial Decrees also prescribe the distribution of carbon payments. However, the current legislation does not address critical contextual dimensions, including the distribution of bundles of rights and obligations regarding land and forest entitlements of forest-dependent people. Likewise, while there are Ministerial Decrees that spell out the distribution of rights and duties of different levels of government (central, provincial and local), there is no clear indication if the resources needed to ensure their respective attributions are equitably allocated. These results highlight the importance of adopting comprehensive frameworks for assessing equity that situate detailed analysis of specific REDD+-related laws within their broader legal and fiscal contexts.

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1. Introduction

The global to local governance of forests and climate raises complex and critical questions for social equity. The

stakeholders and governance systems involved are tremendously diverse; the impacts vary across scale, time and place; and many of the world's poorest people face the greatest risks from both action and inaction (Sikor et al., 2010; UNDP, 2007). These challenges are particularly evident in the UNFCCC

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mechanism known as REDD+ (reducing emissions from deforestation and forest degradation, conserving and sustainably managing forests, and enhancing forest carbon stocks in developing countries). While the clearance of forestland is a major source of global emissions (Stern, 2008) it also an integral part of the economic development strategies of many developing countries and impoverished rural communities. The REDD+ mechanism appears to promote international equity by calling on developed countries to compensate developing countries for ceasing forest clearance, but exactly who benefits and loses across complex, REDD+-related global value chains remains an open and highly contested question.

Despite, or perhaps because of, these challenges, the concept of equity has become a central tenet of international negotiations. For example, Article 3 of the UNFCCC (United Nations Framework Convention on Climate Change) establishes “equity” as a core principle. The Convention and its associated Conference of the Parties Decisions (e.g. UNFCCC COP Decision 1/CP.13 (2007) on the Bali Action Plan) furthermore articulate international consensus on a number of equity-related issues, including the importance of participation in decision-making, fair distribution of forest benefits, and equitable allocation of forest peoples’ rights and responsibilities in multilateral laws and institutions concerning climate change.

At the same time that global norms of what is fair and equitable have emerged, international negotiators have agreed upon a “country-driven” approach to REDD+ that recognizes the sovereign right of national governments to shape REDD+ governance within their borders (UNFCCC Decision 12/CP.17). Likewise, recent literature on REDD+ national strategies (Scheyvens, 2010; Costenbader, 2009, 2011; Wilfredo et al., 2010; Felicani Robles and Peskett, 2011) have highlighted the importance of taking into account national and local contexts when assessing the social impacts of forest and climate policy.

This paper applies the McDermott et al. (2013) Equity Framework as a means to navigate and assess equity within this complex legal landscape. Our analysis begins with a review of the framework, followed by its application to core and selected legal texts of relevance to REDD+ in Indonesia. We then consider what this reveals in terms of how equity is, or is not, addressed within formal legal frameworks governing REDD+ in Indonesia.

Indonesia was chosen as a case study due to several environmental and legal factors. It holds the second largest area of tropical forests after the Amazon, and the loss of these forests has been an important contributor to greenhouse gas (GHG) emissions. There are approximately 80 million forest-dependent people, or 38% of the total population (Poffenberger, 2006), who may be directly affected by REDD+ interventions.¹ In terms of legal context, Indonesia was the first country to have REDD+ specific legal instruments at the national level (Costenbader, 2009); Decrees by the Ministry of Forestry explicitly associated with REDD+ were enacted in 2008 and 2009. Indonesia has also been active in REDD+ negotiations at the international level, for example it served as host of the UNFCCC COP 13 Bali Action Plan that launched REDD+ negotiations.

¹ This figure is based on a total population of 210 million (2000 data).

2. Theoretical framework

This paper applies a conceptual framework for understanding equity as outlined by McDermott et al. (2013). The framework recognizes equity as inherently relativistic, relating to notions of fairness or justice rooted in perceptions of relative equality among members of society. The framework also views equity as socially constructed, in that the definition of what must be equal in order to foster equity varies among societies. Differences in priorities across different framings of equity have critical implications, since equality of one thing (e.g. opportunity) may result in inequality of something else (e.g. wealth). In recognition of these trade offs, the framework does not take a normative stance on what is equitable, but rather examines the definition of equity as itself a subject of analysis. This leads to a layered approach to analysing equity, beginning with broad questions around who sets the parameters of equity and narrowing it to more specific questions about the content of this definition. We find this layered approach particularly useful for addressing a multi-level governance challenge such as REDD+, in that it sheds light on the nested ways in which international law, national Constitutions and more specific forest and climate regulations interact to shape the definition and enactment of equity.

For our analysis, we begin with the outermost layer of the framework by considering how the overarching parameters of equity are set within core international and Indonesian legal instruments. The analysis then considers what, if any, explicit or implicit goals for equity have been set by these instruments—i.e. do they include mandates to improve equity, avoid adverse effects on equity or do they not consider equity at all? This is followed by consideration of the targets of equity, i.e. are the “subjects of equity” individual citizens, particular communities, the Indonesian nation, the global community or are non-human species and future generations also included?

After thus framing the parameters, goals and targets of equity, the framework then considers the content, in other words what counts as a matter of equity in selected Indonesian legal instruments. Content, according to McDermott et al. (2013) can be considered across three distinct dimensions. The first consists of distributive equity, i.e. distribution of material and non-material benefits, costs and risks; that may be defined according to a variety of decision rules, such as the equal distribution of material benefits, the achievement of net social benefit, or the distribution of resources based on merit or need. The second consists of procedural equity, i.e. opportunities for participation in decision-making. The third is contextual equity, i.e. the capabilities of individuals to effectively participate and benefit, as well as the social dynamics of access and power that shape these capabilities. Fig. 1 summarizes these multiple parameters and dimensions of equity.

3. Applying the equity framework to legal instruments

Constitutional provisions, international treaties (signed and ratified by Indonesia), national laws and local norms

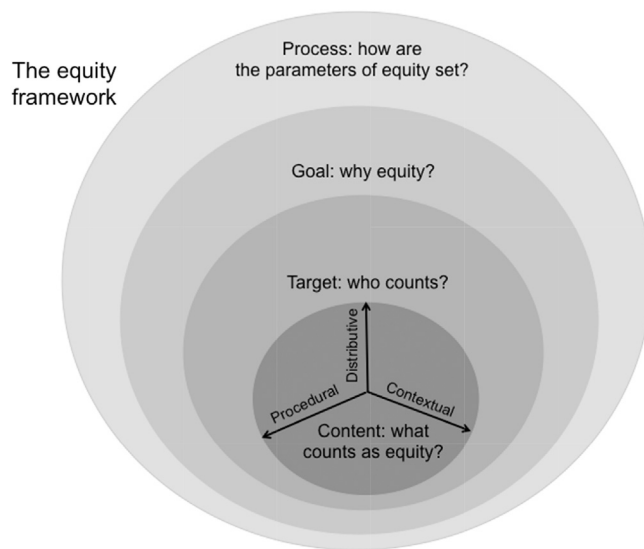


Fig. 1 – The equity framework.

Source: McDermott et al. (2013).

constitute relevant reference points at the national level when analysing the equity dimensions of forest and climate law. This composite of legal instruments affect the way in which more specific legal instruments related to REDD+ are framed, their content, and the social scales involved. While there is a wide diversity of legal instruments that may be of relevance to the equity implications of REDD+ in Indonesia, we choose only a few key instruments for detailed analysis. The purpose is not to be exhaustive, but rather to illustrate the insights that can be gained through a systematic and multi-dimensional assessment of equity in REDD+-related law.

At the international level, we refer to relevant legal provisions of the UNFCCC as the core inter-governmental instrument associated with REDD+. At the national level, we consider the 1945 Indonesian Constitution as the instrument that establishes the fundamental rights of national citizens, thereby setting the wider legal landscape for the operationalization of REDD+. We also consider the Indonesian Forest Law and its role in establishing basic rights of forest ownership.

In regards to specific REDD+ policy, we include the Indonesian REDD+ Strategy issued in June 2012,² a Strategy which provides national guidance for the design and implementation of REDD+ activities in Indonesia. We also examine the Ministry of Forestry (MoF) Decrees that are currently the only legal legislation explicitly related to REDD+ at the national level.³ These Decrees include: the MoF Decree Reduction of Emissions from Deforestation and Forest Degradation Procedure, No. 30/2009 MoF Decree on REDD+ Procedures; MoF Decree No. SK.455/Menhut-II/2008 on the Working Group on Climate Change (also known as ‘MoF Decree on the REDD+

Commission’) replaced by SK.13/Menhut-II/2009 and then replaced by SK No. 64/Menhut-II/2010; and the MoF Decree regarding procedures for licensing of commercial utilization of carbon sequestration and/or storage in production and protected forests, No. 36/2009 (MoF Decree on Licensing Carbon Sequestration) amended by P.11/Menhut-II/2013. Decree No. P. 36/Menhut-II/2009, which includes as an attachment the Indonesian REDD+ Revenue-Sharing Regulation, remained largely unchanged as only Article 15 is amended by the latest Decree No 11/2013.⁴

Finally, we also consider how *adat*, or customary law, is or is not addressed by the above legal instruments. In Indonesia, the considerations of *adat* on the relevant social units and associated forest rights and responsibilities may be important in decision-making associated with REDD+. *Adat* refers to customary laws, self-governance institutions and cultural beliefs shared by an indigenous group prior to incorporation into a colonial or post-colonial state. It includes the regulation of the interaction between people and nature. *Adat* is location-specific and has changed over time (Contreras-Hermosilla and Fay, 2005).

3.1. The process of setting parameters

The “parameters” of equity refer to how the overarching goals of equity are set, and in particular which actors are involved in defining those goals. The UNFCCC text plays a key role in setting the parameters for REDD+ through its adoption of a national approach to reporting on REDD+ (UNFCCC COP 16/ Decision 1C, 2010) that assigns national governments the ultimate authority in governing REDD+ actions.

At the national level within Indonesia, the Ministry of Forestry (MoF) has historically served as the primary legal authority for REDD+. MoF Decree 455 provides the legal basis for the creation of the REDD Commission and a REDD+ working group within the Ministry was established through Decree No. SK.15/VIII-P3PIK/2011. However, REDD+ issues overlap with the jurisdiction of other governmental institutions, generating inter-institutional tensions. In 2010, a REDD+ Task Force for preparing the National REDD+ infrastructure was created outside of the MoF by Presidential Decree No. 19/2010 and renewed by Decree No. 25/2011. The 2012 Indonesia Draft REDD+ Strategy was developed by BAPPENAS (the national planning agency) and was finalized by the REDD+ Task Force. In September 2013 a more permanent ‘stand-alone’ REDD+ agency was created that reports directly to the President (via Presidential Decree Number 62/2013). Whilst the MoF has publicly stated that it welcomes this newly established REDD+ agency,⁵ it is also widely known that the MoF has objected strongly to the location of these REDD+ decision-making bodies outside of its jurisdiction (Mulyani and Jepson, 2013).

Meanwhile, the authority of other MoF REDD+ Decrees has also been challenged. For example, Scheyvens and Setyarso

² The Strategy was issued via the Head of REDD+ Task Force under Decree No.02/SATGASREDDPLUS/09/2012 to provide official legitimacy until a Presidential Decree was issued. See Indonesian National REDD+ Strategy (2012).

³ The translated Ministerial Decrees were kindly provided by Henry Scheyvens.

⁴ Another most recent REDD+ regulation, Decree No P.20/Menhut-II/2012 on the Implementation of Forest Carbon, issued by the MoF on 23 April 2012, cancelled Art 14.1.b within Decree No P.30/Menhut-II/2009, but this particular Article does not relate to our analysis of equity.

⁵ <http://en.tempo.co/read/news/2013/10/22/206523704/UKP4-Prepares-Transition-to-REDD-Management-Agency>.

Table 1 – Benefit sharing distribution.

Table N2JL No.	Permit holder/developer	Distribution		
		Government (%)	Community (%)	Developer (%)
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	Community Forest	10	70	20
6	Hutan Kemasyarakatan	20	50	30
7	Adat Forest	10	70	20
8	Village Forest	20	50	30
9	KPH	30	20	50
10	KHDTK	50	20	30
11	Protected Forest	50	20	30

Source: Attachment III, Decree of the Ministry of Forestry, Republic of Indonesia, Number: P. 36/Menhut-II/2009, Date: 22 May 2009.

(2010) consider that although the MoF Decree 36 states the distribution of income from the sale of carbon credits according to forest category (see Table 1), it is not clear if the Ministry of Forestry has the authority to make this attribution. In a letter sent to the Ministry of Forestry, the Ministry of Finance claims to have these responsibilities and has argued that the Decree is unconstitutional. This has led to cancellations of parts of the Decree, although the subsequent MoF Decree No 11/2013 has not revoked regulation of the distribution of income stated in the previous Decree.

While the distribution of authority across ministries continues to be contested, the MoF Decrees appear to provide some clarity on the vertical attribution of responsibilities across central, provincial and district governments. MOF Decree Licensing Carbon Sequestration (36/2009) reinforced the existing attribution of the provincial and district governments to issue environmental services licenses (IUPJL) stated in Government Regulation 6/2007; the environmental services regulated included storing and absorbing carbon in protection and production forests (Scheyvens and Setyarso, 2010). This support for the decentralization of state authority could lead to a more equal distribution of power across levels of government, but only if accompanied by a corresponding redistribution of personnel and material capital.

In regards to participation of non-state actors in parameter-setting, the drafting of the REDD+ MoF Decree 30 on REDD+ procedures provided some opportunities for public participation (Scheyvens and Setyarso, 2010). This included the involvement of representatives of the Alliance of Indigenous Peoples of the Archipelago (AMAN), the Association of Indonesian Forest Concessionaires (APHI), and the National Council on Forestry (DKN), a multi-stakeholder advisory board of the Ministry of Forestry which has five chambers ('government', 'communities', 'private companies', 'academics' and 'NGOs') (MoF, 2009). However, some leaders of indigenous groups claim that their views were not taken into account (Radin-Syarif, 2011).

In contrast, several leaders of the indigenous people and local communities stressed that their input was taken into good consideration by the REDD+ Task Force when finalizing the REDD+ Strategy (Mulyani and Jepson, 2013). The drafting of the Strategy, which was coordinated by BAPPENAS and supported by the UN-REDD Programme, involved 387 participants representing more than 200 organizations (UN-REDD, 2011).

In sum, the process of setting equity parameters in Indonesia is significantly contested. While the UNFCCC has clearly identified national governments as the locus of authority, there are ongoing debates as to the appropriate distribution of power among government bodies, as well as between government bodies and non-state actors.

3.2. Goal

The goal dimension of equity refers to whether or not there are goals to maximize or improve equity or simply avoid exacerbating inequity. The Indonesian Constitution states that: "Each person has the right to facilities and special treatment to get the same opportunities and advantages in order to reach equality..." (Article 28H(2)). Hence, the goal of maximizing equality is constitutionally embedded in Indonesia's legal framework. UNFCCC Article 3 (1), in contrast, states that the climate should be protected "on the basis of equity", but does not specify whether equity should be improved or not worsened.

Similar to the Constitution, the REDD+ Strategy includes strong language in support of equality among members of society. It states that REDD+ is implemented on the basis of the principle of equality for all, and human rights protection in forest management (Principle 3). It further specifies "equality of opportunity to get involved in all phases of REDD+ activities".

The MoF REDD+ Decrees only implicitly address the degree of equity to be achieved. First, there are certain provisions that include an aim of modifying existing social situations in the forestry sector in Indonesia. In its Article 2.2, MoF Decree 30 on REDD+ procedures mentions: "The purpose of the REDD activity is to restrict the occurrence of deforestation and forest degradation to achieve sustainable management of the forest management and to improve the welfare of the community." The issue of equity is implicit in this goal, since forest-dependent communities are often socio-economically disadvantaged in relation to other groups.⁶

Likewise, Appendix 2 of the MoF Decree 30 on REDD+ procedures implicitly refers to degrees of equity: one selection

⁶ Although the provision does not refer explicitly to forest communities, it may be implicitly understood in this way since the implementation of REDD+ initiatives will largely affect them.

criterion for REDD+ interventions is “the clarity of the poverty reduction dimension”. While equity and poverty reduction are interlinked, efforts to reduce poverty may either improve or worsen equity depending on the distribution of those efforts within targeted communities (see McDermott et al., 2013). As discussed below under “distributive equity”, MoF Decree 30 does address benefit distribution but only in the narrow context of payments for carbon.

Hence, goals for equity in REDD+ are embedded across a variety of legal texts in Indonesia. Equality is articulated as a goal in both the Constitution and the REDD+ Strategy, with both texts emphasizing equality of opportunity. The MoF Decree 30 contains explicit requirements to “reduce poverty”, with uncertain effects on equity.

3.3. Target

The target dimension of equity refers to the “subjects” whose relative welfare is considered in assessing the equity of particular outcomes. The Indonesian Constitution refers to individual citizens and the Indonesian nation as the ‘subjects of equity’; the former in Article 28 (H) concerning fundamental human rights and the latter in Article 33(3) that refers to the use of natural resources for the benefit of Indonesian people.

UNFCCC texts provide a nested set of targets, beginning at the global scale. Article 3(1) includes a broad statement that the “climate system” should be protected “for the benefit of present and future generations of humankind, on the basis of equity.” Article 3 (1.2) recognizes that different country Parties to the Convention face diverse challenges. Consistent with this, the UNFCCC COP 13 Decision (2007) on the Bali Action Plan frames developing countries as subjects of equity under REDD+ that are to be compensated by developed countries for efforts to reduce forest loss. Finally, Annex of UNFCCC COP 16 Decision (2010) articulates a set of “safeguards” focused at the community level, prioritizing the avoidance of harm and enhancement of benefits for “indigenous peoples and local communities”.

The Indonesian REDD+ Strategy identifies relevant stakeholders as the subject of equity, and emphasizes vulnerable communities in particular. For instance, it stresses that women and communities vulnerable to socio-economic and environmental change are to be assured of equality in REDD+ implementation (Section 2.1, Principle 3).

The MoF Decree on Licensing Carbon Sequestration addresses the participation of actors across a range of social scales that can apply for licenses for the commercial utilization of carbon sequestration (IUP RAP-KARBON) and/or storage (IUP PAN-KARBON).⁷ In forest areas that do not have a pre-existing licence these eligible actors include: (a) Individual (*perorangan*); (b) Cooperative (*koperasi*); (c) State-Owned Company (*Badan Usaha Milik Negara*) or Local Government-Owned Company (*Badan Usaha Milik Daerah*); (d) Indonesian Private Company (*Badan Usaha Milik Swasta Indonesia*) (Article 7.1). The sale value for environmental services, which

includes RAP-KARBON and/or PAN-KARBON, is referred to as “income from selling carbon credits that have been certified and paid based on an ERPA (Emission Reduction Purchase Agreement)” and is regulated within this Decree (Article 17).

MoF Decree 30 (Appendix 2) includes “community” as a specific “social scale category” in assessing the selection of a REDD+ site; hence communities are subjects of equity whose relative wellbeing is considered. The Decree states “A. REDD site selection criteria are through the assessment of the following: (4) Social, economic and culture: dependence of community to resources on the site; presence/absence of conflicts; involvement of other parties in the management of the forest, and clarity of poverty reduction dimension.”

In sum, a review of the UNFCCC text reveals a relatively comprehensive and nested hierarchy of subjects of equity under REDD+, from the global community, to developing countries, to local communities. Within Indonesia, REDD+-related legal texts likewise echo the UNFCCC’s focus on local communities as core subjects of equity. The REDD+ Strategy stands alone in addressing equity among or within local communities, placing emphasis on the needs of women and vulnerable communities.

3.4. Content

3.4.1. Distributive equity

Distributive equity refers to the way in which monetary and non-monetary benefits, costs and risks are distributed between different stakeholders. In this paper, we include the distribution of legal rights as well as of material and non-material goods and services.

UNFCCC Article 3.2 addresses the distribution of costs derived from the adverse effects of climate change among country Parties. It adopts a need-based approach since it mentions the Parties’ actions to implement the Convention should be guided by considering “the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change”(emphasis added).

At the national level, the preamble to the Indonesian Constitution states the aim “to realize social justice for all the people of Indonesia”. Article 28H (2) of the Constitution uses the terms ‘equality’ (*‘persamaan’*) and justice (*‘keadilan’*), stressing the need for affirmative action to provide the conditions for each person to enjoy equality and justice. The Constitution also refers to the right to enjoy a healthy environment (Article 28(H)) cultural rights (Article 32 and Article 28(I)) and rights of traditional communities to the recognition of customary law (Article 18(B)). Article 33 (3) constitutes a key provision for understanding the regulation of natural resources and limitations to the above-mentioned recognized rights by the fact, for example that the government can grant forest concessions. With a net social benefit approach, this Article states that the “natural richness” including land is “to be controlled by the state to be exploited to the greatest benefit of the people”.

In regards to *adat*, or customary law, the Constitution states that “cultural identity and traditional rights of *adat* communities are respected and protected by the State as human rights” (Article 28 I(c)) and that the “State recognizes and

⁷ IUP (*‘Ijin Usaha Pemanfaatan’*) RAP-KARBON (*‘Penyerapan Karbon’*) and PAN-KARBON (*‘Penyimpanan Karbo’*) refer to the commercial utilization of environmental services used in the production and protected forests (Article 2).

respects customary law communities along with their traditional rights” (Article 18 B(2)).⁸

The REDD+ Strategy stresses the need for fairness in the distribution of REDD+ benefits, and all parties that hold rights over any particular area where future REDD+ projects are to be implemented have the right to payment (Section 2.2.5.4).

As regards MoF Decree 36 on Licensing Carbon Sequestration, Table 1 refers to Appendix III of this Decree regarding the distribution of monetary benefits from the selling of carbon credit that has been certified and paid based on Emission Reduction Purchase Agreement (Article 7). The table states the distribution of benefits according to “Permit holder/Developer”, referring to State, Community and Developer. The community is the target group that should receive most resources in four out of the eleven categories included in the table. Appendix III also refers to the distribution between State levels and states: “Government’s share will be divided proportionately, that is, central Government 40%, provincial government 20%, District Government 20%.

In sum, REDD+-related legal texts in Indonesia lay out basic principles for distributive equity supplemented by prescriptive rules regarding the distribution of payments for forest carbon. However, as discussed below under contextual equity, these texts do not by themselves resolve the underlying question of who holds the rights to land, and hence is eligible to receive payments for REDD+ activities. Furthermore, no guidance is provided on how to address inequalities inherent in the current distribution of rights and resources.

3.4.2. Participatory/procedural equity

The participatory dimension of equity concerns the inclusion of stakeholders in implementing REDD+-related policies and initiatives. The Indonesian Constitution has no explicit reference to participatory equity. The UNFCCC refers to participation of countries in diverse situations in addressing climate change (i.e. developed, developing countries and countries more vulnerable to the adverse effects of climate change). COP Decisions e.g. Annex 1 of COP 16 (2010) articulates the participation of relevant stakeholders within a Nation State and explicitly refers to participation of indigenous peoples and local communities.

The REDD+ Strategy calls for all stakeholders-particularly the indigenous people and local communities- to be engaged in all REDD+ processes and to be provided with sufficient knowledge, information, and time so that they can participate effectively in the implementation of REDD+ (Section 2.2.5; Section 5.1, ‘fifth pillar’)

MOF Decree on REDD+ procedures, in its Article 4, spells out the universe of stakeholders whose voice should be recognized in implementing REDD+ initiatives. These stakeholders are divided into national and international entities. Possible

national implementing entities include head of natural resources conservation technical implementing unit or the head of the national parks technical implementing unit, customary forest managers, right forest owner or manager and village forest managers as well as licenses holders of other types of forests (Article 4.1). Possible international implementers are governments, business agencies, international organizations, foundations and individuals who provide the funds for REDD implementation (Article 4.2).

The head of the President’s Delivery Unit for Development Monitoring and Oversight, acknowledges that policies concerning participation and recognition of *adat* and community rights over the forest have not translated into practice. He acknowledges that a shift in policies need to be made in implementing REDD+ and expressed the government’s intention to prioritize the needs of forest communities and to “recognize, respect and protect *Adat* rights”. Moreover, he acknowledged that legislation on *adat* rights has been on the books for ten years, but rarely implemented.⁹ In the implementation of REDD+ activities, some organizations question the adequacy of governmental procedures for promoting equitable participation. For instance, in 2009, two Indonesian NGOs wrote a letter to the Ministry of Forestry expressing their concerns about the limited possibilities for an informed, effective and self-determined discussion of indigenous peoples in the Readiness Preparation Proposal for the World Bank’s Forest Carbon Partnership Facility (Scheyvens and Setyarso, 2010).

Different State levels participate in the selection of certain REDD+ initiatives. In particular, REDD+ initiatives to be developed in customary forests, right forests (lands bearing ownership rights), village forests and license holders of some types of forests (such as Timber Forest Product Utilization in Community Plantation and Timber Forest Product Utilization in Ecosystem Restoration in Natural Forest) require a recommendation for REDD+ implementation from the head of District (Article 5).¹⁰ Yet, not all types of forests need such a recommendation. For example, the Production Forest Management Unit, the Protected Forest Management Unit and the Conservation Forest Management Unit do not require such a recommendation (Article 6).

Decision-making on the distribution of economic resources derived from climate initiatives is also relevant to procedural equity. Article 17 of the MoF Decree on Licensing Carbon Sequestration addresses how decisions should be made about the distribution of funding for local communities derived from the sale of carbon credits. It states: “Funding for local community ... is managed by Trust Fund which is managed on good governance principles by the local community together with the village government and project development is facilitated by local Forestry Extension Officer for security in the area of forest being developed for the project RAP-KARBON and/or PAN-KARBON related to avoiding leakage.”

All told, if one considers the REDD+ Strategy and MoF Decrees together, Indonesia’s REDD+ legal framework

⁸ Provincial laws also regulate certain aspects of customary norms. Some examples are Law No. 18/2001 on Special Autonomy in Aceh and Regulation No. 5/1999 A Manual of Conflict Resolution for Ulayat Rights (Dunlop, 2009). Dunlop (2009) considers though that certain notions such as “national interest” enshrined in Constitutional provisions such as Article 33 (3) as well as other regulations relating to land and forests have subordinated legislative provisions protecting *adat* rights thereby creating an uncertain legal environment and inequity.

⁹ See Rights and Resources Initiative (2011).

¹⁰ Rights forest is forests located on land that is burdened land rights, i.e. forest that has existing permit/rights (Article 1).

contains strong requirements for inclusive processes (in the Strategy) and explicit requirements for how consultation should occur in practice, at least in regards to local payments for forest carbon (via the Decrees). As will become clear in the following discussion of contextual equity, however, written procedures are not by themselves adequate to ensure fully inclusive REDD+ processes.

3.4.3. Contextual equity

Contextual equity addresses the capabilities of individuals to participate effectively and benefit, as well as the social dynamics of access and power that shape these capabilities.

As discussed above, Article 28H2 of the Indonesian Constitution includes as a goal “the individual right to facilities and special treatment” in order to gain the equal opportunity and benefit that enable justice. This goal is, in essence, a goal of contextual equity.

Safeguarding contextual equity at the local level may require that forest people are provided with special treatment and power in legal processes. At present, a great challenge exists in ensuring the participation of social groups without a formally recognized status in environmental decision-making. On this account, the REDD+ Strategy includes social safeguards, emphasizing the basic human right to participate

Table 2 – Equity framework applied to relevant REDD+ legal instruments in Indonesia. The table summarizes the case study laws and associated provisions which are relevant when assessing dimensions of equity in REDD+-legal instruments in Indonesia. It is non-evaluative i.e. it identifies where the discussion of equity is relevant but does not assess how effectively or adequately the different dimensions of equity are addressed in practice.

Legal instrument	Equity framework					
	1 Parameters ^a	2 Goal	3 Target	4 Content		
				4a Distributive equity	4b Procedural/ participatory equity	4c Contextual equity
UN Framework Convention on Climate Change	COP 16 Decision 1C on REDD+		Art 3 (1,2,5) COP13, COP16, Annex	Art 3 (1,2)	Art 3 (1,2,5)	
Indonesian Constitution 1945		Art 28H2	Art 28H2, Art 33 (3)	Art.18B (2); Art. 28H(2); Art. 28I(3); Art. 32(3); Art 33 (3)		28H2
REDD+ National Strategy	Participation was addressed during establishment process	Section 2.1. Principle 3	Section 2.1. Principle 3	Section 2.2.5.4. Section 2.2.3.1.	Section 2.2.5. Section 5.1.	Section 2.2.5.3. Section 2.2.5.3.1.a
MOF Decree on REDD Procedures (30/2009). (MoF Decree No 20/2012 cancelled Art 14.1.b within Decree 30/2009)	Decree Considerations	Annex	Annex, Art 2, 8, 9 &10	Annex	Annex	
MOF Decree on REDD+ Commission (455/2008), as replaced by Decree No. 13/2009, as replaced by Decree No. 64/2010						
MOF Decree Licensing Carbon Sequestration (36/2009)	Art 6.3 Relates to Regulation 6/2007 Art CSR		Art 7.1 a, b, c, Art 14.7	17.1; 17.2 Attachment III	Art 17.1, 17.2, 17.4	Art 7.1; 14.7; 22
Includes as attachments: Indonesian REDD Revenue-Sharing Regulation (Peraturan Menteri Kehutanan), Republik Indonesia, Nomor: P. 36/Menhut-II/2009, dated May 22, 2009. (MoF Decree No 11/2013 amended Art 15 within Decree 36/2009; this latest Decree did not revoke the regulation on revenue sharing)						

Source: own elaboration.

The parameters dimension for the Constitution and the UNFCCC, i.e. how overarching goals of equity were set within these broader legal frameworks, is beyond the scope of this analysis.

in the management of forests (Section 2.2.5.3). It calls for a guarantee by the Government to acknowledge the rights of the local communities with respect to land and forests, not only based on formal law but also to consider their rights based on customary law ('hukum adat') (Section 2.2.5.3.1.a).

Yet, aspirational policies regarding human rights and REDD+ can produce the appearance of equity while obscuring the underlying structural conditions that preclude their implementation. For example, the [Ministry of Forestry \(2008\)](#), in a policy document concerning REDD+, mentions that contractual agreements are essential in forestry carbon projects for both buyers and sellers. For forest people in Indonesia, this implies acquiring a recognized legal status of community. However, the process that communities need to undergo in Indonesia in order to acquire legal personality is complex and forest people may not have the legal means to acquire such legal status ([Contreras-Hermosilla and Fay, 2005](#)).¹¹ Furthermore, even if forest people acquire legal personality that does not mean they will be able to apply to any kind of carbon selling licenses. While it is implicit within the Decree that communities can apply for IUP RAP and/or PAN KARBON by establishing or joining a cooperative, the requirements in the application process (which include amongst others a copy of the Deeds of the Cooperative establishment, business permit, tax number, and a business proposal – Article 7.2), are too difficult for communities to meet. Hence, it is unlikely that communities can apply for a license and sell the carbon credits without entering into partnership with other entities.

Another major contextual challenge for equity concerns Indonesia's diverse ethnic groups and languages. All Decrees must be published in the State Gazette of the Republic of Indonesia to ensure that the population has 'cognisance'. Yet, in practice, publishing the Decree in the Gazette does not imply that the Decree's content will be accessible to all. Indonesia's 220 million people (2005 data) include 500 ethnic groups, and 600 language groups ([McDermott et al., 2010](#)). Hence achieving contextual equity would require developing culturally specific materials in a range of formats and languages accessible to different stakeholders including forest-dependent people.

Forest peoples' advocates have been especially vocal in highlighting contextual dimensions of equity by looking at legal definitions and land rights. In particular, they have highlighted inequities derived from the way definitions concerning forests are stated in Indonesian legal instruments as well as implications of the attribution of the State to issue concessions over any forestland. For example, [Indigenous Rights Quarterly \(2009\)](#) criticizes the inclusion of the category of "customary forest" as part of "State forest", and the fact that the government has the sole authority to stipulate the status of forest as "State forest". To this end, it is worthy to note a decision by the Constitutional Court in May 2013 that declares some provisions of Indonesia's 1999 Forestry Law unconstitutional. Of particular relevance is the Court's ruling to delete the word "State" within Art 1 (6), an Article which

previously stated that "customary forests are State forests located in the areas of custom-based communities" (MKRI 2013). Whilst it is expected that the implementation of this ruling via numerous regulations of different levels of Government could take several years, the decision does at least strengthen the community position in Court for any conflicts over land rights between the community and the private sector or the State, and prevents communities from being criminalized for entering their customary forest-land.

In Indonesia, the interface between *de jure* and *de facto* definition of forest cover constitutes a challenge in terms of the equitable distribution of rights and duties concerning forest protection, including restrictions over the use of forest resources. For instance, one-third of Indonesia's forest emissions (a total of 0.6 Gt carbon per year) occur outside of areas institutionally defined as forests, and therefore are not accounted for under the current national policy for REDD+ ([Ekadinata et al., 2010](#)). This affects the capability of forest people in these areas to participate in REDD+ ([Table 2](#)).

In sum, the content of equity in REDD+ varies across legal instruments. While the various instruments examined include some provisions for benefit-sharing and participation, the greatest barriers to equity in REDD+ are likely to be contextual. These include lack of legal recognition of local land rights, as well as linguistic, cultural and other barriers to effective participation in REDD+ governance.

4. Discussion and conclusion

Research on the country-level enactment of environmental international treaties frequently begins with the analysis of treaty provisions and proceeds to assess the compliance of national and local laws with those provisions.¹² This approach assumes that international law will provide the necessary parameters (e.g. through decisions of the Conference of the Parties or Secretariat advice) that then will be operationalized at the national and local level. We did not find this approach adequate for analyzing the REDD+-related legal framework in Indonesia. In this case, UNFCCC text provides minimal guidance on **the parameters of equity**. Instead, equity has been defined mainly by governmental institutions and through REDD+ Ministerial Decrees. This process of parameter-setting has also been highly contentious, sparking tensions and debates about the appropriate distribution of power between public institutions with different but sometimes overlapping mandates. The REDD+ Strategy, which was drafted with large-scale public participation, provides the clearest and most comprehensive set of goals for equity in REDD+. However, it is unclear exactly how the authority to interpret these goals will be distributed among ministries, each of which holds responsibilities related to REDD+ implementation.

The selected legal instruments articulate a range of **subjects of equity**. The UNFCCC focuses most strongly on the global scale, identifying developing countries and their national governments as the core subjects of equity under

¹¹ Legal personality refers to any individual, company or government agency with the right to enter into binding agreements such as signing a contract ([Kornhauser and MacLeod, 2010](#)).

¹² See [UNDP \(2005\)](#) and [UNEP and UNU-IAS \(2008\)](#).

REDD+. In addition, the UNFCCC Appendix on REDD+ safeguards identifies local communities as important beneficiaries, though without reference to equity per se. The Indonesian MoF's REDD+ legislation similarly identifies local communities as key subjects of equity, but with a particular emphasis on the alleviation of poverty. The REDD+ Strategy provides the most specific guidance on the subjects of equity with its emphasis on the needs of women and vulnerable communities.

The examined REDD+ Ministerial Decrees also address the distribution of benefits (though not risks and costs) and participation in REDD+ decision-making, both of which form part of the **content of equity**. However, the equity outcomes of the distributive and procedural rights articulated in these legal texts depend on broader legal and socio-economic contextual dimensions. In Indonesia, these **contextual dimensions** include widespread lack of effective rights to land, lack of legal status to obtain licenses for selling carbon credits, and lack of access to legal texts translated into local languages and cultures. These contextual factors are likely to be the greatest obstacles to operationalizing equitable benefit sharing and participation in REDD+.

In contrast to the REDD+ Ministerial Decrees, the Indonesian Constitution provides a legal mandate for addressing contextual equity, based on a principle of equal opportunity for all citizens. Thus the Constitution, while not a REDD+ law per se, could be viewed as a core legal instrument for addressing equity in REDD+. Likewise, the 2013 Constitutional Court's decision addresses contextual equity because it strengthens the legal position of forest communities in land conflicts. However the impact of this Court decision will depend on its implementation via numerous regulations, which may take several years. The ongoing application of comprehensive Equity Frameworks such as that outlined by McDermott et al. (2013) can facilitate the systematic monitoring of these and other legal developments to assess Indonesia's overall progress towards its own evolving goals for social equity.

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REFERENCES

- Contreras-Hermosilla, A., Fay, C., 2005. *Strengthening Forest management in Indonesia through land tenure reform: issues and framework for action*. Forest Trends.
- Costenbader, J., 2009. Legal frameworks for REDD: Design and Implementation at the national level. IUCN, Geneva, Switzerland. http://cmsdata.iucn.org/downloads/eplp_77.pdf (viewed 20.09.11).
- Costenbader, J., 2011. REDD+ benefit sharing: a comparative assessment of three national policy approaches. In: UN-REDD Programme and the Forest Carbon Partnership Facility. .
- Dunlop, J., 2009. *REDD, Tenure and Local Communities: A Study from Aceh, Indonesia*. International Development Law Organization, Rome.
- Feliciani Robles, F., Peskett, L., 2011. Carbon rights in REDD+: The case of Mexico. <http://redd-net.org/files/Mexico%20case%20study%20final.pdf> (viewed 14.11.11).
- Ekadinata, A., van Noordwijk, M., Dewi, S., Minang, P.A., 2010. Reducing emissions from deforestation, inside and outside the 'forest'. In: ASB Policy Brief 16, ASB Partnership for the Tropical Forest Margins, Nairobi, Kenya. <http://www.asb.cgiar.org> (viewed 19.09.11).
- Indigenous Rights Quarterly, 2009. *Indonesia: no rights, only duties to conserve environment and forest*, Vol. IVpp. 1–2 No. 1–2.
- Indonesian National REDD+ Strategy, September 2012, <http://www.satgasreddplus.org/download/301112.REDD+.National.Strategy.Indonesia.pdf> (viewed 04.01.14)
- Kornhauser, L., MacLeod, B., 2010. *Contracts between legal persons*. In: NBER Working Paper No. 16049. .
- McDermott, C.L., Cashore, B., Kanowski, P., 2010. *Global Environmental Forest Policies. An International Comparison*, Earthscan, London.
- McDermott, M., Mahanty, S., Schreckenberg, K., 2013. *Examining equity: a multidimensional framework for assessing equity in payments for ecosystem services*. Environ. Sci. Policy 33, 416–427.
- Mulyani, M., Jepson, P., 2013. *REDD+ and forest governance in Indonesia: a multistakeholder study of perceived challenges and opportunities*. J. Environ. Dev. 3, 261–283.
- Poffenberger, M., 2006. *People in the forest: community forestry experiences from Southeast Asia*, International. J. Environ. Sust. Dev. Vol. 5 (1) .
- Radin-Syarif, 2011. Exploring REDD+ Implementation in Indonesia's State Policies for Indigenous Peoples, Indigenous Peoples, Forests & REDD Plus: State of Forests, Policy Environment & Ways Forward. Tebtebba Foundation, Baguio City, Philippines. In: http://unfccc.int/files/methods_science/redd/application/pdf/state-of-forests.pdf (viewed 19.09.11).
- Rights and Resources Initiative, 2011. Indonesian Government announces dramatic shift in Forest Policy. In: <http://www.gacfonline.com/2011/07/indonesian-government-announces-dramatic-shift-in-forest-policy> (viewed 13.06.11).
- Scheyvens, H. (Ed.), 2010. *Developing National REDD+ Systems: Progress, Challenges and Ways Forward*. Indonesia and Viet Nam Country Studies, Institute for Global Environmental Strategies, Kanagawa, Japan.
- Scheyvens, H., Setyarso, A., 2010. *Development of a National REDD-plus System in Indonesia*. In: *Developing National*

- REDD+ Systems: Progress, Challenges and Ways Forward. Indonesia and Viet Nam country studies. Institute for Global Environmental Strategies, Kanagawa, Japan.
- Sikor, T., Johannes, S., Enters, T., Ribot, J., Singh, N., Sunderlin, W., Wollenberg, L., 2010. REDD-plus, forest people's rights and nested climate governance. *Global Environ. Chang.* 20, 423–425.
- Stern, Nicholas, 2008. The Economics of Climate Change. *Am. Econ. Rev.* 98 (2) 1–37.
- Wilfredo, V., Subido, A.G., Tinda-an, R. (Eds.), 2010. *Indigenous Peoples, Forests & REDD Plus: State of Forests, Policy Environment & Ways Forward*. Tebtebba Foundation, Baguio City, Philippines.
- UNDP, 2005. Traditional knowledge. In: Wong, T., Hay-Edie, T., Akhtar, T., McNeill, C. (Eds.), *Access to Genetic Resources and Benefit Sharing. A practice note*. United Nations Development Programme.
- UNDP, 2007. Human Development Report 2007/2008, Fighting climate change: Human solidarity in a divided world. United Nations Development Programme. In: <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters> (viewed 10.01.14).
- UNEP, UNU-IAS, 2008. *Access to Genetic Resources in Africa Analysing Development of ABS Policies in Four African Countries*. United Nations Development Programme.
- UNFCCC COP Decision 12/CP.17, 2011. United Nations Framework Convention on Climate Change. In: Conference of the Parties 17th session. Durban, South Africa. In: <http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf#page=16> (viewed 10.01.14).
- UNFCCC COP Decision 1/CP.16, 2010. United Nations Framework Convention on Climate Change. In: Conference of the Parties 16th session. Cancun, Mexico. In: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2> (views 10.01.14).
- UNFCCC COP Decision 1/CP.13, 2007. United Nations Framework Convention on Climate Change. In: Conference of the Parties 13th session. Bali, Indonesia. In: <http://unfccc.int/documentation/decisions/items/3597.php?such=j&volltext=/CP.13#beg> (viewed 15.11.11).
- UN-REDD, 2011. *Annual Joint Programme Progress Report – Indonesia: UN-REDD PROGRAMME SIXTH POLICY BOARD MEETING*. UNREDD/PB6/2011/II/1/Add.3. Da Lat. UN-REDD Programme, Viet Nam.

LEGAL MATERIAL CITED

- Indonesian Constitution 1945, http://www.humanrights.asia/countries/indonesia/laws/uud1945_en (accessed 22.06.11)
- Law Number 41 of 1999 concerning Forestry, Indonesia. http://www.dephut.go.id/INFORMASI/UNDANG2/uu/Law_4199.htm (accessed 22.05.11)
- Ministry of Forestry of the Republic of Indonesia, 2008. Consolidation Report, Reducing Emissions from Deforestation and Forest Degradation in Indonesia, http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/IFCA_Consolidation_report_REDD_Indonesia.pdf (viewed 04.01.11)
- Minister of Forestry Decree on Reducing Emission from Deforestation and Forest Degradation Commission, sk.455/menhut-ii/2008, 2 December 2008, Indonesia.
- Ministry of Forestry Decree regarding procedures for licensing of commercial utilisation of carbon sequestration and/or storage in production and protected forests, p. 36/menhut-ii/2009, 22 May 2009, Indonesia.
- Ministry of Forestry Decree on Reduction of Emissions from Deforestation and Forest Degradation Procedure, No. 30/2009, P.30/Menhut-II/2009, 1 May 2009, Indonesia.
- Ministry of Forestry Konsultasi Publik rancangan Permenhut Tentang REDD, Indonesia, 25 Maret 2009, http://www.forda-mof.org/uploads/2009/Ringkasan_KPP.pdf (viewed 17.11.13)
- MKRI (Makamah Konstitusi Republik Indonesia), 2013. Constitutional Court Ruling No. 35/PUU-X/2012. Jakarta, 16 May. In: http://cathuk.files.wordpress.com/2013/05/putusan_sidang_35-puu-2012-kehutanan-telah-ucap-16-mei-2013.pdf (viewed 21.11.13).