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Review of the New Local Government Law

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i Executive Summary

In September 2014, the Indonesian government enacted the new Local Government Law, Law No. 23/2014 that replaced the old Local Government Law, Law No. 32/2004. The lessons learned from the implementation of old law was the main reason why the government needed to write the new law. Conceptually, the Local Government Law is the main legal regime regulating the distribution of functions and authority among the central, provincial, and district governments.

In the old law, most governmental functions were distributed between the central and district/municipal governments while the authority of provincial governments was not regulated in great detail. In the new law, most governmental functions are distributed between the central and provincial governments. District/municipal governments retain the authority for several functions, but to a much lesser degree than that given by the old law. The old law, for instance, gave certain authority to district/municipal governments in the forestry sector, however, the new law decentralized authority in the forestry sector only to the provincial level.

This article summarizes the legal analysis of the old and new Local Government Laws. Specifically, this article will analyze the shift of authority and distribution of governmental functions among the central, provincial, and district governments, especially with regards to land-based sectors, including forestry, land, agriculture, and spatial planning. The analysis finds that there are a number of significant changes to the distribution of governmental functions and authority with regards to the aforementioned sectors. In the forestry sector, the central government retains the authority over state forest areas, which includes the planning and licensing process, the implementation of forest management and monitoring. The central government holds the authority to control the planning process and monitoring of forest resources, including gazettement of forest areas. Although the authority to conduct planning for forest area gazettement rests in the hands of the central government, implementing this activity will be the task and responsibility of the provincial government. In this regard, there are many issues relating to the implementation of forest area gazettement, which are closely related to the responsibilities of provincial governments, such as the settlement of third party rights claims and monitoring the use of forest areas.

With regards to licensing in the forestry sector, provincial governments have two categories of licensing authority. The first is forest utilization licenses/permits that are non-exploitative in nature, which do not create significant impacts on forest cover or cause changes in the landscape inside the forest area. Permits

that fall into this category are Business Permits for Forest Area Utilization (IUPK), Business Permits for Environmental Services Utilization (IUPJL) - except for the utilization of forest areas for carbon storage and/or sequestration, which is still under the authority of the central government - and Non-Timber Forest Product Extraction Permits (IPHHBK). The second category is permits for activities that will have an impact on forest cover, including: Permits for Timber Forest Product Extraction (IPHHK) and Timber Utilization Permit (IPK) in Convertible Production Forest (HPK) and forest area with lease permits.

Specifically at the implementation level, the authority for the forestry sector is closely related to the authority for Forest Management Units (FMU). The authority, which was previously distributed among district/municipal or provincial governments, has now been allocated solely to provincial governments. This implies that it is provincial governments who will implement FMU related functions including designating forest functions and conducting forest management, forest utilization, forest use, forest area use, forest rehabilitation and reclamation, and forest protection and nature conservation in accordance with the jurisdiction of the provincial government. Since FMUs will be the main locus for forest management at the site level, then various technical proposals, regarding forest use and forest area allocation, must first be addressed to provincial governments. The role of the central government is to monitor forest plans proposed by the province and their implementation. Thus, the system for planning and monitoring forest utilization at the macro level is still under the authority of the Ministry of Environment and Forestry (MoEF). Meanwhile, the authority to propose forest area utilization and management at the site level will be the provincial government's authority.

In the land sector, the new law devolves most of the authority for land functions to the provincial or district/municipal governments. Governments at the district/municipal level are given more licensing authority in the land sector than the central and provincial level. Government functions related to communal *(ulayat)* and abandoned lands are fully devolved to the provincial or district/municipal level.[1] In the old law, the two functions were placed under the authority of the central government, including the authority to set norms, standards, procedures, and criteria. With regards to land acquisition for public interests, the authority is distributed between the central and provincial governments. This is in accordance with the provisions of Law No. 2/2012 on Land Acquisition for Development for Public Interests, which distributes the authority for land acquisition between the central government and provincial governments. In the Land Acquisition Law, district heads are only involved as a member of the assessment team in case of objections that may arise regarding the location of a development plan (article 21 para 3). In the old law, a district or municipality has the authority for land acquisition for public interests, including designating the location, establishing land acquisition committees, establishing a team to assess land prices, and settling disputes regarding compensation. The distribution of authority under the new law should be further regulated in derivative regulations to make it operational such as through government regulations, presidential regulations, and/or ministerial regulations.

With regards to spatial planning, there is no significant change in the distribution of governmental functions between the old and new Local Government Laws. However, in terms of licensing, according to the new law, a district/municipal government has the authority to issue more permits than the central government, namely: Building Construction Permits, National Construction Service Business Permits, and Settlement Area Construction and Development Permits. A provincial government does not even have any licensing authority regarding spatial planning. It is only authorized to coordinate spatial planning proposals from district/municipal governments. The authority to issue the aforementioned three licenses by district/municipal governments pertains more to urban areas. Meanwhile, spatial planning in rural areas is closely related to the distribution of governmental functions in the forestry sector because so many villages are located inside or overlapping with forest areas. Spatial planning provisions may have to be adjusted, especially regarding

[1] Abandoned land is land, on which the State has issued rights in the form of Property Rights, Business Use Rights, Building Construction Rights, Use Rights, Management Rights, or basis of control over land that is not utilized for business, not used, or not utilized in accordance to the condition or nature and objectives of the giving of rights or basis of control (article 2 Government Regulation No. 11/2020 on the Control and Utilization of Abandoned Land).

the authority to propose forest area changes, which has been redistributed to provincial governments from district governments.

In the agricultural sector, the new law redistributes authority over several governmental functions back to the central government, such as agricultural quarantine and protection of plant varieties. It is in contrast with the old law, which gave some authority to the regional governments, including in the protection of plant varieties such as observation, identification, mapping, control, analysis, and regulation of impact/loss, and pest and disease epidemic control. In terms of licensing, there is no difference between the old and new Local Government Laws. Both laws give the authority to governments at the provincial, district, and municipal levels to issue agricultural business permits, whether for plantations, crop cultivation, or horticulture.

Although it recentralizes some authority back to the central level, the new law provides clearer guidance related to the distribution of governmental functions between the central and local governments. Most functions related to formulation of operational regulations for the implementation of governmental functions amongst government levels, which were in the old law, are no longer included in in the new law. For instance, the establishment of norms, standards, procedures, and criteria (NSPC) to implement a governmental function is no longer listed in detail in the new Law, unlike in the old law and Government Regulation No. 38/2007. The new law also grants authority to the central government to formulate NSPC for all functions relegated to the local level. This is different from provisions in the old law, which distributed the authority to set NSPC both to governments at the central and local levels. As a consequence of this distribution, many functions could not be implemented because the NSPC at the local level had not been established, even up to the issuance of the new law. By taking back the authority to establish NSPC to the central level, it is hoped that the formulation of NSPC will be quicker. However, it also raises an issue regarding implementation at the local level as the standards, criteria, and procedures formulated by central government often fail to address various local needs.

The new law stipulates that the operational regulations for the implementation of authority for each governmental function should be formulated by the beginning of 2017. The Law does not stipulate the exact legal form for the NSPC that will be formulated. NSPC is needed by the central government to guide the interpretation of policy implementation. For governments at the provincial, district, and municipal levels, NSPC provides direction so that their interpretation of policy implementation is similar with the central level. This creates consistency between implementation at the local level with planning at the central level. To achieve this, the new law will be equipped with operational regulations, including for the formulation of NSPC for a number of governmental functions up to the beginning of 2017.

The implementation of the new law will depend on a number of operational regulations, one of which is the revision of Government Regulation No. 41/2007 on Local Organizational Apparatus, which is under the auspices of the Ministry of Home Affairs. This government regulation is very strategic because it will determine organizational structures at the local level along with their core tasks and functions. The Ministry of Home Affairs plans to streamline the organizational structures at the provincial and district/municipal level to increase efficiency in terms of coordination and budget. One scenario that can be opted for by the Ministry is merging the authority over several issues that are currently scattered in a number of organizations under a single organizational unit. Of course, the option has both positive and negative consequences for the performance of local governments. Therefore, both empirical and legal analyses must first be conducted so that the new Local Government Law can strengthen the spirit of decentralization as well as improve the performance of provincial, district, and municipal governments in the future.[2]

[2] Discussion with Justiman Situngkir, organizational section of the Ministry of Interior in Aceh, August 27, 2015

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1 Foreword

Since the Indonesian government began the process of decentralization, the Local Government Law has become the main regulation that determines the distribution of authority among the central, provincial, and district governments. The law is the reference for measuring the capacity of local governments to regulate and implement the functions that they were delegated. Therefore, the law is often referred to as the Regional Autonomy Law. A number of criticisms were repeatedly directed against the Regional Autonomy Law, especially with regards to the seemingly "half-hearted" distribution of governmental functions. Local governments were considered to be given authority over limited administrative matters while the central government retained all the political control needed by the local level to implement their own functions (Hidayat, 2010). Nevertheless, the Law still gave the local level an opportunity to regulate their resources in an autonomous manner (Kuncoro, 2004, Simanjuntak et al, 2013).

Since the fall of Soeharto, the Local Government Law has changed three times. The first Law was enacted in 1999 and was effective in 2001. It underwent the next revision three years later, in 2004. Ten years later, in 2014, it was revised again through the enactment of Law No. 23/2014 on Local Government. The revisions brought changes in the distribution of governmental functions among the central and the provincial or district/municipal governments, including: development planning, forestry planning and management, proposals to designate Areas for Other Uses (APL), the granting of (location) permits, business permits, the resolution of tenurial conflicts, the rights of indigenous people and local communities.

Each revision to the Local Government Law has implications for the formulation of development policies both at the national and regional levels. For example, a function that was decentralized from the central to the provincial or district/municipal level of government will have implications in terms of added responsibility for provincial, district, and municipal governments and consequently, the organizational structure of local governments. This may be followed by implications regarding personnel needs, costs, and other aspects required to perform the function at the provincial or district/municipal level. It is also the case when a governmental function is redistributed from the district/municipal to the provincial level. It will create implications in terms of adjustment or addition to provincial policies and organizational structures.

This article examines the legal norms of the new Local Government Law, especially those pertaining to the distribution of governmental functions for natural resources among the central, provincial and district/

municipal governments. This article focuses specifically on the sectors of forestry, spatial planning, land, and agriculture. Due to time constraints, only these sectors were analyzed. There is, however, an urgent need to discuss the legal implications of the enactment of the new law across the entire natural resources sector. Further discussion on mining, villages, and the environment will be provided at another opportunity.

The objective of examining changes due to the revision of Local Government Law from Law No. 32/2004 to Law No. 23/2014 in the forestry, spatial planning, land, and agriculture sectors is twofold:

- To examine the redistribution of functions and authority from one level of government to another. The redistribution of authority can be downwards from the central to the local level or upwards from the district to provincial level.
- To provide a legal analysis and to propose scenarios regarding the implementation of authority, institutional requirements, and environmental and social sustainability aspects resulting from the redistribution of authority due to the enactment of the new Local Government Law. The legal analysis presented is not based on sectors because there are many issues that are cross-sectoral in nature.

In general, it can be concluded that the change of Local Government Law from Law No. 32/2004 to Law No. 23/2014 strengthens the authority of governors in terms of coordination roles. It gives governors a bigger portion of authority for coordination in the forestry sector compared to the authority provided by the previous law. This, in turn, influences authority over many other functions, such as licensing, management of forest areas, and spatial planning. This paper will discuss these issues in a more detailed manner.

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Differences between the Old and New Local Government Law

1. Forestry Sector

A. Forestry Planning

The new Local Government Law redistributes the authority to perform all functions related to forestry planning to the central government (Ministry of Environment and Forestry/MoEF). It does not explicitly give authority to provincial or district governments regarding forestry planning. Authority over forestry planning comprises the following aspects:

- Forest inventory;
- Forest area gazettement;
- Forest area functions designation;
- Establishment of forest management zones; and
- Formulation of national forestry plans.

In this case, the new Local Government Law is different to the old Local Government Law, which assigned authority over several forest planning functions that were technical in nature to provincial or district governments. Under the old law, there were three sub-functions in forestry planning, which involved provincial or district governments in implementation, namely forest inventory, designation of forest areas and planning of forest areas with special purposes (Table 1). Under the new law, the authority for forestry management has been devolved to the provincial level. Consequently, provincial governments have the authority to propose and provide technical considerations regarding the change of forest area status, establishment of Forest Management Units (FMU) and other forestry planning functions. Technical proposals from provincial governments will be used as inputs for the Directorate General in MoEF that handles FMUs with regards to forestry planning. FMUs are forest management units at the site level with functions including conducting forestry planning based on the potential and needs of the area, resolving problems encountered at the site level such as conflicts regarding third party claims, and conducting planning and monitoring.

Table 1: Distribution of forestry planning authority to provincial and district/municipal governments under the new and old Local Government Laws

Authority	The Old Local Government Law		The New Local Government Law
	Province	District/Municipality	
Forest Inventory	Conducting inventories of production forests, protected forests, and forest parks and watershed areas that cut across several districts/ municipalities	Conducting inventories of production forests, protected forests, and forest parks and watershed areas in district/ municipal areas	Provincial governments are given the opportunity to assist forest planning by providing technical considerations, such as proposing changes in forest area status and functions, establishment of FMUs, and others.
Designation of production forests, protected forests, conservation forests, and hunting park areas	Providing technical considerations regarding the designation of production forests, protection forest, conservation areas, wildlife reserves, and hunting park areas	Proposing the designation of production forests, protection forests, conservation areas, wildlife reserves, and hunting park areas	
Forest Areas for Special Purposes	Proposing and providing technical considerations regarding the management of forest areas for special purposes for customary law communities, research and development, forestry education and training, and social and religious institutions at the provincial scale	Proposing the management of forest areas with special purposes for customary law communities, research and development, forestry education and training, and social and religious institutions at the district/ municipal scale taking into account the governor's considerations	

B. Licensing

The authority to issue commercial licenses in the forestry sector still lies in the hands of the central government, in this case the Ministry of Environment and Forestry (MoEF). Commercial licenses usually result in a change in a forest landscape. For example, the MoEF still holds the authority to issue the business permits for timber forest product utilization in natural and plantation forests. MoEF also retains the authority to issue lease permits for non-forestry purposes such as mining. The two types of license contribute to a change in, and reduction of, the size of forest cover. Other licenses that are less commercial and do not contribute to a change in forest area landscape are devolved to the provincial level, such as environmental services permits and permits to extract non-timber forest products. The licenses, the authority for which is retained by the central government, have much higher economic value compared to those relegated to local governments. The economic value pertains to the income received by the governments resulting from financial obligations that must be met by permit-holders, such as the reforestation fund and other levies.

In essence, forestry licenses are still fully subject to the Forestry Law regime along with its derivative regulations that give most of the licensing authority to the central, provincial and district/municipal governments. The composition of licensing authority in the forestry sector is distributed among the central, provincial, and district/ municipal governments, as stipulated in Government Regulation No. 6/2007 jo Government Regulation No. 3/2008, Government Regulation No. 10/2010 jo Government Regulation No. 60/2012, Government Regulation No. 21/2010 jo Government Regulation No. 105/2015. However, authority over logging/timber extraction still rests in the hands of the Ministry of Environment and Forestry (Table 2). There is no fundamental change regarding licensing regime in the new Local Government Law.

Table 2: The authority of MoEF, provincial, and district/municipal governments for licensing in the forestry sector

Authority of MoEF	Minister of Environment and Forestry	Authority of Provincial Level	Authority of District/ Municipal Level
Business Permits for Timber Utilization in Natural Forests, Ecosystem Restoration Forests, Industrial Timber Plantations (HTI), Reserved Areas for Peoples' Timber Plantations (HTR), and Plantation Forests from Rehabilitation (HTHR)	✓	X	X
Business Permits for Non-Timber Forest Product Utilization (IUPHHBK)	✓	✓	✓
Business Permits for Timber Forest Product Extraction (IPHHK)	✓	✓	✓
Forest Area Lease Permits	✓	X	X
Approval-in-principle for forest area relinquishment	✓	X	X
Approval-in-principle for forest area exchange	✓	X	X

C. Forest management or utilization

The new Local Government Law shifts authority over several forest utilization functions from the district to provincial level of government. According to the new law, the implementation of governmental functions in the forestry sector is distributed between the central and provincial governments.[3]

Government at the district level almost has no authority over the management or utilization of forests. The only forest management function that is explicitly devolved to the district/municipal level is management of forest parks known as *Taman Hutan Raya* (Tahura), which are located in the administrative area of districts/ municipalities (Table 3).[4]

Authority for forest management is mainly related to Forest Management Units (FMU). FMUs are currently the main implementation unit for forest area management, hence, it is the main target for policy and program development in the forestry sector. FMUs are designed to strengthen local participation in proposing forest area management and utilization. Thus, forestry planning at the micro level will mostly be conducted by FMUs. In this case, the role of provincial governments is very strategic in terms of determining forest management plans. Besides, FMUs can also provide inputs and suggestions in the formulation of macro forestry plans at the national level or other forestry planning policies as described above.

Table 3: Distribution of authority over forest area utilization and stewardship among provincial and district governments in the new Local Government Law

Government Level	The Old Local Government Law	The New Local Government Law
Provinsi	• Providing technical considerations for the change of forest area status and function, change of land status from private land to forest area, and use and exchange of forest areas. • Conducting the formulation of architecture and establishment and proposing the designation of	• Conducting the designation of forest functions in Forest Management Units, except for Conservation Forest Management Unit (KPHK). • Conducting forest utilization in production and protected forest areas, including:

[3] Two other governmental functions that are shared with the provincial level are maritime and energy and mineral resources
[4] Article 14 of the New Local Government Law

Government Level	The Old Local Government Law	The New Local Government Law
	Protected and Production Forest Management Units (FMU) and providing technical considerations regarding regional institutions for forest management.	1. Utilization of forest area; 2. Utilization of non-timber forest products; 3. Extraction of forest products; and 4. Utilization of forest area for environmental services, except for carbon storage and/or sequestration.
District	• Proposing a change in status and function of forest area and change of land status from private land to forest area and utilization and exchange of forest areas. • Providing considerations regarding the architecture and proposals to establish management areas for protected forests and production forests and institution of forest management areas.	• Conducting the management of Forest Parks (Taman Hutan Raya - Tahura) at the district/municipal level.

Based on the new law, from the six sub-functions in the forestry sector, only one pertaining to conservation is devolved to the district level, namely the management of Forest Parks. The authority over strategic matters such as proposing a change in the status and function of forests to non-forest areas and the use and exchange of forest areas is no longer given to the district level. The authority over implementation of production and protected forest area utilization under the new law is given to the provincial level.

2. Land Sector

The new law still maintains the distribution of authority over three strategic matters in the land sector to the local level, namely authority over location permits, deserted or abandoned land, and communal *(ulayat)* land. Explanations regarding the aforementioned issues is presented in detail below.

A. Location Permits

The old law contained a more detailed explanation regarding the implementation of the authority to issue a location permit, which is the first license required for plantation activities. The regulation detailed the process of issuing a location permit including applications, coordination, reviews and the issuance of decision letters granting the location permit by the minister, governor, head of district/municipality in accordance with their respective authority. And, finally, the monitoring of the land acquisition. The new law, however, does not regulate the scope of authority for the issuance of location permits in detail. However, it assigns the authority to issue location permits to each government level based on the scope of their administrative territory. A location permit is a very crucial phase for business actors who want to obtain a business permit. A location permit is temporary in nature, with a validity period ranging from 1-3 years, depending on the size of the location. However, this permit provides business actors with a legal basis to conduct land acquisition required to begin the initial investment activities, such as measuring and determining zones of the location, conducting Environmental Impact Assessments, and applying for the environmental permit.

B. Abandoned Land

Abandoned land is one of the main objects of land reform that aims to distribute land to landless people. In the last couple of years, the government has been eager to redistribute abandoned lands, whether those were previously controlled by legal entities conducting a certain business or by individuals. Government Regulation No. 11 year 2010 has provided a basis for controlling abandoned lands. According to this regulation, the identification of abandoned lands is under the authority of the head of Regional Office of the National Land Agency at the provincial level. Based on the identification conducted at the provincial level, the head of the National Land Agency will issue a Decision Letter on the designation of abandoned land.

In the old law, governments at the district and/or municipal levels have the authority over abandoned lands including the use and redistribution of the lands. The authority is retained in the new law (Table 4). A significant distinction between the old and the new law is that the central government no longer has the authority to settle cases of abandoned land.

Table 4: Authority of district governments over abandoned lands according to the old and new Local Government Laws

The Old Local Government Law	The New Local Government Law
• Inventory and identification of deserted land to be utilized for seasonal food crops. • Designation of land parcels as deserted land that can be utilized for seasonal food crops together with other parties based on an agreement. • Designation of parties that need land for seasonal food crops by prioritizing local communities.	• Settlement of cases of deserted land in district/ municipal areas. • Inventory of deserted land utilization in district/ municipal areas.

C. Communal (*Ulayat*) Land

The new law provides the district government with the authority to resolve land disputes, communal *(ulayat)* land, and land reform. This authority had also been stipulated in the old law and was even formulated in detail in Government Regulation No. 38/2007. However, exercise of the authority was difficult, especially for *ulayat* land, because it did not include forest areas. The National Land Agency faced a difficulty in registering claims of *ulayat* land because it was unequivocally accepted that the "authority" over forest areas rests in the hands of the Ministry of Forestry. The Regulation of Minister of Agrarian Affairs (or National Land Agency) No. 5/1999, which specifically encourages the identification and recognition of *ulayat* land could not be implemented optimally. Institutionally, there is no internal structure in the National Land Agency specifically that has the responsibility to address the problems of *ulayat* land.

Following the issuance of Constitutional Court Decision No. 35/PUU-X/2012 regarding customary land rights, the government issued a joint regulation regarding the Procedure for Relinquishment of Communities' Lands in Forest Areas. The regulation was issued by the Ministers of Home Affairs, Forestry, Public Works, and the head of the National Land Agency No. 79 Year 2014, No. PB.3/Menhut-II/2014, No. 17/PRT/M/2014, No. 8/ SKB/X/2014, and subsequently called the Joint Regulation of Four Ministries. This regulation aims to provide the government at the district/municipal level with a legal basis to legalize individual claims inside forest areas after fulfilling several requirements.

In line with the joint regulation, the Ministry of Agrarian Affairs and Spatial Planning (National Land Agency) has already issued a Ministerial Regulation No. 9/2015 regarding the Registration of *Ulayat* Land in Forest Areas. According to this Ministerial Regulation, the head of district has the authority to establish a team

to conduct inventories of the control, ownership, use, and utilization of land (*Inventarisasi Penguasaan, Pemilikan, Penggunaan, dan Pemanfaatan Tanah*) by local communities in forest areas. If the claim of *ulayat* land is located inside forest areas, the IP4T team will propose the relinquishment of the forest area to the Ministry of Environment and Forestry through the Directorate General of Planology. A Decision Letter of Forest Area Relinquishment from the Minister of Environment and Forestry together with the results of the IP4T team will become the basis for the head of district to legalize the existence of indigenous peoples and their *ulayat* land. [5]

Provincial governments also have the authority to legalize *ulayat* land in locations that cut across several districts/municipalities. However, because most *ulayat* land is located in the jurisdiction of the district government, in the future, the exercise of authority to legalize ulayat land will mostly be conducted at the district level. This authority will provide district heads or mayors with a significant portion of authority regarding the recognition of rights to ulayat land in forest areas for customary law communities. In the implementation of this authority, heads of districts/municipalities will coordinate directly with the Ministry of Environment and Forestry.

3. Agriculture

Both the old and new Local Government Laws classify authority in the agricultural sector into three categories, namely food crops, horticulture, and plantations. The authority of the provincial and district/municipal governments in the agricultural sector is related to these three categories (Table 5).

Table 5: Licensing authority of the provincial and district/municipal governments in the old Local Government Laws

Sector	Province	District/Municipality
Food Crops and Horticulture	• Granting business permits for food crops and horticulture within the province. • Monitoring and supervising the implementation of business permits for food crops and horticulture within the province.	• Granting business permits for food crops and horticulture within the district/municipality. • Monitoring and supervising the implementation of business permit for food crop and horticulture within the district/municipality.
Plantations	• Granting business permits for plantations across several districts/municipalities. • Monitoring and supervising the implementation of business permits for plantations across several districts/municipalities.	• Granting business permits for plantations in the district/municipality area. • Monitoring and supervising the implementation of business permits in the district/municipality area.

In essence, the authority for the agricultural sector does not change after the issuance of the new Local Government Law (Table 6). The new law retains provisions regarding the licensing authority both at the provincial and district/municipality levels.

[5] See Common Regulation of the Ministry of Interior, Ministry of Forestry, Ministry of Public Work and Head of National Land Agency of Republic of Indonesia No. 79 Year 2014 No. PB.3/Menhut-II/2014, No. 17/PRT/M/2014, No. 8/SKB/X/2014 on the Procedure for Settlement of Land Control Located inside Forest Area. For communal land, it is stipulated in the Regulation of the Minister of Agraria and Spatial Planning/Head of National Land Agency No. 9 Year 2015 on the Procedure for Enacting Communal Rights to Land of Customary Law Communities Located Inside a Particular Area.

Table 6: Licensing authority at the provincial and district/municipal level according to the new Local Government Law.

Province	District/Municipality
• Issuing business permits for agriculture, which location cuts across several districts/ municipalities in 1 (one) province. • Issuing permits for the development of animal and veterinary community health laboratories in provincial areas. • Issuing business permits for animal husbandry and distribution of animal medicines.	• Issuing business permits for agriculture, which is conducted within the district/municipality. • Issuing business permits for seeds/livestock and animal feed, animal raising facilities, animal hospitals/ markets, and animal slaughterhouses. • Issuing business permits for animal medicine retailers (shop, agent, and sub-distributor).

4. Spatial Planning

As in the agricultural sector, the authority for spatial planning does not change between the old and new Local Government Laws. Both laws mention that the implementation of spatial planning at the district level is conducted by government at the district level. The head of district/mayor submits a spatial planning proposal to the Regional House of Representatives *(Dewan Perwakilan Rakyat Daerah - DPRD)*. Consensus between the head of district/mayor and DPRD is formulated in a Regional Regulation Bill *(Rancangan Peraturan Daerah - Ranperda)*. The bill cannot be enacted automatically by the head of district/mayor, but must first be submitted to the Governor who will in turn issue a recommendation letter. Subsequently, the governor will forward the proposal to the minister in charge of spatial planning to get approval regarding the substance (article 245 and article 400).

One of the important articles in new law stipulates that forest classification in district spatial plans must refer to the forest classification in the provincial spatial plan. In the old law, a head of district or mayor had the authority to propose to the minister for a change in the forest classification, particularly from forest areas to Areas for Other Uses *(Areal Pengunaan Lain - APL)*, taking into account the forest plan at the provincial level. APL is an area that is classified as non-forest, hence, deforestation and land use change is legally permitted. The new law stipulates the matters differently to the old law. It seems that the plan to propose the change of forest classification is determined at the provincial level, including for APL. Planning at the district/municipal level is decided at the provincial level taking into account conditions at the district/municipal level. The district level government proposes for zoning allocation based on the one at the provincial level. This arrangement still conforms to provisions regarding spatial planning set out in Government Regulation No. 15/2010. Therefore, there is no inconsistency between the new Local Government Law and spatial planning regulations.

11

Legal Implications of the Redistribution of Authority

The redistribution of authority in the sectors of forestry, land, agriculture, and spatial planning brings several implications to local governments in providing public services in these sectors. The possible implications of the new Local Government Law will be discussed in detail below.

1. Forest Area Gazettement and Its Implications for the Land Sector

Forest area gazettement involves a very long process.[6] The process includes: (1) forest area designation, (2) forest boundary demarcation, (3) forest area mapping, and (4) forest area enactment. The central government has the Agency for Forest Area Consolidation (Balai Pemantapan Kawasan Hutan - BPKH) as the technical implementing unit at the provincial level to conduct forest boundary demarcation, which is an important process of forest area gazettement. BPKH is led by an Echelon III official. Throughout Indonesia, there are 17 BPKHs.[7] In the old law, the governor/head of district had the authority to propose or give recommendations regarding the designation of certain areas as forest areas. Even at the stage of forest boundary demarcation, the committee responsible for forest boundary demarcation submits the Temporary Boundary Demarcation Minutes of the Committee Meeting (Berita Acara Tata Batas Sementara - BATBS) to the district government through the forestry service.[8] The BATBS is then announced to the public for third party comments if they feel that their land rights are included in the temporary category of forest areas. The minutes of the committee meeting are very important as evidence of forest area designation.[9] Furthermore, there are two

[6] See information regarding forest area gazettement by BPKH area XIV, Kupang, http://bpkh14.dephut.go.id/info-kehutanan/pengukuhan-hutan

[7] See http://www.dephut.go.id/Halaman/Organisasi%20Kelembagaan/Pelantikan%20Pejabat/BPKH.htm

[8] Article 8 of Regulation of Ministry of Forestry No 44/Permenhut-II/2012 jo 62/Permenhut-II/2013

[9] BATB can be qualified legally as an authentic deed so that it possesss perfect and binding evidenciary power. See Supriyadi, Bambang Eko,2013, Hukum Agraria Kehutanan: Aspek Hukum Pertanahan dalam Pengelolaan Hutan Negara, Jakarta: Rajawali Pers pp. 100-101

types of authority exercised in full directly by the central government through BPKH, namely mapping and designation of forest areas.

In the new law, the central government has the authority to conduct all four stages of forest area gazettement stipulated in Law no. 41/1999 on Forestry. According to the Decision of Constitutional Court No. 45/PUU-IX/2011, the four stages should be completed before an area can be legally designated as a forest area.[10] After 15 years of Forestry Law enactment, the implementation of the four stages for forest area gazettement is far from optimal. The report of the Ministry of Forestry in 2013 states that from the total of 124,022,848.67 hectares of land that has been designated as forest area, the total area of land that has already been mapped was only 43,210.780 hectares or 34 per cent of the total size of forest area.[11]
In November 2014, the Directorate General of Planology of the Ministry of Forestry claimed that the total forest area that has been mapped was 72,978,331.64 ha or 60.41 per cent of the total size of forest area with the size of 120,783,631 hectares. This data shows a reduction of almost 4 million hectares of the total forest area based on the 2013 official data. Evidence presented to back up the enactment of forest areas were 1,610 Decision Letters and 5,058 maps as attachments. By the end of December 2014, the Directorate General aimed to have mapped forest areas with the total size of 83,312,731.18 hectares or 68.86% of the total size of the state forest area.

On the other hand, the Directorate General on Planology admits that there are still problems in the process of forest area gazettement. For example, forest areas that have been designated may be reduced in size because there are legitimate third party rights that have not been settled.[13] In this case, the map used by Directorate General on Planology to determine forest areas was not fully "clean and clear" of third party rights. Legally, the implementation of the four stages of forest area gazettement creates the potential for the settlement of third party claims that must be conducted in the forest boundary demarcation process. If the claims cannot yet be settled, a note will be added to the Decision Letter of Forest Area Enactment issued by the Minister regarding the third party rights or location of unresolved conflicts.[15]

The new law indicates that the implementation of forest area gazettement by the central government will involve provincial governments. Provincial governments have the authority to provide a recommendation for technical considerations (Pertek) on forestry planning and licensing.[16] This is in accordance with provisions in the forestry law that can be found in a number of regulations such as: Government Regulation No. 44/2004 on Formulation of Forest Management Plan (article 30), Government Regulation No. 3/2008 jo No. 6/2007 on Designation of Forest Functions and Formulation of Forest Management Plan and Forest Utilization (article 8), and Government Regulation No. 105/2015 on Second Amendment to Government Regulation No. 24/2010 on Forest Area Use (article 9). Some authority over technical matters previously held by the head of district/ mayor in the operational regulations of Law No. 41/1999 should be redistributed to the provincial level (Figure 1). Several possible implications of the new law are:

- Implication I: Classification of an area whether as forest or non-forest area will rely on a proposal or recommendation from BPKH as the technical implementing unit of the central government at the local level. BPKH can work together with the forestry service at the provincial level to push for the process of designating or changing the classification of forest areas, by involving relevant stakeholders at the

[10] Arizona, Yance, Mary, Rakhma Siti, Nagara, Grahat, 2012, Anotasi Putusan MK NO.45/PUU-IX/2011 Mengenai Pengujian Konstitusionalitas Kawasan Hutan Dalam Pasal 1 Angka 3 UU No.41 tahun 1999 tentang Kehutanan, Jakarta: HuMa

[11] Work Plan of Ministry of Forestry year 2015 in Regulation of Ministry of Forestry No. P.46/MENHUT-II/2014 on Work Plan of Ministry of Forestry Year 2015, p. 6.

[12] Directorate General of Forestry Planology, 2014, Policy Reconstruction and Progress of Forest Area Gazettement, Discussion of progress of implementation of Common MoU of 12 Ministries and Agencies with KPK

[13] Directorate General of Forestry Planology, 2014, op cit

[14] Article 21-24 of Regulation of Ministry of Forestry No. 44/Menhut-II/2012 jo No 62/Menhut-II/2013 on Forest Area Gazettement

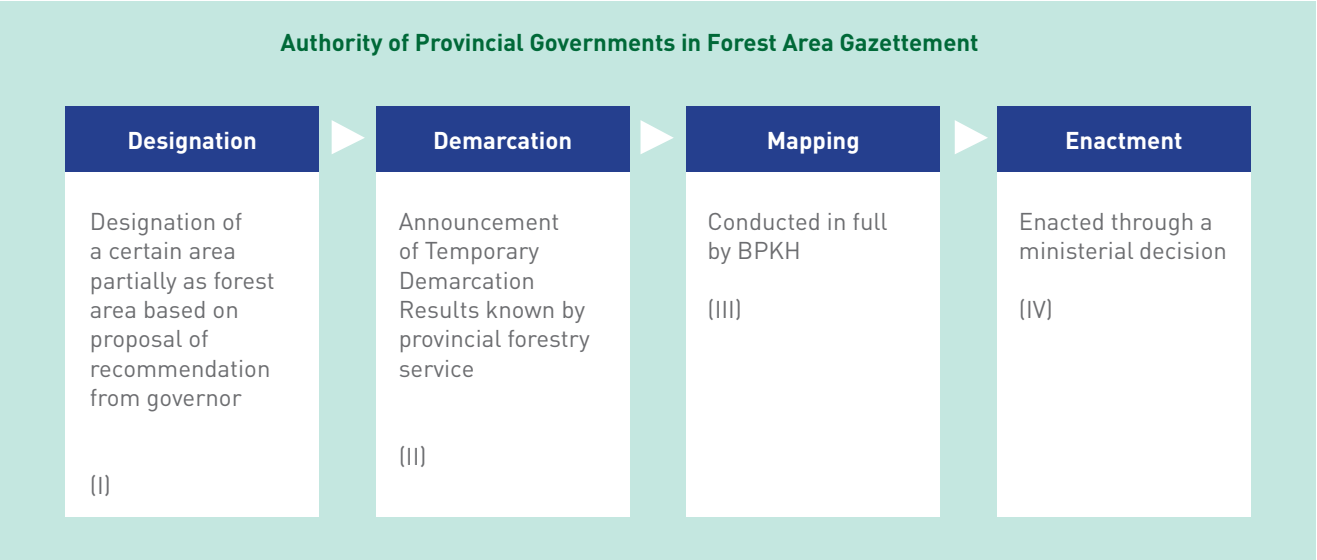
[15] Article 44 of Regulation of Ministry of Forestry No. 44/Menhut-II/2012, ibid

[16] Technical consideration or Pertek is a compilation of technical information submitted by a particular government agency as a part of its responsibility in a certain area and its skill regarding a particular matter in the implementation of development.

provincial level and taking into account provincial spatial planning (RTRWP). At this stage, the provincial government can ask for inputs from the district/municipal government.

- Implication II: Governors may still play a strong role in providing technical recommendations in the process of forest area gazettement based on their authority over FMUs and other licensing authority such as forest area utilization, utilization of non-timber forest products, and environmental services. By taking into account the management authority at the provincial level, the central government can make adjustments at the technical level regarding forestry planning that will be regulated in operational regulations of Law No. 41/1999 and the new Local Government Law.

Figure1: Forest area gazettement according to Law No. 41/1999 and the new Local Government Law



A concrete challenge for the central government in exercising the authority for forest area gazettement is related to the role of local governments to map and solve third party claims within forest areas. The total area that has not been mapped and settled is significant. Thus, the tasks required to increase the effectiveness of the exercise of the authority in forest gazettement will pertain to two endeavors:

- Accelerating the process of forest area boundary demarcation to prevent encroachment to occur first. The uncertainty of borders makes field monitoring difficult, hence, it encourages encroachment. For example, encroachment of the Rawa Singkil Aceh Wildlife Reserve, which is as much as 25 per cent of the total area, is difficult to monitor due to uncertainty of forest area borders.[17]
- Resolving the status of rights claims of indigenous peoples and local communities that live around or inside forest area. The process of forest area gazettement must take into account third party rights to prevent conflict in the future. Some claims have been formally submitted. Aliansi Masyarakat Adat Nusantara (AMAN), for instance, has submitted to the government a proposal for the recognition of customary territories consisting of 6.8 million hectares of customary territories mapped through participatory mapping.[18] Other claims are latent and have not come to the surface in the form of explicit or formal demands. For example, most Arfak sub-tribes in West Papua live inside a conservation area. Based on their customary practices, they classify the land as their communal land.[19]

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[17] Chik Rini, 2014, Ribuan Hektar Suaka Margasatwa Rawa Singkil Rusak Dirambah Sawit, see http://www.mongabay.co.id/2014/07/21/ribuan-hektar-suaka-margasatwa-rawa-singkil-rusak-dirambah-sawit/

[18] Yulianisa Sulistyoningrum Senin, 09/11/2015 17:21 WIB, Legalitas Wilayah Adat Di Hutan Nasional Masih Tidak Jelas, see http://kabar24.bisnis.com/read/20151109/16/490422/legalitas-wilayah-adat-di-hutan-nasional-masih-tidak-jelas

[19] Earth Innovation Institute and INOBU, 2015, Securing Land and Livelihoods: Opportunities for the Recognition and Support of Customary Land Rights and Livelihoods in West Papua, Unpublished Report, cooperation of INOBU-Earth Innvoation Institute with European Forest Institute

Despite the back and forth political process in handling these claims, a practical lesson that can be turned into a legal norm here is that existing participatory maps must be referred to in the process of forest area boundary demarcation in the future. With regards to this, some forest area gazettement processes could be delegated to the provincial level, especially those pertaining to contextual issues that require specific responses at the provincial level. For example, community participation in the forest boundary demarcation process can be devolved to the provincial level. Thus, the institutional changes regarding forest management at the provincial and district/municipal level should be followed up with appropriate responses from the MoEF so that the target of forest area gazettement can be achieved faster.

2. Proposal of Revising Spatial Planning related to APL

The old law provided district governments with the authority to propose a change in forest area classification.[20] This authority is affirmed in Government Regulation No. 10/2010 that has been revised by Government Regulation No. 60/2012. The regulation mentions that the district/municipal government can propose a partial change in forest function in their jurisdictions directly to the Ministry of Forestry. A partial change is permitted to accommodate proposals for forest area exchanges/swaps and forest area relinquishment. In general, forest area exchanges/swaps are proposed for mining activities, while forest area relinquishment is mainly to relinquish an area from state forest to become non forest areas (APL) for plantations and other purposes.

In the new law, the authority of district/municipal governments over forest areas is redistributed to provincial governments. Possible implications of this shift are as follows:

- First implication: district heads/mayors no longer have the authority to propose APL. This authority is withdrawn and consolidated fully at the provincial level.
- Second implication: governors can ask for inputs from district heads/mayors in formulating proposals for APL in their jurisdictions by taking into account the existence of FMUs in each district/municipality. Inputs from the district/municipal level will be consolidated at the provincial level. In short, it is the governor that will submit the proposal to change forest area status and functions to the minister instead of the head of district/mayor.

The change in spatial plans, which are marked by the conversion of forest areas into non-forest areas, occurred in part because it is allowed by the regulations. Another cause of such change is illegal encroachment due to lack of understanding regarding the status and classification of forest areas.[21] On the other hand, conversion forests have been designated to support economic development. The Indonesian Forest Reference Emission Level (FREL) report to the UNFCCC (2015) states that 15.2 million hectares of forest area have been allocated for Conversion Forest (HPK), including 7.42 million hectares of natural forests.[22] These areas can be relinquished any time for development activities. As an example, the land requirements for plantation development, only for palm oil, ranges between 250,000-500,000 hectares per year. [23]

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[20] Analysis regarding distribution of authority in spatial planning can be seen in Hasni, Hukum Penataan Ruang dan Penatagunaan Tanah dalam Konteks UUPA-UUPR-UUPLH, Jakarta: RajaGrafindo Persada, pp. 146-152. See also Wahid, Yunus, A.M., 2014, Pengantar Hukum Tata Ruang, Jakarta: Kencana Prenadamedia Group.

[21] Kartodihardjo, Hariadi, 2013, Penjabaran Perpres 62/2013 Dikaitkan Persoalan Riil REDD+, presentation in REDD+ Implementation Workshop Series: Transition towards Operationalization of REDD+ Agency held by UKP4 in Sari Pan Pacific Hotel, Jakarta 22-23 October 2013.

[22] MoEF, 2015, National Forest Reference Emission Level for Deforestation and Forest Degradation:
In the Context of Decision 1/CP.16 para 70 UNFCCC (Encourages developing country Parties to contribute to mitigation actions in the forest sector), Published by DG-PPI MoEF Indonesia

[23] Strategic Planning of Ministry of Agriculture 2015-2019 as stipulated in Regulation of Ministry of Agriculture No. 19/Permentan/HK.140/4/2015 on Strategic Planning of Ministry of Agriculture Year 2015-2019

Pressures on forests are one of the main considerations to redistribute forestry authority from the district/municipal level to the provincial level. Therefore, the juridical challenge for the implementation of the provincial authority for APL is related to the alignment of the new Local Government Law with spatial planning regulations. Consolidation of proposals for APL under provincial authority needs to be affirmed in national spatial planning regulations and policies, which currently still puts proposals for forest area changes under the authority of provincial and district/municipal governments. As an intermediate policy, a governor can make a scenario of forest policy based on its authority according to the new Local Government Law and relevant forestry regulations and policies.

3. Forest Management Unit

The old law provided the authority to establish FMUs to the central government. At the management level, the law provides the district/municipal government with the authority to give technical considerations in designing and proposing Forest Management Units for protection forests (KPHL) and production forests (KPHP) as well as their managing institutions. This is affirmed by Government Regulation No. 6/2007 that was later revised by Government Regulation No. 3/2008.[24]

In the new law, the authority to establish FMUs is still with the central government, but the authority at the management level is redistributed to the provincial level from the district level. As an implication, FMU institutions at the district level will be placed under the authority of the province. The role of district/municipal governments in the future will depend on the revision of Government Regulation No. 41/2007 on Local Organization Apparatus that is currently being drafted by the Ministry of Home Affairs. This regulation will determine whether a part of authority regarding FMUs will still remain with institutions at the district/municipal level or whether it will be redistributed entirely to the provincial level. If it is decided that the management of FMUs is given entirely to provincial governments, then the forestry office at the district/municipal level will be abolished from the structure. Their staff will likely be placed in FMUs that are geographically and administratively located within the district/municipality.

In 2011, the Ministry of Forestry released an initial report reflecting on the establishment of FMUs. In the report, they presented a number of challenges raised by site level, forest managers related to the implementation of FMUs.[25] In principle, the main issue hindering the implementation of FMUs is related to institutional preparedness at the local level. The report stated that not every district/municipal government supported the establishment of FMUs because of the budget implications for personnel and operational activities.

Three years later, in 2014, the Ministry of Forestry issued another report on the progress of FMU establishment. The Ministry again found a number of institutional challenges.[26] This is evident in the Ministry's assessment of FMU implementation performance, which found that although more than 50 per cent of model FMUs (120 FMU) were categorized as good and very good, the categories of moderate and not good were still present, mainly due to institutional problems. The details are as follows: 27 Model FMUs (22.5 per cent) are categorized as very good, 38 FMUs (31.7 per cent) are categorized as good, 25 FMUs (20.8 per cent) moderate, and the rest, 30 FMUs (25.0 per cent) are not good. Based on the classification, Production FMUs that are categorized as very good are 15 units (19 per cent), 26 units are considered as

[24] See analysis regarding FMUs in MoEF report, Directorate General on Forestry Planology of the Ministry of Environment and Forestry, 2014, Strategi Pengembangan KPH dan Perubahan Struktur Kehutanan Indonesia, Jakarta: Kementerian Lingkungan Hidup dan Kehutanan in cooperation with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Forests and Climate Change Programme - FORCLIME

[25] Kartodihardjo, Hariadi, Bramasto, Nugroho, Putro, Haryanto R., 2011, Pembangunan Kesatuan Pengelolaan Hutan, Konsep, Peraturan Perundangan dan Implementasi, Jakarta: Kementerian Lingkungan Hidup dan Kehutanan in cooperation with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Forests and Climate Change Programme – FORCLIME, pp. 23-25

[26] Kartodihardjo, Hariadi, Sardjono, Mustofa Agung, Wulandari, Christine, 2014, in Direktorat Jenderal Planologi Kehutanan Kementerian Lingkungan Hidup dan Kehutanan, 2014, Strategi Pengembangan KPH, op cit, pp. 35-49

good (33 per cent); while the remaining 14 units and 23 units are categorized respectively as moderate (18 per cent) and not good (30 per cent). Meanwhile, the assessment of Protected FMUs categorized: 12 units as very good (29 per cent), 12 units as good (29 per cent), 11 units as moderate (26 per cent), and 7 units as not good (17 per cent). Institutional challenges occurred because the FMU is considered as a new institution, which had led to various interpretations at the local level. As mentioned in the report, in the end, many regions defined or understood FMUs as the 'devolution of authority' from the central to local government.[27] Thus, FMU establishment at the local level did not entirely fulfill the institutional expectations of the Ministry of Forestry.

Learning from the experience of FMU establishment, there are at least two future challenges regarding the implementation of the management authority for FMUs at the provincial level. They are: formulation of clear policies and actions at the local level, in this case the provincial level, and establishment of strong institutions with adequate financial and personnel capacity support.

4. Licensing Authority

Authority for licenses and facilities provided by the government to support the implementation of a business activity ("non-licenses facility") in general remain under the control of the central government.[28] Fardiana (2014) found that out of 32 governmental functions that are distributed among the central, provincial and district/municipal governments, the central government controls authority over 141 licenses and non-license facilities. Provincial governments control the authority for over 76 types of licenses and district/municipal governments over 73 types. Most of the authority for licenses and non-license facilities pertains to transportation (18), energy and mineral resources (14), maritime and fishery (6) and agriculture (6). Furthermore, district/municipal governments have the authority to issue licenses in the transportation sector (21), health (7), and labor (5).

In the land sector, district/municipal governments have authority for issuing more licenses than their counterparts in provincial governments. Two licenses under the authority of district governments are the location permit and permit to clear the land. Provincial governments only have the authority to issue a location permit for an area that cuts across several districts. Meanwhile, the central government has the authority to issue location permit in a location that cuts across several provinces.

Most licensing authority related to spatial planning and public works is held by district governments, namely: Building Construction Permits, National Construction Business Service Permits, and Construction and Development of Settlement Area Permits. Provincial governments do not have any authority pertaining to public works and spatial planning. They do, however, have authority for the coordination of spatial planning. Meanwhile, the central government has the authority for Foreign Construction Service Business Permits.

In the agricultural sector, there are three permits that are placed under the authority of district/municipal government, namely the Agricultural Business Permit, including for plantations, seeds/livestock and animal feed production business permits, animal keeping facilities, animal hospitals/animal markets, animal slaughterhouses, and retail business permits (shop, agent, sub-distributor) for animal medicines. Provincial governments have the authority for three types of licenses and three non-license facilities. Licensing

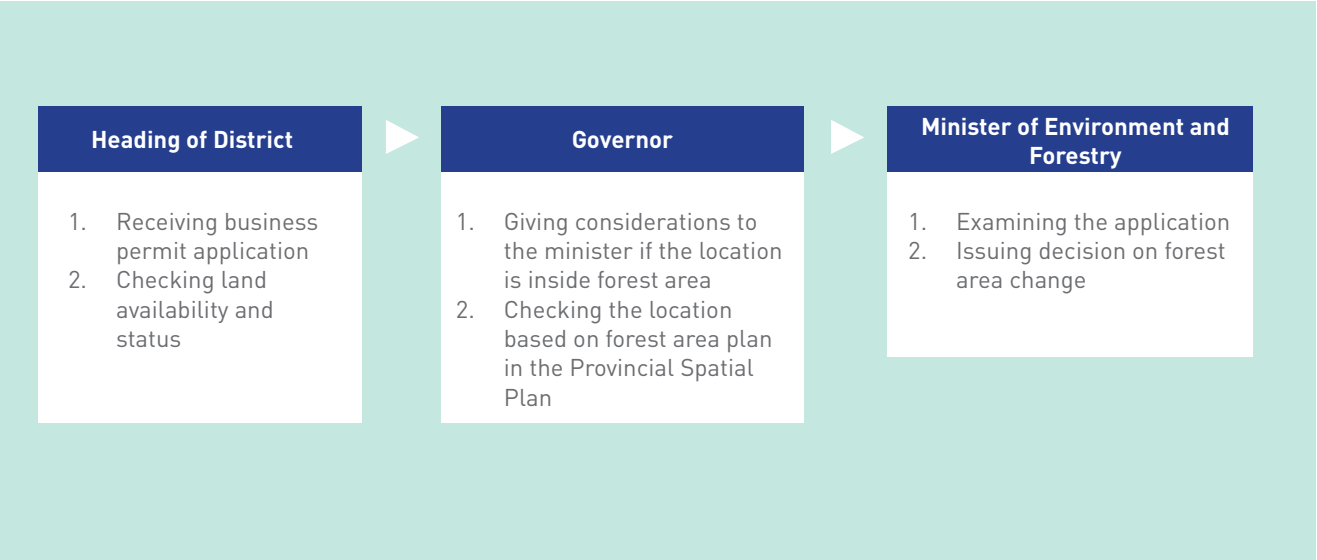
[27] Direktorat Jenderal Planologi Kehutanan Kementerian Lingkungan Hidup dan Kehutanan, 2014, Strategi Pengembangan KPH, op cit, pp. 60-61

[28] The category of "non-license" is a facility provided by the state to support the implementation of an activity or business. Article 1 para 6 of Regulation of Head of Investment Coordinating Agency No. 2 year 2009 ("Perka BKPM 12/2009") mentions the definition of non-licensing service as all forms of ease in service provision, fiscal facility, and information regarding investment in accordance with the prevailing laws and regulations. Guidance Regarding Procedure to Apply for Non-Licensing Facility in Investment besides in Perka BKPM 12/2009 is also stipulated in decisions issued by related technical agencies/Head of Non-Department Government Agency (LPND), Government and Head of district/Mayor. - See: http://hukumpenanamanmodal.com/pelayanan-non-perizinan/#more-39

authority includes the issuance of Plantation Business Permits (IUP) in locations that cuts across several districts/municipalities, permits to construct provincial animal and veterinary community health laboratories and animal husbandry permits and permits for animal medicine distribution. The central government has the authority for eleven types of licenses and non-license facilities, among others are business permits for producing/importing animal medicines and permits for the formulation of fertilizers, pesticides, agricultural machinery and equipment, and animal medicines.

As previously explained, governors and district heads have the authority to issue Location Permits and Agricultural Business Permits. Applications for location permits are often related to the classification of forest areas. When a location permit is applied for in a location that is classified as a forest area, then the area first should be relinquished from the state forest area. The relinquishment process will involve the governor within that jurisdiction who has the authority for forestry planning. A legal scenario that may be implemented following the new Local Government Law is that the proposal for forest area relinquishment is assessed directly by BPKH while taking into account technical considerations from the provincial government through the provincial forestry service. Considerations from the provincial government together with the result of field verification by BPKH will become the basis for the Minister to issue a decision letter on forest area change (Figure 2).

Figure 2: Possible stages of location permit issuance for a location inside forest area



Regarding licensing in the forestry sector, the authority of provincial governments will include two categories of licenses. First, the provincial government has the authority to issue Forest Utilization Permits, both in production and protected forest areas, which are non-exploitative and non-extractive in a way that it will not create significant impacts on forest cover. The conditions for the forest utilization activities are as follows: not reducing, changing, or destroying the main functions of forest, limited land cultivation, not creating negative impacts on biophysical and social-economic conditions, not using mechanical equipment and heavy machineries, and/or not building facilities that change the natural landscape. These conditions are already stipulated in the forestry law regime (Law No 41/1999, Government Regulation No 6/2007 jo No 3/2008, Government Regulation No. 24/2010 jo No. 105/2015). This license category includes several types of permits:

1. Business permits for forest area utilization in production and protected forests (IUPK). The objects of this permit usually include forest area utilization for cultivation of medicinal plants, ornamental plants, mushrooms, bees, wild animal conservation, animal rehabilitation, and cultivation of livestock feed.

2. Business permits for environmental services (IUJL). The objects are utilization of water stream utilization, water utilization, nature tourism, conservation of biodiversity, and conservation and protection of the environment. On the other hand, utilization of forest area for carbon storage/sequestration is still under the authority of the central government.

3. Business permits for non-timber forest product utilization (IUPHHBK). This permit is meant to provide opportunities for local communities that live around forest areas to extract non-timber forest products that are provided naturally such as rattan, honey, gum, fruits, mushrooms, or swallow nests. This permit is limited in terms of time, size, and/or volume, which shall not exceed 5 per cent of the target volume per type of forest products listed in the permit.

The second category consists of licenses that can affect forest cover significantly, namely permits for timber extraction (IPHHK) and timber utilization (IPK). IPHHK is a permit given to extract timber from production forest through the activities of harvesting, transporting, and marketing with limitations in terms of time, size, and/or volume, which shall not exceed 5 per cent of the target volume per type of forest products listed in the permit.

The current forestry regulations stipulate that provincial governments have the authority to issue IPK in Conversion Forests (HPK) and forest areas with lease permits. District governments have the authority to issue IPK in APL (Area for Other Uses), or provincial governments if the area stretches across districts.

Decentralization of licensing authority in the land sector or spatial planning to district/municipal governments creates challenges for the implementation of the authority in the new Local Government Laws. This challenge mainly pertains to the status of forest areas that must be referred to in the issuance of each category of license, when the process of forest gazettement has not been completed.

19 Conclusion

The distribution of governmental functions among the central, provincial, and district/municipal governments in the new Local Government Law redistributes authority over several matters, while at the same time, the new law retains the authority of each government level as compared to old law. This article found that authority shifted over matters related to the forestry, land, agricultural, and spatial planning sectors. The redistribution of authority are obvious mostly in the sectors of forestry and land. The shift in these two sectors also affects other sectors, namely agriculture and spatial planning.

In the forestry sector, most authority still rests in the hands of the central government. At the local level, provincial governments have the authority for the implementation of forest planning and utilization and the authority to issue several non-timber permits. District governments are provided with limited authority for managing the implementation of FMUs as an extension of the authority of provincial governments. The management of forest parks is devolved to district/municipal governments, but the utilization of the forest park is limited in accordance with the norms, standards, procedures, and criteria determined by the central government.

The central government retains the authority to issue licenses that are related to the change of forest classification. This implies that the central government has the responsibility to control and plan for deforestation and land use change in the future. This authority should be distributed in the form of delegation of responsibility to provincial governments supported by the required resources. This is to proportionally distribute the role of addressing deforestation, as the existing distribution of power gives an impression that provincial governments lack, or even do not have, the responsibility for deforestation occurring in their jurisdictions.

Regarding spatial planning, district/municipal governments retain the authority to propose for spatial plan revisions, particularly related to APL proposals from the provincial government. Therefore, applications for licenses that pertain to forest areas will go through a process of active consolidation between district/municipal and provincial governments before they are proposed to the Ministry of Environment and Forestry. In this process, provincial governments need valid data for forest areas as the basis of its considerations in consolidating the proposals from district/municipal governments. Hence, provincial forestry offices and other related agencies have remaining homework such as: harmonizing data and supporting the role of the central government in accelerating the process of forest area gazettement.

In the land sector, provincial governments do not have much implementation authority. District/municipal governments have more authority over the identification and registration of ulayat and abandoned land. This authority is supported by other regulations at the national level, namely the Joint Regulation of Four Ministries (Perber) and Regulation of Minister of Agrarian Functions and Spatial Planning No. 9/2015. The joint regulation provides district/municipal governments with the authority to recognize rights claims to the land of indigenous people and local communities, including claims within forest areas. At this point, proposals from district/municipal governments regarding ulayat and individual lands within forest area will be submitted to the Ministry of Environment and Forestry. The Minister of Agrarian Affairs and Spatial Planning has issued a specific implementation guidance regarding this matter. However, the Ministry of Environment and Forestry, until this article is written, has not issued any specific implementation guidance regarding the implementation of the joint regulation. The authority of district/municipal governments includes issuing location permits, which often intersects with the interests of private actors as they are required to obtain Plantation Business Permits, Agriculture Business Permits, and other permits for their businesses. The authority for these issues should be harmonized at the district/municipal level as district governments should consider the territorial claims of indigenous people/local communities in their

jurisdictions before issuing location permits to prevent conflict. Thus, the Plantation Business Permit should be consolidated by district/municipal governments so that it is in line with the rights of indigenous people/ local communities. The Plantation Business Permit is required for plantation activities in Indonesia, which often cause social and environmental problems, especially deforestation.

To exercise authority devolved to the local level stipulated by the new Local Government Law, there are a number of legal and institutional gaps that must be resolved by each level of government. The gaps are:

- The central government must immediately complete the revision of Government Regulation No. 41/2007 on Local Organizational Apparatus. This revision is crucial for providing direction for local governments to establish the necessary institutions based on the authority distributed to them in the new law. This regulation will also provide a comprehensive picture regarding the capacity, budget availability, and form of organization required by local governments to exercise the authority that has been given to them.
- The central government must issue a regulation to stipulate how the authority devolved to provincial governments should be implemented in the forestry sector. This is crucial to accelerate forest area planning at the local level especially that pertains to forest area gazettement and FMUs. This is in line with spatial planning provisions related to changing forest classifications from state forests to non-forest areas. In this case, the central government must regulate the relationship between districts/ municipalities, who have the authority to submit proposals for changing forest classifications, and provinces, who have the authority to consolidate spatial planning change proposals and the use of forest areas. Provincial governments must also issue a technical regulation regarding the stages and procedures for districts/municipal governments to submit proposals to provincial governments.
- The Ministry of Environment and Forestry must make adjustments to a number of licensing regulations such as IUPK, IUPJL, IUPHHBK, and IPHHK, the authority of which was previously held by district/ municipal governments and has now been redistributed to provincial governments.

21 Bibliography

Arizona, Yance, Mary, Rakhma Siti, Nagara, Grahat, 2012,
Anotasi Putusan MK NO.45/PUU-IX/2011 Mengenai Pengujian Konstitusionalitas Kawasan Hutan Dalam Pasal 1 Angka 3 UU No.41 tahun 1999 tentang Kehutanan, Jakarta: HuMa

Chik Rini, 2014,
Ribuan Hektar Suaka Margasatwa Rawa Singkil Rusak Dirambah Sawit, lihat http://www.mongabay.co.id/2014/07/21/ribuan-hektar-suaka-margasatwa-rawa-singkil-rusak-dirambah-sawit/

Direktorat Jendral Planologi Kehutanan, 2014,
Pembenahan Kebijakan dan Kemajuan Pengukuhan Kawasan Hutan, Diskusi perkembangan implementasi Nota Kesepakatan Bersama 12 Kementerian dan KL bersama KPK

Direktorat Jenderal Planologi Kehutanan Kementerian Lingkungan Hidup dan Kehutanan, 2014,
Strategi Pengembangan KPH dan Perubahan Struktur Kehutanan Indonesia, Jakarta: Kementerian Lingkungan Hidup dan Kehutanan bekerja sama dengan Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Forests and Climate Change Programme - FORCLIME

Earth Innovation Institute and INOBU, 2015,
Securing Land and Livelihoods: Opportunities for the Recognition and Support of Customary Land Rights and Livelihoods in West Papua, Unpublished Report, cooperation of INOBU-Earth Innovation Institute and European Forest Institute

Hasni, 2008,
Hukum Penataan Ruang dan Penatagunaan Tanah dalam Konteks UUPA-UUPR-UUPLH, Jakarta: RajaGrafindo Persada, hal. 146-152.

Hidayat, Syarif, 2010,
Mengurai Peristiwa – Merantas Karsa: Refleksi Satu Dasawarsa Reformasi Desentralisasi dan Otonomi Daerah, Majalah Prisma Edisi Vol. 29, Juli 2010 "Otonomi Daerah Untuk Siapa?"

Indrarto, G.B., Murharjanti, P., Khatarina, J., Pulungan, I., Ivalerina, F., Rahman, J., Prana, M.N., Resosudarmo, I.A.P. dan Muharrom, E. 2013,
Konteks REDD+ di Indonesia: Pemicu, pelaku, dan lembaganya. Working Paper 105. CIFOR, Bogor, Indonesia.

Kartodihardjo, Hariadi, Bramasto, Nugroho, Putro, Haryanto R., 2011,
Pembangunan Kesatuan Pengelolaan Hutan, Konsep, Peraturan Perundangan dan Implementasi, Jakarta: Kementerian Lingkungan Hidup dan Kehutanan bekerja sama dengan Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH Forests and Climate Change Programme – FORCLIME, hal. 23-25

Kartodihardjo, Hariadi, 2013,
Penjabaran Perpres 62/2013 Dikaitkan Persoalan Riil REDD+, presentasi pada acara Seri Lokakarya Implementasi REDD+: Transisi Menuju Operasionalisasi Badan Pengelola REDD+ yang diselenggarakan UKP4 di Hotel Sari Pan Pacific, Jakarta 22-23 Okteober 2013.

Kartodihardjo, Hariadi, Sardjono, Mustofa Agung, Wulandari, Christine, 2014,
dalam Direktorat Jenderal Planologi Kehutanan Kementerian Lingkungan Hidup dan Kehutanan, 2014,
Strategi Pengembangan KPH, op cit, hal 35-49

Koeswahyono, Imam, 2012,
Hukum Penatagunaan Tanah dan Penataan Ruang di Indonesia, Malang: UB Press

Kuncoro, Mudrajat, 2004,
Otonomi dan Pembangunan Daerah, Surabaya: Erlangga

MoEF, 2015,
National Forest Reference Emission Level for Deforestation and Forest Degradation: In the Context of Decision 1/CP.16 para 70 UNFCCC (Encourages developing country Parties to contribute to mitigation actions in the forest sector), Published by DG-PPI MoEF Indonesia

Orrinda Ike Fardiana, 2014,
Matriks Pembagian Kewenangan Pelayanan Perizinan dan Non Perizinan dalam Lampiran Uu 23 Tahun 2014,
Surabaya: Pupuk (Perkumpulan Untuk Peningkatan Usaha Kecil)

Renstra Kementerian Pertanian 2015-2019
Peraturan Menteri Pertanian No. 19/Permentan/HK.140/4/2015 tentang Rencana Strategis Kementerian Pertanian Tahun 2015-2019

Rencana Kerja Kementerian Kehutanan Tahun 2015
Peraturan Menteri Kehutanan No. P.46/MENHUT-II/2014 tentang Rencana Kerja Kementerian Kehutanan Tahun 2015, hal. 6.

Simanjuntak, Bungaran Antonius (ed), 2013,
Dampak Otonomi Daerah di Indonesia: Merangkai Sejarah Politik dan Pemerintahan Indonesia, Jakarta: Yayasan Pustaka Obor

Supriyadi, Bambang Eko,2013,
Hukum Agraria Kehutanan: Aspek Hukum Pertanahan dalam Pengelolaan Hutan Negara, Jakarta: Rajawali Pers, hal. 100-101

Wahid, Yunus, A.M., 2014,
Pengantar Hukum Tata Ruang, Jakarta: Kencana Prenadamedia Group

Yulianisa Sulistyoningrum Senin, 09/11/2015 17:21 WIB,
Legalitas Wilayah Adat Di Hutan Nasional Masih Tidak Jelas, http://kabar24.bisnis.com/read/20151109/16/490422/legalitas-wilayah-adat-di-hutan-nasional-masih-tidak-jelas

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