

REDD+ Safeguards in Indonesia¹

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Executive Summary

Safeguards were created to protect basic human rights and the environment from the negative impacts of development projects managed by international institutions and donors. Many international development agencies require that safeguards, a set of standards and principles, must be followed whenever such projects are undertaken. Many of the objectives and procedures that are represented in these international standards and principles are also present in the existing laws and regulations in Indonesia. Safeguards are a promising way to grapple with the problem of Indonesian forests especially with the arrival of the REDD+ regime.

However, it is hard to believe that safeguards will always be fully developed or implemented or will always apply to a certain kind of project. Forestry problems are very complex and rooted in a chain of wrong policies, practices and mentalities of bureaucrats. After years of reforms, there is no significant progress in forestry policies related to the rights of forest peoples and challenge of halting deforestation. Conflict continues in and around forest areas, and deforestation rates have remained high during the last five years.

Since REDD+ (Reducing Emissions from Deforestation and Forest Degradation) covers the core issues of Indonesian forestry, such as conservation, halting deforestation, and providing benefits for communities, the issue of safeguards has become central. With more than 40 REDD+ pilot projects and demonstration activities happening in Indonesia and the acceleration of setting up national REDD+ policies, safeguards cannot be ignored. They are a crucial instrument that can protect the rights and livelihoods of the communities and indigenous peoples in the forest areas and can ensure REDD+ schemes are useful and serve their main intended purposes. Safeguards are certainly not a panacea as forestry is not all about safeguards per se. However, they open discourse to promoting a rights-based approach in managing Indonesian forests and accelerating some programs related to halting deforestation that for years have failed to contribute significantly. Many communities that are facing REDD+ pilot projects are demanding respect for their rights and have an informal consensus that a rights-based approach should be the basis of REDD+.

REDD+ to some extent is bringing the international climate negotiations into the national context, especially after the Cancun Agreement clearly supported the language of safeguards for REDD+. Although the term “safeguards” is unfamiliar to the Indonesian legal taxonomy, civil society sees laws, standards and practices to promote a national level of safeguards as essential to resolving forestry problems. With the involvement of civil society groups who have been pushing the Indonesian Government and donors for REDD+, the country is now (during the writing of this paper) in the process of developing a REDD+ National Strategy. And safeguards are a part of it. But, again the question is whether the safeguards that are being developed as part of the National Strategy are sufficient and strong enough to protect the rights of the communities and the environment. How do safeguards relate to the result of international negotiations including Cancun Agreement and standards that are promoted by multilateral development banks?

This paper addresses these questions by describing the current principles of safeguards promoted by Indonesian civil society organisations (CSOs) and how they influence the REDD+ strategy. Some safeguard principles in the draft national strategy have taken into account CSOs’ proposal on safeguards. The rights of forest peoples and protection over biodiversity are accommodated. CSOs advocated for these proposals before the Cancun Agreement was reached in 2010. However, these proposals are

exactly in line with the language of Cancun. Both versions play an important role in integrating safeguards into the many levels of REDD+ decision making in Indonesia.

At the same time, this paper also examines a link between of which safeguards have been promoted by other actors and their gaps compared with the CSOs' proposal. As an example, we compared the CSOs' principles and World Bank's safeguards. Through this comparison we want to highlight the ways that national issues have been addressed by international actors, especially the World Bank. By looking at the gaps, this paper recommends an intensive dialogue among REDD+ actors to avoid contradictory safeguards, so that REDD+ can contribute to resolving the real problems in Indonesian forestry.

I. Forestry Problems in Indonesia

Forests are not only for trees and carbon. In Indonesia, forests are home to more than 60 million people and thousands of plant and animal species. Indonesia's forests now stand at the intersection of a complexity of problems. A deeper understanding of the complexity of problems is needed in order to have a better stepping stone for constructing safeguards for REDD+. The following section will highlight many problems of Indonesia's forests, which will likely continue as problems under the REDD+ discussion.

I.1. Conserving the wrong 'area'

When the New Order regime issued the first Forestry Law in 1967, the concept of 'state-based forest tenure' was framed in a way that covered both the geographical-biological and political spheres. Through this Law, Indonesia made a distinction between the definitions of forest and forest area. Forest was defined as a bio-physical entity that factually referred to tree cover in a particular area. Meanwhile, forest area was a politico-legal definition suggesting a mandate given to the Ministry of Forestry to designate an area as forest area although in reality, it does not have tree cover.

The concept of 'area' serves as the basis of the Ministry of Forestry's authority to regulate and designate an area's function. Since the 1980s, the authority has been exercised through the so called Consensus Forest Land Use Plan (Indonesian: *Tata Guna Hutan Kesepakatan*, TGHK) formulated only on the basis of on-table studies and vegetation maps, entirely void of any social criteria. At that moment, the total size of forest area reached 141,774,427 million of hectares. Between the period of 1999-2001, decentralization and regional autonomy brought a compromise between the Central and Provincial Government concerning control of forest area in the form of what was called 'integration and harmonization' or '*padu-serasi*' (Contreras and Fay, 2006: 18). The process, however, ignored the consideration of community rights. Currently, government data show Indonesian forest area is 136.88 million hectares, including water conservation area (Annual Work Plan 2011 and 2012).² The number covers almost 70% of Indonesian mainland. Meanwhile, the size of peat land cover is almost 22 million of hectares scattered in primary forests, secondary forests, and areas for other use (APL).

As a consequence, the concept of 'forest area' is loaded with state interests and forest tenure politics, and the real amount of forest cover in Indonesia is highly questionable. In 2006, ICRAF (World Agroforestry Center) calculated that the 2002 Ministry of Forestry's figure of forest area actually included non-forested area with the size of 32,927,000 hectares or ten times the size of Belgium. At the same time, around 8 million hectares of primary tropical forest was not included in the category. In

² Ministry of Forestry Regulation No. P.57/Menhut-II/2011 on Ministry of Forestry Work Plan Year 2012

2010, an official report of the Government of Indonesia (GOI) spelled the gap: out of 136.88 million of hectares claimed as forest area, the real number of Indonesian forest cover is only 94.432 hectares.³ It means that 42.448 million hectares of forest area or ten times the size of the Netherlands is in fact unforested.

Unfortunately, the problematic pattern of designating forest areas is repeated in other policies, including REDD+ policies. Most recently, when the two-year suspension (so called moratorium by CSOs) on the issuing of new licenses for development in primary forests and peat lands was launched by the government, areas that are very important for the future of Indonesian forest were excluded from the moratorium plan. Based on the 2011 report from Center for International Forest Research (CIFOR), 9.6 million hectares of primary forest, 3.4 million hectares of protected and conservation forest, and 4.7 million hectares of peat land were excluded from the 66.4 million hectares included on the indicative map of moratorium.⁴ The aforementioned statistics of discrepancy suggest that the endeavours to save Indonesian forest will never be effective if the paradigm of forest tenure rests only on controlling 'areas' rather than preserving forest.

I.2. Indonesia's deforestation crisis

A number of reports show that the highest level of greenhouse gas emissions in Indonesia comes from deforestation and peat land clearings. The history can be traced back to the 'golden era' of timber production in the 1970s, which reached its peak in the 1990s. In the 1990s, deforestation destroyed around 65 million hectares of forest area or 2.2 times the size of Italy. In the period of 1990-1996, the average rate of deforestation per year was 1.87 million hectares. It rapidly accelerated until it reached 3.51 million hectares per year in the period of 1996-2000 and was recorded in the Guinness Book of Record as the fastest forest destruction rate in the world. The rate then declined to 1.08 million hectares per year in the period of 2000-2003 only to increase again to 1.17 million hectares per year in the period of 2003-2006. Based on the historical data, the rate of Indonesian deforestation can be projected to around 1.125 million hectares per year. Meanwhile, the rate of degradation caused by logging activities is 0.626 million hectares per year (data taken from General Directorate of Forestry Planology, 2010, as cited by Bappenas, 2010).

The main driver of deforestation and forest degradation is the policy of centrally-led deforestation through various legal instruments that have been issued since 1967 until today. These instruments provide a legal basis to open forests and peat lands in a massive manner without meaningful restrictions. Based on the study of the Indonesian Forest Climate Alliance (IFCA, 2008), the highest rate of deforestation in peat land forest in the period of 2000-2005 occurred in area for other use (APL), which was 36%, followed by Production Forest (31%), Production Forest for Conversion (15%), Protected Forest (10%), and Limited Production Forest (8%) (Ministry of Forestry, 2008). The majority of the areas consists of concessions or former concessions that have been mismanaged by the license holders or the government. Aside from them, the primary forests that were not categorized as forest area were ready for conversion anytime and triggered deforestation in the real meaning of the term (Chip Fay and Arnaldo Contreras 2006: 6-8).⁵ Adding to this complexity, the legal status of forest area has not been clear even until now due to the slow process of forest area border designation. The Minister of Forestry

³ Global Forest Resources Assessment 2010, *Country Report Indonesia*, Rome: Forestry Department of FAO. pg 10

⁴ Daniel Murdiyarso, Sonya Dewi, Deborah Lawrence and Frances Seymour, 2011, *Indonesia's Forest Moratorium, A Stepping Stone for Better Forest Governance* ?, Bogor Indonesia: CIFOR

⁵ Arnaldo Contreras dan Chip Fay, *Memperkokoh Pengelolaan Hutan Indonesia melalui Pembaruan Penguasaan Tanah*, World Agroforestry Centre, Bogor

himself admitted that only 15.2 million hectares or 11.1% of forest has officially been designated as forest area (Tempo Newspaper, January 14, 2011). The chaotic nature of forest management and uncertainty of forest area legal status have in turn caused not only deforestation but also conflicts among communities. With regard to this, if it is assumed that every policy triggers extractive investments that have been operating until today without limitations, then it is difficult to accept an overly optimistic prediction regarding to the sustainability of the remaining forest.

I.3. Forestry conflicts

Since colonial time, forests have been one of the main sources of income for government. Under the totalitarian regime of New Order (Orde Baru) huge numbers of licenses were given for land where communities had lived for generations. Seeds of conflicts immediately emerged but were mostly kept latent as the New Order muzzled critics and cracked down on protest and resistance. After the New Order was stepped down, huge numbers of conflicts exploded, including forestry conflicts.⁶ HuMa has mapped forestry conflict per year from 1978 – 2011. From that period, conflict rose in 2003 (72.09%) when decentralization forced local governments to hand out large numbers of licenses for generating income. In 2010, conflict rose again (2.14%) which was apparently triggered by the ambition of private sector actors seeking new land for continuing investment after the old ones they claimed were no longer efficient.⁷ Nowadays, business groups are demanding a new law to provide land for business investment.

Forestry conflicts are rooted in at least two problems. First is the state's tenurial claim. Derived from a legal concept in the colonial era called *domein verklaring*, the state has a monopoly to designate forest areas. This concept was introduced by Raffles in 1813 aimed at tightening the colonial power's grip over land.⁸ After Indonesia's independence, the concept was preserved and was later translated into the State's Rights to Control (*Hak Menguasai Negara* or HMN). In general, HMN could be viewed in two categories. Firstly, HMN is based on the Basic Agrarian Law (UUPA). Although the scope of agrarian matters regulated by the Law is very broad (forests included), in reality it cannot be applied on forest area and is only applicable outside forest area. Secondly, HMN is based on the Basic Forestry Law. According to this Law, the operationalisation of HMN inside forest area rests under the mandate of the Ministry of Forestry and is regulated under the Basic Forestry Law. Based on this interpretation, the Ministry of Forestry claims control of almost 70% of Indonesian land area although many legal experts have qualms about the legal basis of such incredible claims (Subadi, 2010: 5). The second problem is an overlapping claim of forest area characterised by at least six patterns of claim: (1) between communities and the state; (2) between communities and companies; (3) between companies and the state; (4) among state institutions; (5) among companies; (6) among communities; and (7) a combination of various claims mentioned above.

So far, conflicts make it harder for communities to have their rights to forest fulfilled and protected. Criminalisation as well as other threats of sanctions and punishment continue taking place when conflicts are not resolved because communities will continue being regarded as illegal residents or illegal dwellers. More than 31.000 of villages that entirely or partially live in forest area are not secured as their

⁶ See S. Suyanto, 2006, *Underlying cause of fire: Different form of land tenure conflicts in Sumatra*. <http://www.worldagroforestry.org/downloads/publications/pdfs/ja06280.pdf>

⁷ HuMa, Fact Sheet September, 2011

⁸ Lynch dan Harwell, 2002, *Whose Natural Resources ? Whose Common Good ?*, Elsam, HuMa, Jakarta, hal. 19-43

area has not yet been validated as non-forest area. Under the definition of forest, they are an easy target of criminal charges.

II. Gambling on REDD+ in the Midst of Forestry Problems

When REDD+ was at the initial stage of discussion in the Indonesian public, many public and private sector groups viewed this scheme as an entry point to address many forestry problems that were the legacies of the past. At the current preparation stage, the government will fast-track the development of policy frameworks that are expected to be a 'safe bridge' towards REDD+. The draft REDD+ National Strategy, which is currently being written by the Ministry of Forestry for the readiness phase (2009-2012), states that one of the key components and strategies of REDD+ in Indonesia in this phase is policy intervention to address the triggers of deforestation and degradation in various different landscapes of forest area. This shows that the GOI between 2009 and 2012 has issued and will issue a set of policies that will suppress the deforestation rate. On the social and economic side, in another official document, the government states that:

*"REDD, however, is not a 'silver bullet' solution. REDD implementation must be supported by broader sustainable development strategies at the national level. While a number of challenges must be addressed moving forward, REDD remains as an innovative and constructive element of the international climate change negotiations and is translating into real action on the ground. REDD has the potential to accrue economic, environment and social benefits....There is a need to establish minimum standards for ensuring safeguards and co-benefits at the national level."*⁹

Meanwhile, the draft of the REDD+ National Strategy is entering its final stage. It states that the architecture of the REDD+ National Strategy in Indonesia has 5 pillars: (1) institutions and processes; (2) legal framework and regulations; (3) implementation of strategic programs, (4) changes in paradigm and work culture, and (5) multistakeholder involvement. The short-term goal is to establish an institution that will be able to implement forest and peat land governance with the main aims of reducing deforestation and degradation rate. A strong institution (Pillar 1) is required so that REDD+ is able to operate on a cross-sectoral basis involving multistakeholders with transparent governance. Meanwhile, in Pillar 2, it is mentioned that the development of a climate-friendly forestry legal framework or CLF will include forestry and peat land sectors in Indonesia as the reference in policy formulation and will also be an instrument of cross-sectoral policy harmonization.¹⁰

Official statements of the government and the good faith inscribed in the draft program or policies at the normative level should be acknowledged as a step forward towards sustainable and democratic forest management in Indonesia. Not many good initiatives can be referred to when it comes to natural resources management in Indonesia. Here, REDD+ comes to the forefront in the abovementioned statements and is expected to become one of the breakthrough points amidst the stumped response of forestry policy to the demands that urge for the resolution of existing forestry problems.

Since the 2007 13th COP in Bali, Indonesia has been promoting REDD+ pilot projects through the preparation of a set of supporting regulations and policies. With regard to this, the Ministry of Forestry issued three policies in the period between 2008-2009. The first is Ministry of Forestry Regulation No. P 68/Menhut-II/2008 on the Implementation of Demonstration Activities (DA) of Reducing Emissions from

⁹ Agus Purnomo dan Doddy S. Sukadri, 2011, "LULUCF and REDD+DNPI" in Green Review on REED, Indonesia: DNPI, pg. 13

¹⁰ REDD+ National Strategy, see final draft for online public disclosure

Deforestation and Forest Degradation. The second is Ministry of Forestry Regulation No. P 30/Menhut-II/ 2009 on Mechanism of Reducing Emissions from Deforestation and Forest Degradation. The last one is Ministry of Forestry Regulation No. P 36/Menhut-II/2009 on the Mechanism for Issuing Licenses for the Utilization of Sink and/or Carbon Storage in Production and Protected Forest. The three policies were super fast measures of the Ministry of Forestry to respond to cooperation offers from developed nations and private actors in the development of the REDD+ scheme decided in Bali COP.¹¹ The aforementioned policies, however, are far from being unproblematic.

The very fundamental aspects of forestry problems in Indonesia elaborated above, deemed by many as critical preconditions towards a successful REDD+ implementation, are excluded from the existing REDD+ policies. Firstly, related to the effort to deal with actors of deforestation and forest degradation, the three policies refer only to juridical reference and ignore the ecological reference, which should have been guiding any response to climate change. The three policies added new set of rights to the already thick bundle of rights for actors of forestry business, including logging companies and industrial tree plantations, without considering the fact that the main cause of deforestation and forest degradation is uncontrolled massive clearing of forest by actors of the forestry business possessing official licenses. The December 23, 2010 version of draft REDD+ National Strategy document stated that almost all Production and Protected Forest outside Java has no clear 'master' or responsibility-holder, which made them open access area that in turn triggered deforestation and degradation, planned or otherwise.¹²

Secondly, the three policies have no clear or strong provisions to address the tenurial problems, a major legacy of forestry regimes since the Colonial era. Without tenurial clarity, all forestry policies and initiatives, including REDD+, have the potential to criminalize and penalize communities that live within and in the surrounding forest areas, who hold no formal evidence of land rights such as a license or official letter from the government. Based on HuMa's analysis, more than 91% of natural resources conflict in Indonesia occurs between communities and private companies.¹³ The main trigger of the conflicts is overlapping area claims between communities and license-holders. The natural resources conflicts have cost not only material possessions, but also lives and communities' main sources of livelihoods.

Thirdly, the abovementioned policies provided no breakthrough in the mechanism of forestry license issuance, which has for a long time been known for its lack of openness and accountability. One of the major problems is the non-adoption of free and prior informed consent (FPIC) as one of the procedural rights of communities in remaking the model of forestry business that has long created conflict and cost many casualties. The principle has to be understood as the manifestation of democratic principles in the management of natural resources, including forestry. More than 40 years after the 1967 Forestry Law 'sold' Indonesia's forest area with a bargain price under the state-led deforestation investment, communities living inside and in the surrounding area of forest remain the poorest people in Indonesia. The report of the State Ministry for the Acceleration of the Development of Least-Developed Areas revealed that the percentage of poor families in forest villages is twice as high as poor families living outside of forest area.¹⁴ This fact is acknowledged even by the Ministry of Forestry itself.¹⁵ At this point,

¹¹ Bernadinus Steni, 2009, *Pemanasan Global: Respons Pemerintah dan Dampaknya terhadap Hak Masyarakat Adat*, Jakarta: HuMa. Hal. 59

¹² Draft 1 Strategi Nasional REDD+, revision, dated September 23, 2010 pg. 32

¹³ HuMa, Factsheet September 2011

¹⁴ "Masyarakat Desa Hutan, Komunitas yang Terabaikan," http://www.kabarbisnis.com/opini/2814996-Masyarakat_Desa_Hutan_Komunitas_yang_Terabaikan.html, 30 Sept 2010

here and now, many parties urge that the REDD+ scheme, which talks a lot about local communities and indigenous peoples, should be dominated by a model of forest management that is democratic, among others by implementing FPIC. In many proposals, FPIC is a part of safeguards that will play a key role in turning the lofty principles of human rights into practice. Considering this background, safeguards in Indonesian REDD+ is a must.

Aside from the three abovementioned policies coming from the Ministry of Forestry, several other policies and programs related to REDD+ include, among others: (1) Formation of Task Force to Prepare for the Establishment of REDD+ Institution;¹⁶ (2) Postponement of the Issuance of New Licenses and Perfection of Primary Forest and Peat Land Governance (known as the Moratorium Policy);¹⁷ (3) National Action Plan concerning the Greenhouse Gases;¹⁸ and (4) New Task Force to Prepare REDD+ Institution.¹⁹

The abovementioned ‘rules of the game’ are dominated by rushed policy making process with little—if any—accommodation of public demands. Nevertheless, some of the processes show increasing efforts to contribute to the democratization of public policy making in the future. In the formulation of the REDD+ National Strategy, the government conducted rounds of public consultation in six regions, which involved many parties, including communities living inside and in the surrounding area of forest. For the first time, tenurial problems, conflicts, access inequality, gender issues, and other human rights issues, which had been kept ‘silent in tension,’ were publicly discussed in areas in which no such issues had been previously discussed in a serious and participatory manner under an open political process. Therefore, the rounds of public consultation held at the end of 2010 could be called the most massive national policy making process ever attended by the highest number of direct stakeholders of forest, including communities living inside and in the surrounding area of forest. However, the process will be meaningless should there be no substantive transformation. Most of the democratic process was eventually ‘sewn’ or determined by bureaucrats of related sectors, some of which were unable to capture the important messages and recommendations resulting from the rounds of public consultation. Looking at the latest development of the establishment of the New REDD+ Task Force (President’s Decree No. 25 Year 2011), it seems that conservative senior officials and politicians, together with extractive business actors, worked hand in hand to counter-attack a number of public officials that have designed the abovementioned democratic process. Such conditions will hamper future efforts of environment preservation, especially of Indonesian forest.²⁰

Currently, there are more or less 44 pilot projects related to REDD+ schemes in Indonesia, whether directly or indirectly.²¹ In terms of safeguards, there are at least three patterns or models used by these projects.

¹⁵ See Ministry of Forestry Regulation No. P.51/Menhut-II/2010 on Strategic Planning of Ministry of Forestry 2010 – 2014

¹⁶ President’s Decree No. 19 year 2010

¹⁷ President’s Instruction No. 10 year 2011

¹⁸ President’s Regulation No 61 year 2011

¹⁹ President’s Decree No. 25 year 2011

²⁰ Analysis on the polemic before and after the issuance of moratorium policy in Indonesia shows poles of competing interests full of tension. See Anggalia Putri Permatasari, 2011, *Analisis Wacana Media: Peta Kecenderungan Aktor dalam Isu Moratorium*, Jakarta: HuMa

²¹ See a map of distribution of REDD+ demonstration activities was made in 2010 by the Center for International Forestry Research (CIFOR) dan North Carolina State University with contribution from Stibniati Atmadja, Liwei Lin, Erin Myers Madeira, Daju Resosudarmo, Agus Salim, Ratih Septivita dan Erin Sills, see http://www.redd-indonesia.org/index.php?option=com_content&view=article&id=205&Itemid=57

Firstly, they make intergovernmental bilateral or multilateral deals or agreements with other parties. This could be in the form of a Memorandum of Understanding (MoU), Letter of Intent (LoI), or other kind of agreement. These are flexible in nature, in order to encourage the implementation of the trial scheme in the form of preparation of institutions and regulations, up to demonstration activities. This pattern is manifested in Indonesia-Australia, Indonesia-Norway, and Indonesia-UN-REDD cooperations, among others. These models use different safeguards. Indonesia-Norway cooperation promotes safeguards but without giving any details. It says that the funding instrument that will be established in Phase One of cooperation shall be managed according to established international standards – including fiduciary, governance, environmental and social safeguards.²² Meanwhile, Indonesia-Australia has not mentioned anything related to safeguards in its cooperation documents. But, in programs, safeguards are being promoted as a mechanism to avoid the negative impacts and result in a significant social co-benefit.²³ And UN-REDD, instead of covering all matters of safeguards, focuses on Free Prior and Informed Consent.

Secondly, they enter into the license scheme in the form of ecosystem restoration. This scheme has been heatedly discussed since 2004 when the Ministry of Forestry issued Ministry of Forestry Regulation No. 159/2004 on the Direction for Ecosystem Restoration Location. In 2008, a new regulation was issued, which was Ministry of Forestry Regulation No. P.50/Menhut-II/2010 on the Mechanism of Determining and Enlarging Work Area of Business License on Timber Forest Result Utilization (IUPHHK) in Natural Forest, IUPHHK for Ecosystem Restoration, or IUPHHK for Industrial Plants in Production Forest. In this regulation, the definition and scope of ecosystem restoration covers the following criteria: (1) containing important ecosystems; (2) including activities of preservation, protection, and restoration of forest area, including planting, enrichment, tree distancing, animal captivity, releasing of flora and fauna to original habitat; (3) playing a role in restoring bio- and non-bio nutrients to its original condition until it reaches bio- and ecosystem balance. Through this scheme, license-holders at first set their eyes on non-timber forest production as an entry gate to forest management before linking up their license to carbon business. Currently, there are several private initiatives that are using this scheme, among others are PT. Rimba Makmur Utama, Rimba Raya Conservation, PT. Restorasi Ekosistem Indonesia, Global Green, Forever Green Indonesia, Restorasi Gambut Lestari, Ekosistem Khatulistiwa Lestari, and many others that are queuing in the Directorate of Natural Forest Development, Ministry of Forestry. The sizeable government attention makes ecosystem restoration a scheme most watched by potential carbon investors in Indonesia. This model has no standard of safeguards. In the requirements for getting license, it has no measures related to safeguards. Every project developer initiates its own strategies and concepts for safeguarding rights and the environment. Unfortunately, most of the interest for REDD+ investments comes from this kind of license.

Thirdly, they use the mechanism of carbon licensing by referring to Ministry of Forestry Regulation No. 36/Menhut-II/2009. Information on the parties that have used this scheme is not yet available.

Various reports from the field show that despite such high hopes, the presence of REDD+ initiatives have created problems since their inception, especially those related to the basic rights of communities. Many community members whose areas have been designated as REDD+ locations were totally uninformed and are ignorant of what REDD+ is and what benefits and risks it entails. HuMa's report (2011) found that in the location of Kalimantan Forests and Climate Partnership (KFCP) project, many villagers have no idea about the project location, creating a tremendous anxiety concerning impending

²² See LoI text at <http://www.forestsclimatechange.org/fileadmin/photos/Norway-Indonesia-LoI.pdf>

²³ Materials of presentation of KFCP at Palangkaraya Central Kalimantan, April 20, 2011

area claim that may threaten their rights to land, forest, and other natural resources. FPIC rights are not enforced while rights to land, including customary land, have never been a serious topic of discussion since project developers tend to play safe by not applying too much pressure on the government. As a result, an old pattern of policy and project development repeats itself. Villagers and communities realize that their territories were included in a particular program far after the government unilaterally designated their areas as demonstration activities locations without any prior discussion, dialogue, or approach.²⁴

At the same time, the effectiveness of policy direction developed by the government in its response to REDD+, which is reducing emissions through replanting activities, is highly questioned. CIFOR (2011) reports that there will be almost no meaningful impact for Indonesia in an emission reduction scenario that rests only on the campaign of planting 1 billion trees – a campaign initiated by the President and Ministry of Forestry to restore Indonesia’s forest – since the number of trees that must be planted to achieve the target emission reductions will require areas twice of Indonesia’s size, even if it is conducted in degraded lands. According to CIFOR, a national emission reduction target of 26% could be achieved only by reducing the rate of deforestation. Indonesia must reduce its deforestation rate up to 550,000 hectares per year, a 50% cut.²⁵

III. Developing REDD+ Safeguards for Indonesia

III.1. The role of the international community in shaping the safeguard debate in Indonesian REDD+

In designing the REDD+ safeguards in Indonesia, the government, the World Bank, the UN and civil society and indigenous peoples have come into play, infusing their competing and overlapping perspectives. In principle, the Indonesian government identifies social and environmental safeguards as one of the critical components of REDD+, including during the readiness phase. However, it is clear that safeguards have not originated in Indonesia’s legal framework. They are influenced by international actors.

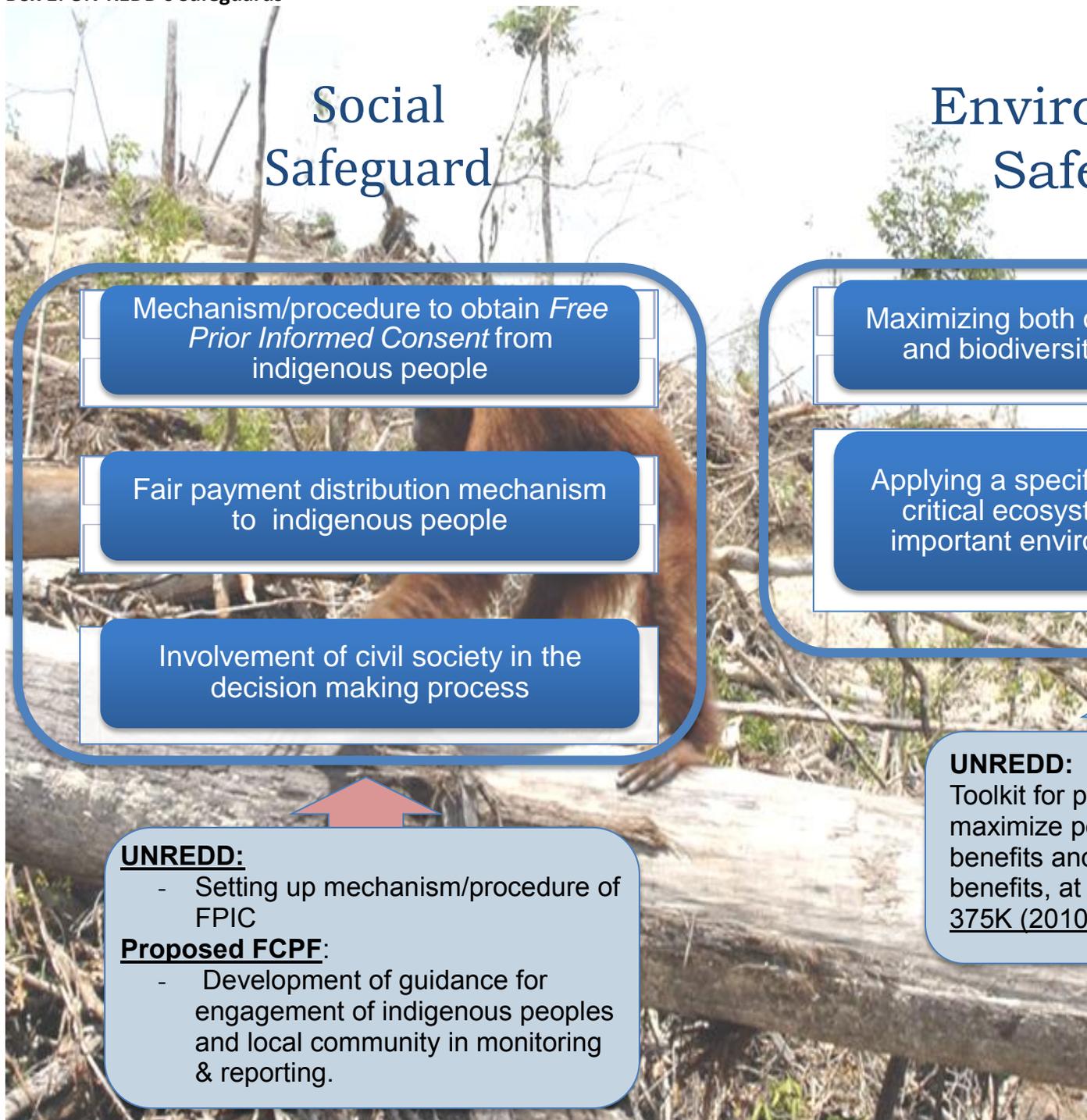
Role of UN-REDD

At UN-REDD’s launching workshop, a presenter from the Center for International Cooperation, a branch of Ministry of Forestry, stated that UN-REDD and other programs will help to formulate the social and environmental safeguards which in substance will include FPIC and biodiversity (see Box 1 below). UN-REDD’s forum is creating enabling conditions to push the government to publicly promote safeguards.

²⁴ Bernadinus Steni and Sentot Setyasiswanto, 2011, *No Reason to Delay: The Portrait of FPIC in REDD+ Demonstration Activities Projects in Central Kalimantan and Central Sulawesi*, HuMa, Jakarta, Indonesia

²⁵ Louis V. Verchot, Elena Petkova, Krystof Obidzinski, Stibniati Atmadja, Elizabeth L. Yuliani, Ahmad Dermawan, Daniel Mudiarmo and Salwa Amira, 2011, *Reducing Forestry Emissions in Indonesia*, Bogor Indonesia: CIFOR, pp.11-12

Box 1: UN-REDD's Safeguards



Source: UN-REDD, March 30, 2010

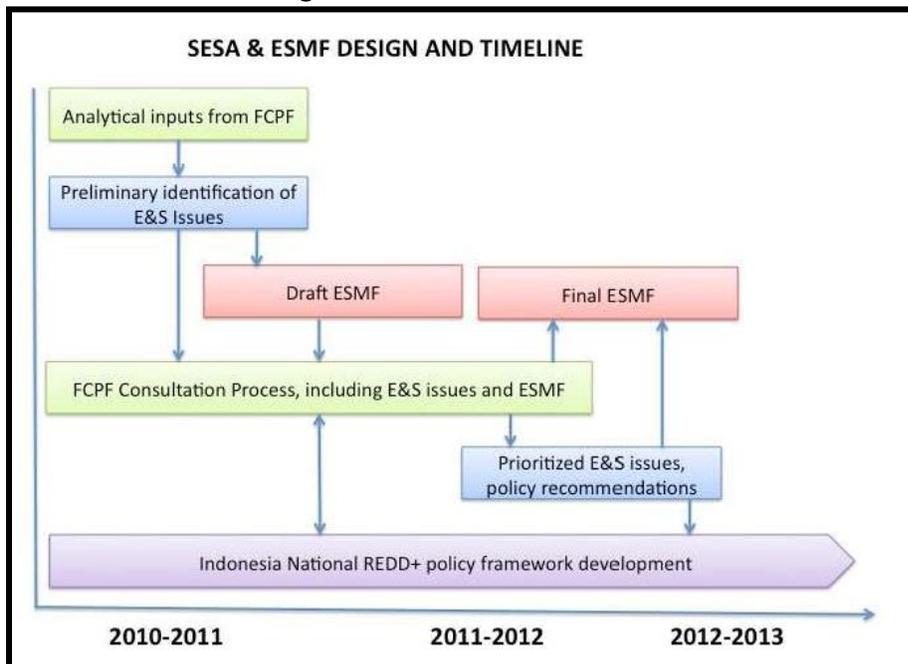
At the moment, UN-REDD is formulating a model of FPIC (Free, Prior, and Informed Consent) implementation in Central Sulawesi. This process is also approaching CSOs in Central Sulawesi to engage in integrating FPIC into local policies.

Role of World Bank

At the same time, World Bank's Forest Carbon Partnership Facility (FCPF) is working to finalize the Indonesian Strategic Environmental and Social Assessment (SESA) and the Environmental and Social Management Framework (ESMF), which will advise the country on how to address social and environmental issues for site-specific investments during the REDD+ readiness phase. Once specific REDD+ readiness activities are known, safeguards will apply. However, up until now, CSOs were only limitedly involved in the SESA process. The public consultation process of the FCPF's Indonesian Readiness Preparation Proposal (R-PP) was conducted in a highly inadequate manner, especially in terms of accountability and participation. A public consultation was held and CSOs were invited, but on a very short notice (the invitation was sent on Friday evening while the consultation was scheduled for the following Monday morning).²⁶

Due to this inadequate course, the World Bank decided to restart the SESA and ESMF process, by handing it over to the National Forestry Council (DKN) – an independent body consisting of governments, CSOs, communities, business, and academics. The World Bank expects that DKN can ensure multi-stakeholders involvement in FCPF, and thus have a bottom-up approach for the development of SESA and ESMF. Unfortunately, however, the internal process within the DKN itself has its faults. The members in each of the five chambers representing different stakeholders were not well informed of the decisions made by the chair of DKN, which then created some objections from the members. Nevertheless, the World Bank still has hopes for the improvement of process within the council.

Box 2: World Bank's safeguards for REDD+



Source: Ministry of Forestry, ToR for FCPF Indonesia:
Environmental and Social Management Framework (ESMF)

²⁶ See Statement of Civil Society on Public Consultation of REDDI-Readiness RPP FCPF Ministry of Forestry GOI May 19, 2010

Role of Norway

Indonesia and Norway signed a Letter of Intent on May 26, 2010²⁷. It stressed the need for public participation, including participation of communities living inside and in the surrounding area of forest, in REDD+ formulation. Such pressure gives a 'macro effect' in REDD+ debate in Indonesia, including in the issue of safeguards. There are several principles outlined in the Letter of Intent, one of which is 'full and effective participation' of stakeholders, including indigenous peoples and local communities (see Box 3).

²⁷ The Letter of Intent can be found here <http://www.redd-monitor.org/wordpress/wp-content/uploads/2010/05/Norway-Indonesia-LoI.pdf>

Box 3: Key elements of the Letter of Intent between the Governments of Indonesia and Norway

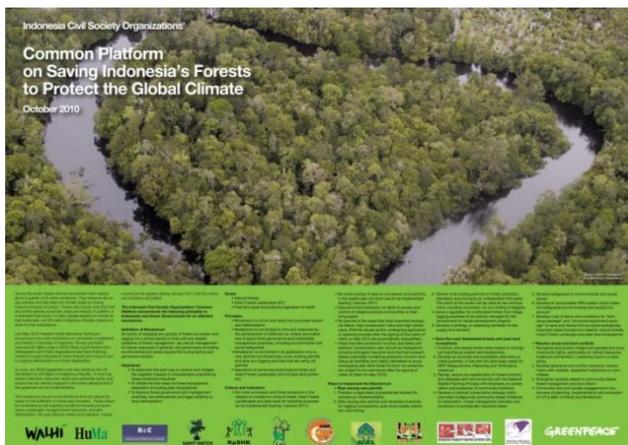
- a. Ensure that this Partnership be based on, and that nothing in this Partnership is or shall be in conflict with, the UNFCCC and the Global REDD+ Partnership.
- b. Give all relevant stakeholders, including indigenous peoples, local communities and civil society, subject to national legislation, and where applicable, international instruments, the opportunity of full and effective participation in REDD+ planning and implementation.
- c. Seek a proportional and progressive scaling up of financing, actions and results over time, based on the principle of contributions-for-delivery.
- d. Be fully transparent regarding financing, actions and results.
- e. Encourage the participation of other development partners.
- f. Ensure coordination with all other REDD+ initiatives, including the UN-REDD Programme, the Forest Carbon Partnership Facility, the Forest Investment Program and other bi- and multilateral REDD+ initiatives taking place in Indonesia.
- g. Seek to ensure the economic, social and environmental sustainability and integrity of our REDD+ efforts.

Role of UNFCCC

Based on the Cancun Agreement, the government should have completed initiatives to formulate and finalize safeguards rather than making it a prolonged polemic and ping-pong exercise of global decisions in the name of sovereignty. Until today, there is not a single final and binding document from the government that specifically operationalizes the definition, standard, and the scope of safeguards. However, Cancun produced seven principles of safeguards that precisely support the language of Indonesian CSOs' safeguards. This includes, for example, promoting the rights of indigenous peoples and local communities.

III.2 . Civil society involvement

Before the formulation of the National Strategy, the presence of REDD+ triggered waves of civil society demands to bring back the discussion of several issues that were too sensitive to be discussed: notably the issues of tenure and rights of communities to the forest. The pressure surged in several documents, among others are two main documents: "The Common Platform on Saving Indonesia's Forests to Protect the Global Climate" and "Beyond Carbon: Rights-Safeguard Principles in Law" (RBS). They were used by the government as references in the process of policy formulation, including among others the REDD+ National Strategy and Information System of the Implementation of Safeguards+.



Common Platform



Rights-based Safeguard Principles

The acceleration of various initiatives coming to Indonesia in the name of climate change, including REDD+ projects, has triggered reactions from Indonesian civil society. More and more people realize the need to protect the natural resources and people's livelihoods, especially those living in or around the forest area, against the potential harm that may occur if these projects are not being implemented carefully. In other words, *safeguards* have become essential. The People's Chamber of the National Forestry Council (DKN) – an independent body consisting of governments, CSOs, communities, business, and academics – records that there are 32,000 villages in Indonesia located within and in the surrounding areas of forest. Most of them are inhabited by customary law communities and local people who consider forest as part of the food supply chain, a cultural site, and a place to perform religious and ritual practices. These people are the real *rights-holders* of REDD+ projects.

Through several discussion forums, one of them organized by DKN, rights-holders developed several recommendations concerning REDD+ and climate related projects²⁸ (see Box 1), which must be acknowledged and adopted into REDD+ schemes. The same set or types of recommendations also appeared in other forums, such as in the "Sinar Resmi Declaration" (2009)²⁹ and recently, in the "Rongkong Declaration" (2011)³⁰ – two declarations launched by the Indigenous People groups members of AMAN.

²⁸ See *Alone in the Changing Climate* -Petition of the People's Chamber of the National Forestry Council (DKN) on the Policies for the Mitigation and Adaptation of the Management of Climate Change, HuMa, 2011

²⁹ Sinar Resmi Declaration, 8 August, 2009, Declaration resulting from the National Indigenous Peoples' Consultation on Climate Change and REDD and AMAN's National Strategic Meeting, 5-8 August 2009.

<http://www.forestpeoples.org/partners/aman/publication/2010/sinar-resmi-declaration>

³⁰ Rongkong Declaration, AMAN (Indigenous Peoples Alliance of the Archipelago), September 22, 2011

Box 4: Recommendation from the People’s Chamber of the National Forestry Council

To the National Government

1. Amend all climate change policies that threaten the existence of the people living within and in the surrounding areas of forest for generations.
2. Give protection to the adaptation and mitigation initiatives implemented by the people that have lived from generation to generation living within and in the surrounding areas of forest and provide adequate support that includes technical assistance and mentoring on a regular basis.
3. Urge all parties involved in the policymaking process and climate change mitigation projects to respect, protect, and fulfill the rights and fundamental freedoms of the people living within and in the surrounding areas of forest, including by adopting national human rights principles and norms in the new policies in the field of climate change mitigation.
4. Make sure that there is a clear roadmap in the climate change policy and other policies concerning the target of the fulfillment of the rights of the living within and in the surrounding areas of forest.
5. Ensure full involvement of these people living within and in the surrounding areas of forest in the formulation process of all climate change policies that directly or indirectly affect these people.
6. Ratify ILO Convention No.169,
7. Push industrialized countries to reduce their emissions willingly, immediately and unconditionally.

To the People’s Legislative Assembly of the Republic of Indonesia:

1. Implement strict supervision on the projects and programs related to the adaptation and mitigation of climate change impacts.
2. Urge the government to put pressure on industrialized countries to reduce their emissions immediately and unconditionally.
3. Take part in the efforts to accelerate the ratification of ILO Convention No.169.

In the process, a number of Indonesian civil society groups initiated the idea of putting together a set of principles which then became the “Beyond Carbon: Rights-Safeguard Principles in Law” that was mentioned previously. The groups who were involved in the initiative are: HuMa, Civil Society Forum on Climate Justice (CSF), Bank Information Center (BIC), WALHI, Kemitraan (Partnership), KpSHK, ICEL, Samdhana Institute and AMAN. Through the *Beyond Carbon* document, nine principles were highlighted as the basis of safeguarding REDD+ projects. These principles are:

1. Basic right to information,
2. Right to participate,
3. Right to forest resources,
4. Right over values and customs relating to forest,
5. Rights to benefit-sharing,
6. Right to compensation and environmental restoration,
7. Right to free and prior informed consent,
8. Right not to be terrorised and to protection under the law,
9. Right to a healthy environment.

The main intention of the *Beyond Carbon* document is to guide the integration of safeguards in governing REDD+ initiatives. It was intended as a proposal to all donors and the national and local governments to institutionalize maximum transparency, inclusive decision-making processes, protection for indigenous peoples’ rights and all relevant economic, civil and political rights of forest communities, and accountability across all REDD+ programs. The nine principles from the civil society in the *Beyond Carbon* document were proposed to the REDD+ Task Force in early 2011, and have now been adopted into the draft REDD+ National Strategy. The strategy does not use exactly the same language, but in principle, the content is more or less the same. The difference is that *Beyond Carbon* came with a set of indicators a long with the principles, while the National Strategy does not.

III.3. Government's response

Although safeguards are repeatedly mentioned as an important component in various government official documents, information on its scope and content has never been found. A document (2011) from the National Council on Climate Change (Dewan Nasional Perubahan Iklim – DNPI) states that:

“The scope for safeguards and co-benefits and institutional structure needed to support them must be further explored, while being mindful of the need not to layer so many things on REDD that implementation becomes overly difficult. There is a role for international guidance in this regard, but the ‘pressure point’ for addressing co-benefit and safeguards should be at the country level.”³¹

DNPI sees the need to equip REDD+ with safeguards but with threefold conditions: safeguards are not supposed to make it ‘overly difficult’ for REDD+ to be implemented, safeguards may be guided internationally, but at the same time should predominantly refer to the national (‘country level’) situation. This framework of thinking is also apparent in the report of Indonesian negotiators for COP-16 in Cancun.³² Several officials commented that safeguards are the World Bank’s project and even called them ‘fancy’, meaning that they serve only to boost a positive image.³³ Such frameworks of thinking are trapped in a confusing logic because safeguards are supposed to be seen not as troublesome obligations but enabling conditions that allow REDD+ to be implemented effectively and efficiently. Without safeguards, REDD+ will be faced with conflicts, free riders, and forest and peat land brokers who propose license solely for the purpose of land banking.

However, the initiative to push for safeguards has been taken seriously in the formulation of the REDD+ National Strategy. The September 2011 version of Draft REDD+ National Strategy contained safeguard principles that refer to national as well as international law. Four out of the nine principles included in the Draft answer the growing demands in various fora, reports, even demonstrations, including demands from rightsholders. The four principles are as follows:

1. Various kinds of basic rights of communities to receive comprehensible information, to participate, and to file a complaint (as a part of FPIC principle) related to any public policy of REDD+ project;
2. A guarantee that REDD+ projects or programs will protect and acknowledge the rights of indigenous peoples/local communities to natural resources that are not only based on formal evidence but also historical control and claim;
3. Indicators that guarantee the recognition of the basic rights of indigenous peoples and local communities to make their decisions related to any REDD+ project in their territory;
4. Various principles of good governance, including ones to guarantee public transparency and accountability from the implementator of forest management.

Such developments in the REDD+ National Strategy cannot be de-linked from the pressure of Indonesian civil society.

³¹ Agus Purnomo dan Doddy S. Sukadri, 2011. pg 13

³² Task Force on Climate Change, Ministry of Forestry, *Laporan lengkap Delegasi Kementerian Kehutanan pada COP-16*, Cancun, Mexico November 29 – December 10, 2010, pg 46-47

³³ Statement of a Ministry of Forestry official in UN-REDD launching, March 30, 2010 and a comment of a member of REDD+ Task Force when responding to NGOs’ pressure concerning the need of safeguards

After the UNFCCC negotiations in Cancun, the Ministry of Forestry through the Central General Secretariat in charge of Standardization and Environment actively pushed for the implementation of the Cancun Agreement by initiating a discussion on the establishment of ‘information systems’ on safeguards. In the Terms of Reference of the September 8, 2011 Focus Group Discussion on the Establishment of Information System on the Implementation of Safeguards+, it was mentioned that the key issue of translating REDD+ guidance and safeguards from Cancun to the national context is to translate the REDD+ safeguard principles agreed at COP-16 to the national and local context, whether from the bio-geographical side, socio-cultural richness, economic interests, and operational legislative regulations, while not undermining state sovereignty. Therefore, it must be shown that the implementation of these safeguards ensures that REDD+ is a mechanism that can improve the quality of management and increase the value of forest resources for national development purposes and can contribute to efforts to address global warming. It is still unclear who will be responsible for determining the content of safeguards and how they will work. In the Draft National Strategy, the responsibility rests with the REDD+ Agency.

IV. Test Case for Harmonization: Safeguards in National Strategy vs. World Bank’s Safeguards

Among development agencies and international financial institutions, the World Bank’s safeguards are among the most widely used. They have a set of ten safeguards that serve as guidelines for the Bank and the borrowing countries to follow in implementing their projects and programs. The safeguards include policies on Environmental Assessment, Natural Habitats, Forestry, Involuntary Resettlements, Indigenous Peoples, Cultural Property, Disputed Areas, International Waterways, Pest Management and Safety of Dams.

The World Bank was among the first international financing actors that adopted safeguards – as a result of a long history of pressure from civil society groups around the world. And in the national context, the Bank had been involved in the REDD+ policy debate since the beginning. Through the Forest Carbon Partnership Facility (FCPF), the Bank intends to facilitate the readiness phase of REDD+ in Indonesia. The Readiness Plan (R-PP) agreement was signed in June 2011 for US \$ 3.6 million. Furthermore, together with the ADB and IFC, the World Bank also took part in the Forest Investment Plan (FIP), which provides up-front bridge financing for readiness reforms and public and private investments for REDD+.

Here we compare the safeguards principles adopted in the National Strategy, based on the proposal from CSOs, with the safeguards policies of the World Bank, to identify relative gaps, strengths, and need for improvement. This analysis could also be useful for the formulation of the SESA and ESMF of World Bank’s FCPF for Indonesia, which will guide REDD+ investments in Indonesia and ensure compliance with the World Bank safeguard policies.

Table 1: Comparison of the National Strategy’s Principles and the World Bank’s Safeguards

Category	National Strategy	World Bank	Gap
Rights to Information	Based on the principles set in section 4.6.1 (1) Safeguards Implementation Framework, providing “Various kinds of basic rights of communities to get comprehensible information, to participate, and to file a complaint (as a part of FPIC principle) related to any public policy of REDD+ project”.	Referring to Policy on Access to Information: “The Bank allows access to any information in its possession that is not on a list of exceptions (set out in Part II, Section A, of this policy statement). In addition, over time the Bank declassifies and makes publicly available certain information that falls under the exceptions. Notwithstanding the broad intent of this policy, the Bank reserves the right, under exceptional circumstances, to disclose certain information covered by the list of exceptions, or to restrict access to information that it normally discloses”. ³⁴	The Bank clearly defines which documents are allowed to be disclosed and which are not. The principle stated in the National Strategy needs to provide implementation and technical guidance in order to carry out the principle.
Tenure	In principle: “A guarantee that REDD+ project or program will protect and acknowledge the rights of indigenous peoples/local communities to natural resources that are not only based on formal evidence but also historical control and claim”. This requires: “Procedures and information system that guarantee the recognition of community rights to land and forest that refer not only to formal evidence of control but also customary or historical control”.	Referring to OP 4.10 on Indigenous Peoples: The policy recognizes the customary rights of Indigenous Peoples, the need to protect such land and resources, and the cultural and spiritual values of such lands. ³⁵ Moreover, legal recognition according to the policy must be in the form of: (a) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or (b) conversion of customary usage rights to communal and/or individual ownership rights. If neither option is possible under domestic law, the IPP includes measures for legal recognition of perpetual or long-term renewable custodial or use rights.	The National Strategy acknowledges the rights of communities and IPs, and not only refers to state law, but also to IP or local laws. The Bank is only referring to state law, which actually does not recognize IPs’ tenurial rights.

³⁴ “The World Bank Policy on Access to Information”, the World Bank, July 1, 2010, pg 2

³⁵ OP 4.10 on Indigenous Peoples, the World Bank, para. 16

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html#F17>

<p>Free, Prior and Informed Consent (FPIC)</p>	<p>FPIC in the National Strategy is mentioned in the Designation of safeguards principles, criteria, and indicators: “Various kinds of basic rights of communities to get comprehensible information, to participate, and to file a complaint (as a part of FPIC principle) related to any public policy of REDD+ project” which then requires “Procedures and information system and mechanism of FPIC (including a mechanism to file a complaint) in the process of giving <i>consent</i> to any REDD+ activity”.</p>	<p>The World Bank does not recognize “Free, Prior and Informed <i>Consent</i>”, but “Free, Prior and Informed <i>Consultation</i>”.</p>	<p>Although the National Strategy has yet to compose the procedures and information system for implementation, it recognizes FPIC as Free, Prior and Informed <i>Consent</i>. This contrasts with the World Bank, which only recognizes it as “Consultation” without requiring consent from the people.</p>
<p>Governance</p>	<p>Various principles of good governance, including the ones to guarantee public transparency and accountability from the implementor of forest management.</p>	<p>Good governance has become a basic principle for all World Bank operations.</p>	<p>The National Strategy needs to lay out the indicators of good governance in a REDD project.</p>
<p>Benefit sharing</p>	<p>Mentioned in the Designation of safeguards principles, criteria, and indicators: Criteria on any possible impact or benefit that will result from REDD+ implementation, including guarantee of benefit sharing scheme that will arise as the consequences of REDD+. Mentioned that it should be included in the Monitoring, Reporting, and Verification (MRV) system.</p>	<p>Referring to OP 4.10 on Indigenous Peoples: It requires the IP Plan that enables the Indigenous Peoples to share equitably in the benefits to be derived from such commercial development; at a minimum, the IPP arrangements must ensure that the Indigenous Peoples receive, in a culturally appropriate manner, benefits, compensation, and rights to due process at least equivalent to that to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land.</p>	<p>The National Strategy still needs to set the criteria, procedures and system for benefit sharing mechanism. The World Bank needs to: (1) further elaborate on project implementation; (2) apply the same requirements and mechanism not just for IPs, but for all forest dependent/local communities.</p>
<p>Vulnerable groups (IPs, gender)</p>	<p>The National Strategy emphasize that “Safeguards for vulnerable groups must get a special attention in the development of REDD+ program/project/activity”. Moreover, it requires “Measures to improve the welfare of</p>	<p>Vulnerable groups are recognized by the World Bank in their Indigenous Peoples Policy and Gender Policy.</p>	<p>Vulnerable groups do not only consist of IPs and Women, but also children, disabled, elderly, etc. Both the National Strategy and the World Bank have to ensure that</p>

	vulnerable groups will be a part of safeguards of the implementation of REDD+ program/project/activity”.		those other groups are not excluded.
Public participation	Mentioned in the Designation of safeguards principles, criteria, and indicators: “Various kinds of basic rights of communities to get comprehensible information, to participate, and to file a complaint (as a part of FPIC principle) related to any public policy of REDD+ project” and “Indicators that guarantee gender equality and vulnerable groups in terms of participation in REDD+ implementation”.	In principle, to ensure transparency and accountability of their activities, the World Bank requires Public Participation and Consultation process for every new project and programs that they are funding/supporting and implementing and policies they are implementing.	The National Strategy needs to set specific requirements that every REDD+ project must have a genuine multi-stakeholder consultation process, starting from the design phase.
Biodiversity	The National Strategy states that “The adoption of biodiversity measures in REDD+ program/project will be carried out to ensure that the effort to reduce emissions and to increase and preserve carbon stock is in line with efforts of biodiversity conservation”. And it requires that the designation of REDD+ safeguards for biodiversity must be carried out together with the relevant stakeholders, including representatives of forest communities and must be largely based on their knowledge on benefits of such biodiversity.	Referring to OP 4.04 on Natural Habitats. Biodiversity protected under this policy is that which is within the scope of WB’s definition as <i>Natural Habitats</i> ³⁶ . Biodiversity outside of natural habitats (such as within agricultural landscapes) is not covered under this policy. OP 4.01 on Environmental Assessment, where an EA must take into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects (which includes adverse impact on biodiversity’). ³⁷	The National Strategy must define what biodiversity is, the scope of biodiversity that will be protected, and an implementation mechanism.

³⁶ OP 4.04, Annex A, Definitions,

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20065305~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184~isCURL:Y,00.html>

³⁷ OP 4.01 – Environmental Assessment

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

Involuntary Resettlement	Only seen as part of FPIC.	OP 4.12 on Involuntary Resettlement. ³⁸	The National Strategy must have a clear principle, criteria and mechanism for involuntary resettlement.
Complaint/Redress Mechanism	Mentioned in the Designation of safeguards principles, criteria, and indicators: “Procedures and information system and mechanism of FPIC (including a mechanism to file a complaint) in the process of giving consent to any REDD+ activity”.	Complaint/redress mechanism is through the Inspection Panel of the WB, which is an accountability and recourse mechanism that investigates IBRD/IDA financed projects to determine whether the Bank has complied with its operational policies and procedures (including social and environmental safeguards), and to address related issues of harm.	The National Strategy has yet to set up the complaint and redress mechanism for REDD+ projects.

From the table above, we can see that the World Bank has a detailed policy and procedural guidelines in the identification, preparation and implementation of the bank’s financed projects and programs. The Bank uses a more practical approach in setting the policies. The safeguards in the National Strategy, based on the categories in the matrix, include almost all of the main environmental and social safeguards issues that need to be covered. In a broad sense, the set of safeguards principles in the National Strategy uses the rights-based approach proposed by communities and CSOs. However, the set of principles needs to be further elaborated with criteria and indicators, which can be made into an applicable safeguards system and operational manual document³⁹.

The gaps identified in the matrix can be of use to complete and strengthen the safeguards in the National Strategy. As long as the strategy will consistently follow the rights-based approach for developing the REDD+ safeguards system for Indonesia, the gaps will be resolved. As for the international donors, they must also comply with the national safeguards that are set. The CSOs that came up with the “Beyond Carbon” approach shared the concept proposal with the World Bank in the hope for possible harmonization of safeguards, and to avoid contradicting policies of safeguards.

³⁸ OP 4.12 – Involuntary Resettlement

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

³⁹ At the time of the writing of this paper, the Presidential Special Unit (UKP4) Task Force in charge of formulating the REDD+ National Strategy and Agency, is developing the Operational Guidelines/Manual – Principles, criteria and indicators to implement the REDD+ safeguards principles.

V. Implementing the Civil Society Safeguards Proposal (Beyond Carbon Plus)

V.1. The need for harmonization of standards

As discussed above, Indonesia already has existing laws and is a party to international covenants and conventions that protect, respect, and provide remedy for rights and safeguards. Therefore, REDD+ donors do not need to reinvent the wheel, they just need to take guidance from these other commitments and reinforce them.

On the other hand, REDD+ financing facilities such the World Bank's Forest Carbon Partnership Facility (FCPF), the Forest Investment Program (FIP), UN-RREDD, and other bilateral agencies have their own sets of safeguard standards. The challenge, however, is that they are not yet aligned. Some are mandatory (World Bank), some constitute guidance, and some are guided by grievance mechanisms while others are not. This creates confusion among the government and forest communities on whose standards to follow.

There is a growing call from civil society for the upward harmonization of standards, especially now that the FCPF has proposed using "Multiple Delivery Partners" (MDPs)—meaning other multilateral development banks, and UN agencies—as implementers of REDD+ programs. This poses either opportunities or constraints for the meaningful implementation of strong safeguards. With all of these developments happening, Indonesia plays an important role in showcasing the need for high common standards on safeguards.

V.2. Safeguards in the Indonesian context

While the government has embraced the importance of safeguards in REDD+, the policies in place and the strategies proposed remain challenged by their power to address the long-standing drivers of deforestation and degradation.

According to the Cancun agreement and in the statement of the Indonesian government, safeguards need to be contextualized within the national context. In the Cancun agreement, the rights of Indigenous Peoples must be fully recognized and adopted as defined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, in the Indonesian context, either by law or in the political context, all natural resources are owned by the state. Subsequently, there is little space left for the people and communities to claim their rights for natural resources including forests. So how do you ensure that the rights of these people, who own the forest, who have been protecting the forest for many years, decades, all the way back to their ancestors, can be protected? Therefore, safeguards in the Indonesian context must go beyond the positive law in order for state ownership to be distributed fairly and equitably, and can be beneficial for all the people, including indigenous and vulnerable groups.

VI. Closing

Indonesia is still in the process of formulating policies for REDD+ safeguards. However, many government entities have gone through the process according to each of their mandates without proper coordination. For instance, the REDD+ Task Force formulated the safeguards principles in the draft National Strategy. But at the same time, the Ministry of Forestry also set up its own safeguards information system. Consequently, it is unclear which institution is responsible and authorized to formulate, monitor and validate the safeguards implementation. Some government officials are even reluctant to use the term 'safeguards' and are using the issue of national sovereignty to hinder international intervention in formulating the REDD+ national standards. However, there is still public space in the drafting of the REDD+ National Strategy to push for regulatory instruments to work, and for integrating other related international and national standards including basic human rights, good governance, conflict resolution, and complaint mechanisms into the national safeguards standards or policy.

On the other hand, donors involved in the many REDD+ initiatives in Indonesia do not have the same safeguards standards as well. Some basic human rights principles such as "consent" in FPIC – which is recommended in the Cancun agreement – are interpreted differently, or even rejected by some donors. Some international financial institutions including the World Bank do not adopt the right of "consent" for communities and Indigenous Peoples, whereas the UN institutions like UN-REDD and UNDP adopt FPIC fully. Moreover, there have been efforts to reduce the safeguards standards by using country systems that may be weaker than the donor's standards. Hence the upward harmonization for donors is crucial. As the impacts of climate change become more apparent and cause serious threats to Indonesia's natural resources, the REDD+ scheme can only be successful through strong, consistent, and implementable policies.