Government of Central Kalimantan

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Master Plan for the Rehabilitation and Revitalisation of the Ex-Mega Rice Project Area in Central Kalimantan






SECTORAL POLICIES AND THE EX-MEGA RICE PROJECT AREA IN CENTRAL KALIMANTAN

Technical Report No. 17

OCTOBER 2008

Euroconsult Mott MacDonald and Deltares | Delft Hydraulics
in association with
DHV, Wageningen UR, Witteveen+Bos, PT MLD and PT INDEC

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Summary and Conclusions

In the context of the EMRP Master Plan and NLDS projects, a review of the legal framework for relevant policy fields - lowland water resources management, spatial management, forestry and peatland management - has been completed.

The old sector laws from the period before 1998 (the end of the New Order period) can be characterized as strongly centralistic, sector and development-oriented, with poor attention to environmental and social issues. The Spatial Management Law of 1992 was a first step to a more integrated, cross-sector approach. However, this law was poorly implemented due to a lack of proper guidance.

The institutional set-up during the New Order period was very clear. Authority in all sectors was concentrated on a central level with only small authority for the regional government (province, district/municipality). The institutional set-up changed completely in 1999 when the new decentralization legislation was enacted.[1] However, the new institutional set-up was not clearly formulated, neither in the law, nor in the implementing regulation. Due to this, it produced much confusion and conflicts. Then, in 2004, the decentralization law tried to repair the problems of ambiguity and, furthermore, the law strengthened the position of the province with control and supervision talks.

Elaboration of the new law took place in 2007 with PP 38/2007. The revised division of authority and responsibilities between the different government levels will be incorporated in the sector laws/regulations. This process is still ongoing. So, confusion in the institutional set-up will continue in the coming years.

After the fall of the Soeharto regime, most policy sectors prepared new sector laws in parallel to the new decentralization legislation. One of the chief goals was partly to re-centralize power lost due to the new decentralization legislation. A good example is the Forestry Law of 1999 (Law No. 41/1999), which was ratified shortly after the enactment of the decentralization laws. The law still has a strong, centralistic approach.

Another feature of the Forestry Law is that it is not the result of a participative process. The submitted bill was the product of the ministry itself and led to heated discussions in Parliament. It is little wonder that this law has no public support and no strict compliance with the law in practice. Illegal logging and non-timber activities are still wide-spread. When laws fail to reflect the way which people arrange their lives, those laws will not have the critical mass of public support they need in order to be respected.

Due to the participative approach of the Law on Water Resources (Law No. 7/2004) and the implementing regulations, water resources management and irrigation are more sophisticated. The conditions for compliance with the law have improved.

Unfortunately, this is not the case with the regulation on water resources lowland

[1] The decentralization legislation started in 1999 with Law No. 22/1999 on regional autonomy (and based on this law PP No. 25/2000) and Law No. 25/1999 on Financial Relations. These laws were reviewed in 2004 and replaced by Law No. 32/2004 and Law no. 33/1004. PP No. 25/200 is replaced by PP No. 38/2007.

management. The drafting process of this regulation (which is still a PU internal draft) is not based on a participative approach.[2]

All the laws hold something in common in that they are umbrella laws. They are heavily reliant on subsequent government regulations. However, the problem is that sufficient thought is often lacking on the content of the regulations. Conceptual and practical problems in the law are only noted once the law has been passed, constraining the preparation of useful implementing regulations.

The old sector laws had no provisions for cross-institutional coordination. The consequence of this approach was that these laws were overlapping and conflicting. The Law on Spatial Management of 1992 (Law 24/1992) was the first attempt to improve this situation. Unfortunately, the implementation of this law was poor, due again, among other things, to a lack of guidance. The new Law of Spatial Management of 2007 (Law No. 26/2007) was an important step in the aim to strengthen external coordination on the legal level.

The Forestry Law of 1999 has no provisions about external coordination. Also, the implementing regulations hold no such provisions. This is a major constraint, especially because this law plays a dominant role in the discussion about land use. Coordination for the various sector claims on land use has to be done in the context of the spatial plans. However, about 65% of Indonesian territory still holds forest status and falls under the direction of the Ministry of Forestry. In reality, only a few parts of the forests can still be considered forest. There are many conflicts over the use of logged wastelands. This problem has to be addressed properly and soon.

The water resources legislation (law and implementing regulations) affixes explicit attention to external coordination, especially to coordination with spatial plans. However, the way in which this is done is too vague. This requires a more precise formulation.

In general, one could say that external institutional coordination is still rather weakly developed. For the most part, it does not yet have a legal base, and if it does, the formulation is too vague. The experiences of other countries show that the strengthening of external institutional coordination is a long process. Indonesia has a long tradition in non-legal-based institutional coordination which grants the involved institutions a lot of room for freedom of policy.

[2] The new water law and the regulations about water resources management and irrigation are prepared under the umbrella of the WATSAL program in broad, composited pokjas. In 2003, PU decided to halt this approach.

1. Introduction

This report provides an analysis of four key policy areas in order to inform the development of the Master Plan and its implementation. The four policy areas covered are:

1) The Water Resources Sector
2) The Forestry Sector
3) Spatial Planning and Management
4) Peatland Management

The major policies including Laws (*Undang-undang*) and selected Government Regulations (*Peraturan Pemerintah*) are reviewed for each sector with the intention that these will provide a useful resource for the development of the Master Plan for Rehabilitation and Revitalisation of the EMRP area.

2. The Water Resources Sector

The legal framework for the lowlands' water resources is the Law on Water Resources (Law No 7/2004) and two government regulations (further named PP)[3] based on that law: the PP on Water Resources Management and the PP on Lowland Water Resources Management. Both regulations are still in the draft stage. The goal is to enact the regulations in 2008. Until that time, the regulations based on the old water legislation are still in force.[4]

The structure of this chapter is as follows: Section 2.1 provides a description and analysis of the old legal framework for the lowland water resources; Section 2.2 discusses the new Law on Water Resources; Section 2.3 examines the RPP on Water Resources Management; and Section 2.4 discusses the RPP on Lowland Water Resources Management; conclusions and recommendations are given in Section 2.5.

2.1 The Former Legal Framework - Law 11/1974

The legal base for lowlands in the past was the Law on Water Resources Development (Law No. 11/1974). This law provided the legal framework for the development of water resources and its management. Lowland development was one of the explicitly-mentioned objects of the law. The elaboration of this part of water resources was further regulated by the Government Regulation on Lowland Development (PP No. 27/1991), which came into force in 1991. This means that the government-sponsored lowland development projects of the 1970s and 1980s were not based on this regulation. In fact, this regulation played no role in previously-developed lowlands.

The regulation was mainly oriented towards development and not towards management. This is in line with Law No. 11/1974, which also was focused primarily on development (see the title of the law). Another characteristic of the regulation is the dominant position of the central government with little or no authority for the regional governments (provinces and districts). The regulation is a typical product of the New Order period, in which the position of the central government was foremost. The position of the regional governments was very weak. Development of lowlands was fully the authority and responsibility of the Ministry of Public Works. In theory, the regulation took into account environmental aspects of the development of lowlands. In accordance with the preamble, the regulation contained several articles about sustainability and conservation. However, in practice, these articles were not supported by other legal instruments and hence were ignored.

Due to the autonomy and fiscal decentralization of 1999, the political and institutional setting has completely changed. The Law on Regional Autonomy (Law no. 22/1999), and the related Law on Fiscal Equalizing between Central and Regional Government (Law no. 25/1999), gave the regional governments major administrative and financial autonomy.[5] Thus, the new paradigm of autonomy and fiscal decentralization made the existing water law and the PP Rawa of 1991 obsolete.

[3] The Indonesian term for a (draft) government regulation is: (Rancang) Peraturan Pemerintah, (R)PP.
[4] Article 97 of the new water law states that the existing regulations are still in force so far as they do not contradict the new law.
[5] Both laws were revised in 2004 (law no. 25/2004 and Law No. 33/2004). Among others, the position of the provinces was strengthened.

The change in institutional setting and the shift away from a developmental approach to an integrated management approach is expressed in the new Law on Water Resources.

2.2 The New Law on Water Resources

The Law on Water Resources (Law No. 7/2004; further named: the law) is aimed at promoting a coherent, integrated and open approach to the different aspects of water resources management, focused on a sustainable management of water resources.[6] To realize this objective, the law provides a number of substantial organizational facilities.

The first aspect concerns the attribution of authority and responsibilities to the various government authorities involved in water resources management. The second aspect is aimed at empowering these authorities with strategic and operational instruments to enable them to perform their tasks properly.

The three main pillars of the law are: conservation, utilization, and control of water damaging power. See **Annex 1** for an overview of the structure of the law. Further, part of its integrated approach is that social bodies, the private sector, and local communities are given the opportunity to participate in all stages of the decision-making process, not only in the planning process, but in the operational process of the implementation of water resources management (involvement by annual plans decisions, permit decisions, etc.).

Although the law has grown considerably in size in comparison to the old law (from 17 to 97 articles), the subjects included in the act are only provided in outlines. The substantial elaboration which takes place in government (and ministerial) regulations applies to almost all subjects. This makes the law a typical framework law. The intention is to make separate government regulations about the following subjects:

- Water resources management
- Irrigation
- Lowlands
- Rivers and lakes
- Groundwater
- Water supply and sanitation
- Water quality and control of water pollution
- Water use rights
- Corporations

Until now, only two regulations have been enacted: PP No. 16/2005 about Water Supply and Sanitation, and PP No. 7/2006 about Irrigation. The other regulations are still in the drafting phase.

The object of the law is water resources. Lowlands are one of them. The elaboration

[6] The discussion about water sector reform was started by the Indonesian National Planning Bureau BAPPENAS in 1997. The legislation program was actually started in April 1999, after the signing of the WATSAL contract between Indonesia and the World Bank. WATSAL stands for Water Resources Sector Adjustment Loan and concerns the plan supported by the World Bank to reform the Indonesian Water Sector, partly against the background of strengthening regional authorities' autonomy realized in the Law on Regional Autonomy. The modernization of water legislation was part of this WATSAL program.

of this subject will take place in government regulation. To understand the contents of this regulation fully, it is important to know how much attention the law and the explanation of the law give specifically to the lowlands. Analysis of this question has uncovered the following: the term “lowlands” is rarely used in the law. It is interesting that the term is absent in article 1, which contains the definitions of the most relevant terms of the law. The law counts 97 articles. Only three articles use the term “lowlands:” articles 35, 36 (part of the chapter about utilization) and 58 (part of the chapter about the control of the destructive power of water).

Utilization is the effort to administer, provide, use, develop and operate water resources effectively and efficiently (definition of article 1, sub 19). The utilization articles 34-36 handle water resources development. Article 35 states that water resources development comprises of:

- surface water in rivers, lakes, **lowlands**, and other surface water sources
- groundwater in groundwater depressions
- rainwater
- seawater on land

Article 36, section 2, states that provisions on the development of rivers, lakes, **lowlands**, and other surface water sources shall be further regulated by government regulation.

Control of the destructive potential of water is the effort to prevent, mitigate and recover damage to the environment caused by water (definition of article 1, sub 20). Article 58, section 1, states that the control of water should be conducted in rivers, lakes, basins and/or dams, **lowlands**, groundwater depressions, irrigation systems, rainwater, and seawater on land. Section 2 states that provisions about this issue will be further regulated by government regulation.

The explanation of the law is also very thin on lowlands. Why is the law and its explanation so reluctant to use the term “lowlands?” The reason for this poor attention to lowlands is probably due to the following. The draft law and several draft regulations (like those about water resources management and irrigation) are prepared in four working groups (*Pokja*), which mainly consist of river and irrigation specialists.[7] Lowland specialists were not represented in the working groups. Furthermore, preparing a regulation about lowlands was not part of the WATSAL program. Nevertheless, the lowlands are an important part of water resources management. We shall see in the next paragraph how this subject is elaborated in government regulations.

2.3 RPP on Water Resources Management

2.3.1 General

The RPP on Water Resources Management (WRM) has a wide scope. It regulates some general subjects for all types of water resources (not only rivers, but groundwater, irrigation, and lowlands). Nevertheless, river basins remain the primary focus. The main subjects of the regulations are: (a) principles for water resources management, (b) planning, (c) construction, operation and maintenance, (d) conservation, (e) efficient use of water resources, (f) control of the destructive potential of water, (g) permitting, (h) information system, (i) supervision, and (j)

[7] These Pokja were part of the WATSAL program.

administrative sanctions.

For an overview of the structure of the regulation, see **Annex 2**.

In the context of the object of this paper, it is important to give specific attention to the arrangement of the planning structure.

2.3.2 Planning

Arrangements for planning are very important for the development of a roadmap for a national lowland development strategy and will be described and discussed here in outlines.

The arrangement of the planning structure in the water law is concise. The chapter "Planning" only contains three articles (59-62). The substantive regulation of the planning is laid down in the RPP on WRM. A distinction is made between three, mutually-related planning forms: water resources policy, water resources management framework (Pola), and water resources management planning (WRM plan). The first is related to administrative boundaries and is strategically aimed towards policy. The other two are related to physical boundaries (river territory).[8]

At all administrative levels, the adoption of a document on strategic policy has been provided (articles 4-7). The arrangement is formulated rather generally. It is important to give attention to the interrelationship between the different policy documents. The national policy shall be used as a reference in preparing provincial policy and the provincial policy shall be used as a reference in preparing district policy.

All authorities are required to draw up a "Pola" (articles 14-23) and a WRM-plan (articles 24-36) for each of the river territories falling under their responsibility. A Pola is a strategic plan in which the outlines of long-term objectives, according to river territory, are formulated. Based on the Pola, the authority responsible must draw up a WRM-plan for each river territory. The WRM-plan is also a long-term plan, but it is more operational and its objective is more technical, because it formulates measures for the medium-term and short-term. The Pola and the WRM plan are valid for 20 years, but they have to be reviewed every 5 years.

The articles about the Pola and the WRM plan lack rules for coordination with regional spatial plans. The Explanation of the regulation merely states that the WRM plan is one of the elements in the preparation and/or review of the regional spatial plan.[9] Such little attention to the relationship between water resources planning and spatial planning is regrettable. Indeed, the relationship is of crucial importance. A stronger coordination mechanism is necessary. This subject will be part of the research in the second stage of the NLDS project.

The frequency of the five-year review for a Pola and WRM plan requires attention. Experience in other countries has shown that the implementation of new policy takes a lot of time. Too much attention is focused on making new policy over and over again; this must be prevented. Instead, attention should be focused on implementation of the policy. In connection with this, the term for review of a WRM-

[8] A river territory has to be distinguished from a river basin (DAS). A river territory is a water resources management unit and exists as one or more river basin (DAS). In total 137 river territories exist.
[9] This is derived from article 59, section 4 of the law.

plan should be formulated more flexibly; for example, by determining that the plan has a valid five-year term, the period of which can be extended by another five years. It is, of course, always possible to review the Pola and the WRM-plan intermediately with regard to particular sections.

A last observation concerns the implementation of the measures mentioned in the WRM plan. Several government authorities are involved. How might one ensure a well-coordinated implementation process? Rules for this are rather weak. A good instrument to make coordination stronger is an agreement. This instrument was introduced in the 2002 version of the RPP on WRM, but, unfortunately, disappeared in the 2007 version. It seems to be regulated now in an underlying ministerial regulation. It is regrettable because this instrument is juridical and it is important that it be regulated at least in the government regulation.

2.4 RPP on Lowland Water Resources Management

A Working Group of the Ministry of Public Works (PU) started the drafting process in the second half of 2005. The internal drafting process will be finished at the end of 2007. The interdepartmental negotiation process will be started in 2008. The description and analysis of the RPP (also named in the regulation) is based on the October 2007 version.

The drafting process of the regulation runs parallel to the preparation of a strategic National Lowland Development Plan. The regulation creates the legal and institutional framework for the implementation of the new policy about lowlands. One characteristic of this policy will be the shift from a developmental approach to an integrated management approach. This can also be seen in the structure and content of the regulation. See **Annex 3** for an overview of the structure of the RPP. Some important items of the RPP will be described later.

2.4.1 General

The RPP is an important step to elaborate the shift from development to management of the lowlands. Development is no longer the priority of the regulation; rather, it is part of an integrated and sustainable management approach. Elements include conservation, operation and maintenance, and community participation. The broad scope of the regulation is expressed in the articles about the object and objectives of the regulation. Besides development of the lowlands for agricultural purposes, conservation of the natural lowlands is also important. The term “conservation” is broad and refers to both natural and developed lowlands. So, natural lowlands (especially deep peat lands) have to be protected, the developing of lowlands has to be done in a sustainable way, and the management of developed lowlands must be sustainable too.

Several subjects of the regulation are also objects of the RPP on WRM. The interrelation is unclear. The explanation does not give attention to this. In theory, there is overlapping and even partial doubling (for instance, the arrangement about the control of the destructive power of water), which can create confusion. One could say that the RPP on WRM is more general (not only oriented towards rivers, but towards other types of water resources) and the RPP on LWRM is more specific and has specific rules about the same subject. Yet, from a juridical point of view, this point requires attention.

2.4.2 Authority and Responsibilities

The arrangement of the attribution of authority and responsibilities in the regulation is based on the attribution arrangement for irrigation systems as set in the law.[10] The same arrangement applies to the lowland systems. That means that lowland schemes of sizes less than 1000 ha are the full responsibility of the district, lowland schemes between 1000 and 3000 ha are the financial responsibility of the province, and lowland schemes of more than 3000 ha are the financial responsibility of the central government. Furthermore, the government (central or regional) is financially responsible for the operation and maintenance of the primary and secondary networks.[11] The Water User Associations are responsible for the tertiary networks.

The question if the big navigation channels in the lowlands are part of the draining networks is not yet clearly answered in the RPP on LWRM. It seems to have been done in a ministerial regulation.[12] This subject is too important to leave this to a ministerial regulation. It seems logical that the big navigation channels are not part of the draining networks. The primary function of these channels has been transportation. Besides that, O&M costs of these channels are 10 times higher than the main networks in the irrigation systems.

2.4.3 Coordination

The responsibility for water resources is distributed over a large number of authorities at different administrative levels. This requires sound horizontal and vertical policy coordination. The importance of this is acknowledged in the law. It provides the establishment of coordination councils (*Dewan*) per government level. Organizations for social interests will also be represented on the councils. They have an important role in the preparation of the strategic plans. This is an important step forward and it also fulfils the government's general aim of strengthening the democratic standard in policy-making processes. The establishment of councils creates conditions for obtaining administrative and social support for policies in which there are major (and to a growing extent) conflicting social interests.

The regulation has provided for the establishment of two, specific institutions for coordination on the lowlands: the Water User Association (WUA) and the Lowland Commission. The WUA is responsible for the tertiary system and may participate in O&M of secondary and primary systems. Furthermore, the regulation provides the establishment of the Lowland Commission in each province and district.

The interrelationship between the role of the Dewan, the Lowland Commission, and the WUA is not clear. The explanation of the RPP is also vague. There is a real chance for overlapping which will cause confusion.

2.4.4 Planning

The planning structure is regulated in the law only in a general way. The elaboration has taken place in the RPP on WRM. The RPP on LWRM states that the LWRM plan is part of the WRM plan of a river territory. Thus, it is not a separate plan, but forms an integral part of the WRM plan. This is a very important big step in the search for

[10] It should be formally regulated in the law, but it is done in the Explanation part of the law; see the explanation sub article 41.
[11] In the irrigation sub-sector, the central government has already mandated the implementation of its O&M tasks to the districts.
[12] Article 53, section 8 states that the "nomenclature" of a channel will be stipulated in a ministerial regulation.

an integrated approach within the water resources sector. A point of attention, however, is the coordination between the WRM plan and the regional spatial plan. This is also weakly regulated in the RPP on LWRM.

In relation to the planning structure, it is important to make an observation about the decision-making process in activities for development (new development and improvement) and maintenance with respect to rehabilitation. All of these major activities need a base in the lowland part of the WRM plan. An isolated decision is not possible. Furthermore, an environmental impact assessment (AMDAL) will be necessary for, at least, the development activities.

2.4.5 Conversion

An activity is the conversion of the function of a developed lowland area (often from rice production to oil palm production). Frequently, it happens illegally. The regulation gives attention to this subject in articles 78-79. It stipulates that conversion is only possible based on an adjustment of the regional spatial plan. This a good example of a strong, legal provision for coordination between the lowland sector and the spatial planning sector. The conversion arrangement also stipulates that, in case of conversion, a permit of the competent authority is required.

2.4.6 Permit System

This brings us to the subject of the permit system in general. The permit is an important instrument of the regulatory framework for the implementation of the strategic decisions. Activities based on a LWRM plan need, in principle, a permit. The regulation lays out the permit requirement in several places. The way in which this is done needs some remarks.

First of all, a distinction has to be made between an absolute prohibition and a permit. The regulation does not indicate clearly in which situation an absolute prohibition or a permit applies. It is necessary to formulate this clearly in the regulation. For instance, in conservation areas, which have to be protected, activities are absolutely prohibited. In other areas, activities are possible, but must be based on a permit and with a clear set of permit conditions.

The permit procedure has to be clearly regulated, too. That is not the case now in the regulation. This is a more general problem. The law does not say anything about this and the (more general) RPP on WRM does not regulate this either. It seems that this will be done in a separate ministerial regulation. In my opinion, it should be regulated on the level of the government regulation. The juridical implications of the permit procedure are too important to leave this to a ministerial regulation.

Also, there is no clear assessment criterion for whether or not a permit can be granted or refused. That criterion should be related to the objectives of the regulation. The criterion could be formulated as the following: protection of the lowland water resources interests.

2.4.7 Sanctions

The law expresses criminal sanctions only, not administrative sanctions. This is corrected in the RPP on WRM. Also, the RPP on LWRM has a chapter about administrative sanctions. The advantage of this instrument is that the enforcement of the regulation will be more efficient and effective. The use of criminal sanctions has

to be reserved for typical criminal activities. For a lot of situations, administrative sanctions are more suitable.

Several types of administrative sanctions are already common practice. Examples are: written warning, temporary stop of activities, permanent stop of activities and suspension or revocation of permit, re-establishment by the water manager of the cost to the violator. The introduction of the administrative fine is new. Experience in other countries (like the Netherlands) has shown that this is a very efficient and effective instrument.

2.6 Conclusions and Recommendations

General

1. With the new Law on Water Resources, an important step has been taken towards a coherent, integrated approach to water resources, including the lowland water resources.
2. The new act is a true management act. It is no longer primarily focused on the development of water infrastructures, irrigation networks and lowland networks, but on the creation of conditions for a sustainable management of all water resources.
3. The water law is a typical framework act. The subjects included in the act are only provided in outlines. The substantial elaboration which takes place in government (and ministerial) regulations applies to almost all subjects. For the lowlands, this is done in the PP on Water resources Management (more general) and in the PP on Lowland Water Resources Management (more specific). Both regulations are still drafts.
4. Both PPs are an important step in the elaboration of the law's shift from development to management of the lowlands.
5. The more general RPP on WRM is also important for the lowlands, especially in that the regulation elaborated the arrangement for the planning structure.
6. Several subjects of the RPP on LWRM are also the object of the RPP on WRM. The interrelationship is not always clear and can create confusion. This point needs further attention.

Authority and Responsibilities

7. The arrangement of attribution of authority and responsibilities in the regulation is based on the attribution arrangement for irrigation systems as set by the law. The same arrangement applies to the lowland systems. That means that lowland schemes of sizes less than 1000 ha are the full responsibility of the district, lowland schemes between 1000 and 3000 ha are the financial responsibility of the province, and lowland schemes of more than 3000 ha are the financial responsibility of the central government. Furthermore, the government (central or regional) is financially responsible for the operation and maintenance of the primary and secondary networks. The Water User Associations are responsible for the tertiary networks. The question if the big navigation channels in the lowlands are part of the draining networks is not yet clearly answered in the RPP on LWRM. It seems to have been done in a ministerial regulation. This subject is too important to leave it to a ministerial regulation. It seems logical that the big navigation channels are not part of the draining networks. The primary function of

these channels is transportation. Besides the O&M, costs of these channels are 10 times higher than the primary networks in the irrigation systems.

Coordination

8. The RPP on LWRM has provided for the establishment of two, specific coordination institutions for the lowlands: the Water User Association (WUA) and the Lowland Commission. The interrelationship between the role of the Dewan, the Lowland Commission, and the WUA is unclear. The explanation of the RPP is also vague. There is a real chance for overlapping which will cause confusion.

Planning

9. The arrangement in the RPP on WRM about the Pola and the WRM plan lack coordination rules with regional spatial plans based on the Spatial Planning Act. The Explanation of the regulation only states that the WRM plan is one of the elements in the preparation and/or review of the regional spatial plan. Such little attention to the relationship between water resources planning and spatial planning has to be regretted. The relationship is of crucial importance. A stronger mechanism for coordination is necessary. This will be part of the research in the next stage of the NLDS project.
10. The frequency of the five-year review for a Pola and a WRM-plan needs attention. Experience in other countries has shown that the implementation of new policy takes a lot of time. Attention which is focused too much on making new policy over and over again must be prevented. Instead, attention should be focused on implementation of the policy. In connection with this, the review term of a WRM-plan should be formulated more flexibly.
11. The LWRM plan is part of the WRM plan of a river territory. So, it is not a separate plan, but forms an integral part of the WRM plan. This is a very important big step in the search for an integrated approach within the water resources sector.
12. Development activities and rehabilitation activities are major activities and need a base in the lowland part of the WRM plan. An isolated decision is not possible. Furthermore, an environmental impact assessment (AMDAL) will be necessary for, at least, the development activities
13. Several government authorities are involved in the implementation of the measures mentioned in the WRM plan. An agreement is a suitable instrument to ensure a well-coordinated implementation process. It is recommended to regulate this instrument in the PP on WRM itself and not in an underlying ministerial regulation.

Conversion

14. Conversion is only possible based on a change of the regional spatial plan (article 79 RPP on LWRM). This a good example of a legal coordination provision between the lowland sector and the spatial planning sector. The conversion arrangement also stipulates that, in case of conversion, a permit of the appropriate authority is required.

Permit system

15. Activities based on a LWRM plan need, in principle, a permit. A distinction has to be made between an absolute prohibition and a permit. The regulation does not clearly indicate in which situation an absolute prohibition or a permit applies. It is

necessary to formulate this clearly in the regulation.

16. The permit procedure is not regulated clearly. The law says nothing about this and the (more general) RPP on WRM does not regulate this either. This needs attention.
17. There is no clear assessment criterion for whether or not a permit can be granted or refused. That criterion should be related to the objectives of the regulation. That is why precise formulation of the objectives is important. The criterion could be: protection of lowland water resources interests.

Sanctions

18. The law expresses only criminal sanctions, not administrative sanctions. This is corrected in the RPP on WRM. Also, the RPP on LWRM has a chapter about administrative sanctions. The advantage of this instrument is that the enforcement of the regulation will be more efficient and effective. The introduction of the administrative fine is new. Experience in other countries has shown that this is a very efficient and effective instrument.

3. The Forestry Sector

This chapter focuses on the legal framework for forestry management in general. It follows the structure of the law 41/1999.[13] The legal framework will be described and commented on in general. The time available for the preparation of this report was too short to make a quality analysis of the performance of the law in practice.

3.1 Rationale for the Law

To understand fully the current Forestry Law of 1999 (Law No. 41/1999), it is necessary to have a general idea about the legal framework for forestry during the period of the New Order (1967-1998). This legal framework was based on and in line with the New Order's development paradigm, which was oriented towards economic growth without attention to sustainable exploitation of natural resources. The legal framework for this policy was the Forestry Law of 1967 (Law No. 5/1967). This law was mainly development-oriented.[14] That was also the case with the implementing regulations.[15]

During the New Order period, the Forestry Law of 1967 was the legal base for the implementation of forestry policy. It was a strongly centralistic and sector-oriented policy with little attention to the environmental problems which arose as a consequence of this policy. Under the influence of the Environmental Management Law of 1982 (Law No. 4/1982), which introduced, among others, the requirement of an environmental impact assessment for forest concessions, the official forestry policy of the period after 1982 paid more and more attention to the issues of conservation and protection. The situation was further improved by the enactment of the Conservation law of 1990 (Law No. 5/1990).[16]

Incorporation of this new policy in the forestry legislation took place in 1980 in a decree by the Minister of Agriculture[17]. The decree was the basis for the designation of forest protection areas (like sanctuaries and national parks) and forest production areas. 53 million ha were indicated as protected areas. Later, Presidential Decree No. 32/1990 for the management of Protected Areas also expanded this approach to other area types like coastal areas, peatland areas with a depth exceeding 3 meters, etc.

But, in practice, the new policy and legislation did not change the existing exploitation of production forests. Forest concessions were granted to logging companies for a long period: 30 years. Over the decades, these companies acted with little attention to environmental impact and the situation of local communities. These environmental and social problems were an important rationale for the new Forestry Law of 1999.

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[13] For an overview of the structure of the law see **Annex 4.**

[14] The Elucidation of the law reflects this orientation by saying that "the spirit of the Forestry Law of 1967 is not only to protect the forest for the sake of the forest, but also, or rather in particular, to utilise forests for the benefits of the people".

[15] Implementing regulation was enacted for forest exploitation (PP No. 21/1970), forest planning (PP No. 33/1970), and criminal sanction provisions for forest production (PP No. 28/1985).

[16] The Conservation Law of 1990 deals with the conservation of living natural resources in general, including forest. The official title of the law is: Law on Biological Resources Conservation and their Ecosystem.

[17] In that time, forestry was part of the Ministry of Agriculture.

3.2 General Picture of the Law

General
The new Forestry Law was enacted in September 1999, shortly after the fall of the Soeharto regime. [18] The draft of the new law was sent to the Parliament in April 1998. The draft law was the subject of heated discussion.[19] NGO's, in particular, argued that the new law was still central and sector-oriented with too little attention to an integrated management of natural resources, including the dimension of the forest ecosystem. Furthermore, the law did not recognize forestland under customary rights (*adat* forest). Under these criticisms, several amendments were made. The Parliament enacted the law in September 1999 as Law No. 41/1999. The law came into effect in 2001, 19 months after enactment.

The new law is an important first step forward to better-integrated forestry management. The attention is no longer dominantly oriented towards development, but towards management in a wide sense. Besides development, issues like conservation and protection, customary law and participation of local community are also substantial parts of the law.

Character
The subjects included in the act are only provided in outlines. The substantive elaboration which takes place in government regulation and (based on that by) ministerial regulation applies to almost all subjects.[20] This makes the act a typical framework act.[21] This approach is in accordance with the modern principles of legislation in complex policy areas.

An important government regulation for implementation came into effect in 2002: PP[22] No. 34/2002 on Forest Management Plan and Forest Utilization. This PP was replaced in 2007 by PP No. 6/2007. (For the structure of this important PP, see **Annex 5**). The main aims for the new PP were deregulation, de-bureaucratization and the revised decentralization legislation of 2004.[23]

Principles and objectives
The law states in article 2 that forestry management shall be based on the principles of utility, sustainability, democratization, justice, fairness, transparency, and integration. The objectives are formulated in article 3 as follows: to achieve just and sustainable prosperity for all citizens through:

- ensuring the existence of forests
- maximizing the multiple functions of the forests which cover conservation, protection and production in order to gain environmental, social and economic benefits;

[18] Henceforth the law and/or the act.
[19] The Ministry of Forest had prepared a draft law together with NGO's and other society institutions, but, in the end, the ministry proposed its own bill. That was the reason for the heated discussion in Parliament.
[20] The elaboration of the law by regulation can be one or more. There is a widespread misunderstanding about this. Often a lot of articles state that further provisions should be made in a government regulation. The legislator is free to do that in one or (for mostly pragmatic reasons) more regulations.
[21] Often also called: umbrella act.
[22] Government regulation in Indonesian is: Peraturan Pemerintah.
[23] The decentralization legislation started in 1999 with Law No. 22/1999 on regional autonomy (and based on this law PP No. 25/2000) and Law No. 25/1999 on Financial Relations. These laws were reviewed in 2004 and replaced by Law No. 32/2004 and Law no. 33/1004. PP No. 25/200 is replaced by PP No. 38/2007.

- strengthening the carrying capacity of river basins; and
- improving the capacity to develop community potential and empowerment.

To realize these ambitious principles and objectives, the law provides several organizational and substantive facilities. The first aspect concerns the authority of government institutions. The second aspect is aimed at empowering these institutions with (juridical and other) instruments to enable them to perform their tasks properly.

It is noted that forests are the purpose of the law. So, the law is about forest management. However, in practice, a lot of forests are logged and may no longer be deemed forests. It is questionable if the scope of the law is also oriented towards management of the areas where forests no longer exist. In essence, this has to do with land use and that is not the object of the law. The question of the land's status is unclear and creates a lot of confusion.

Institutional set-up

Under the new law, the state is still the central player in forest management. All forest areas within the territory of the Republic of Indonesia are under the control of the central government (henceforth designated Government).[24] This gives the Government the authority to:

- regulate and organize all aspects related to forest, forest areas, and forest products;
- assign the status of certain areas as a forest area or non-forest area; and
- regulate and determine legal relationships between man and forest, and regulate legal actions concerning forestry.

Forest control by the state shall respect customary law, as long as it exists and its existence is recognised and it does not contradict national interests (article 4).

The division of authority and responsibilities for forest management between the Government and the regional government (provinces, districts/municipals) is not regulated clearly in the law. Also, the implementing regulation PP No. 34/2002 was unclear about this question. The reason is that the new forestry legislation was enacted in the transition period, shortly after the fall of the Soeharto regime, together with the new decentralization legislation, which also was unclear about the division of authority between the central government and the regional government. The Minister of Forestry tried to give some clarity with Decree No. 30/1999, which allowed the district heads to grant logging licenses for 100 ha. In practice, the district heads divided the existing big blocks in parts and gave licenses for every block of 100 ha.

In 2004, the decentralization laws were reviewed. Based on that, Forestry Regulation No. 34/2002 was also replaced by PP No. 6/2007. But, this regulation is still not clear about the division of authority between the various government levels.

The Ministry of Forests has already de-concentrated forestry agencies in the region over a long period. PP No. 6/2007 provides the establishment of KPH.[25] KPH is the forest management unit within one river basin (DAS)[26] or one ecosystem area (articles 5-10). This is a renewed issue in the organisational structure of forest

[24] Most laws are using the term "Government" for central government and "regional government" as a collective term for provinces, districts, and municipals. This report follows this nomenclature**.**

[25] KPH is the Indonesian abbreviation for: Kesatuan Pengelolaan Hutan and means forest management unit. The entire forest zones are divided into KPH. Such KPH can be in the form of conservation (KPHK), protection (KPHL), or production (KPHP).

[26] DAS means: Daerah Ailiran Sungai.

management. In fact, this was already regulated in the old law, but never established. So, this has yet to be done. The degradation of the forests is an important motive for the establishment of KPH. An important task of KPH will be to give technical recommendation to the existing de-concentrated forestry agencies about planning, utilization, and monitoring.

Rights of the local community

The position of the local community is strengthened in the law. The rights of the local community are formulated in general terms in several places in the law, such as: article 3 about principles and objectives, articles 4, 37 and 67 about customary law, article 56 about empowerment, article 68 about community participation, and article 71 about class action.

The rights can be divided into procedural rights (involvement in the decision-making process about forestry policy, demarcation of forest boundaries, licensing process, etc.) and substantive rights, like access to forests.

In practice, the strengthening of the position of the local community is a long, slow process with many conflicting situations. Involvement by the local community in the decision-making process went, for decades, unpractised. The same can be said of the substantive rights. An important legal restriction to this is in the law's restriction about the government's duty to respect customary law. The duty applies: "as long as it exists and its existence is recognised and is not contradictory to national interests" (article 4). This restriction gives the Government much freedom of policy. As long as clear rules are lacking for implementation, this situation will not change. Several recent reports conclude that the Government still adopts a reticent attitude towards recognizing rights claims by the local community.

Status and functions

Forests are divided into public or state-owned forests and privately-owned forests (article 5). However, state forest can exist in the form of *adat* forest. Of course, the law is oriented primarily towards the management of state forests, but private forests are also an object of the law. That means that private persons are limited in their activities. They need, for instance, permission from the local government for the selling and transportation of logged trees. This aspect is not regulated in the law, but in PP No. 6/2007.

Article 6 states that forest has three divisions: conservation forest, protection forest, and production forest. Conservation forest has been further divided into three subcategories: nature sanctuary forest zones, nature conservation forest zones, and safari parks (article 7).

A characteristic of conservation forests is the orientation towards biodiversity. A characteristic of protection forests is the orientation towards providing for environmental services. This shall be conducted, among others, through the utilization of watershed services. Production forests are explicitly for human economic activities.

The Government can designate special purposes to a certain forest area (article 8). Examples of such purposes are: research and development, education and training, and religion and culture.

Planning

Planning is part of forest management and is an important instrument to formulate and implement forestry policy.[27]

The law stipulates in article 20 that the government has to prepare forestry management plans by taking into account environmental and social aspects. The law contains no further provisions about content and procedures. This is further elaborated in PP No. 6/2007. The planning arrangement in the PP is rather short. It makes a distinction between a long-term management plan and a short-term management plan, which has to be based on the long-term plan. Article 13 expresses, for both plans, the elements which have to be part of the plan. The long-term plan is prepared by the head of KPH and approved by the Minister of Forestry, the Governor, the district head or the mayor, according to his authority.

The PP lacks a provision about the duration and review of the plans, as well as procedures for the plans. A link to spatial planning is also lacking. This last point, in particular, requires attention. Also, forestry plans should be the input for and a part of the decision-making process about spatial management plans.

Utilization

Articles 23-39 provide the arrangement for utilization. The core of this arrangement is the following. Usage is different depending on the various types of forest. Use of a forest for forestry or other purposes (like mining) is prohibited in nature reserve forests and preservation zones of national parks (article 24).

Use of a forest area is always based on a license (article 27). The license shall be subjected to limitation by taking into account forest sustainability and business certainty (article 31). A license is subject to a license fee, forest rent tax, reforestation funds and performance bonds (article 35).

The arrangement for utilization is rather generally formulated. Further provisions are regulated in PP No. 6/2007 (articles 17-99). The core instrument of utilization is the license. The license arrangement of the regulation is differentiated, detailed and complex.

The overall impression is that the utilization arrangement is unnecessarily detailed, complex and (from a legislative point of view) insufficiently transparent.

Rehabilitation and Reclamation

Articles 40-45 settle forest rehabilitation and reclamation. Rehabilitation intends to recover, maintain and improve the forest and land functions so that its carrying capacity, productivity and role as a system to support life can be maintained. This will be implemented by reforestation, re-greening, tending, enrichment planting, or application of soil conservation. Rehabilitation activities will be done in all forests, except in nature reserves and core zones of a national park.

Forest reclamation intends to improve and recover damaged land and forest vegetation to restore it to its original conditions.

These two issues (rehabilitation and reclamation) have to be elaborated in a government regulation. This has yet to be done. That is a pity, because reforestation,

[27] The old law already had a provision about planning. But, the implementing regulation about planning (PP No. 33/1970) was never put into practice.

as part of rehabilitation, is especially important in forestry management. Already in the 1980's, the Government started reforestation programs, but the performance until now has been poor. One of the reasons was a lack of a clear, regulatory framework.

Protection and Conservation

Articles 46-51 are about forest protection and conservation. Protection and conservation intend to save the forests, forest area and its environment so that protection, conservation and production functions can be secured in optimal and sustainable ways (article 46).

According to article 47, the aims of forest protection are: (1) to prevent and limit the destruction of forests, forest area, and forest products as a result of human and animal conducts, fires, natural hazards, pests, and diseases; and (2) to maintain and keep safe the state, community and individual's rights over forest, forest area, forest products, investment and instruments pertaining to forest management.

Article 48 states that further provisions about forest protection shall be done in a government regulation. That was done in 2004. Despite the aim of this regulation to keep protection forests free from activities to exploit for commercial purpose, 13 mining companies got concessions for mining activities in protection forests.

Article 50 states that all activities which conflict with forest protection are prohibited. The same article enumerates a lot of categories for activities which are prohibited, among others: burning the forests. As the law has been formulated, the detailed prohibition system is questionable. It is unclear if this is an exhaustive enumeration of forbidden activities or not. From a legislative point of view, it is better to formulate only a general prohibition in the law. A more detailed elaboration can be done in a government regulation. Such a system is more flexible and can anticipate actual developments more efficiently.

To ensure the implementation of forest protection, article 51 establishes special police authorization to certain forestry officials with special investigation abilities. This expresses the increased attention to prevent further degradation of the forests.

Empowerment

Empowerment contains the subjects, research and development, education and training, and forestry information to make people aware of the importance of scientific forest management.

These subjects are regulated in chapter VI of the law (articles 52-58). They are standard provisions and need no further elucidation here. However, they are important instruments for a successful implementation of the law. The empowerment instruments are not only important for the involved government agencies, but for strengthening the position of the local community.

Supervision

Supervision consists of observation, monitoring, and evaluation (article 59). These instruments are important in the search for further improvement and/or revision of future forestry regulations. The elaboration of the supervision arrangement shall be done by a government regulation. This has happened in PP No. 6/2007 (articles 123-126), but the supervision arrangement in the PP was also very general. Further provisions will be done in a ministerial regulation.

Enforcement
Enforcement comprises of all the instruments to enforce compliance with the law. The authorities charged with the implementation of the law must have adequate powers to be able to fulfil their responsibilities. In general, two types of enforcement can be distinguished: administrative enforcement and criminal enforcement. The Forestry Law has both types of sanctions.

Article 78 formulates different criminal sanctions (imprisonment and criminal fine), dependent on the type of criminal action. Article 80 is about compensation and administrative sanctions, but is concrete only as far as the instrument of compensation. In case of damage or the effects thereof, the state has to be compensated for the cost of rehabilitation, forest recovery or other necessary actions. Concrete administrative sanctions are not mentioned. The article states only that provisions shall be done by government regulation. That has been done in PP No. 6/2007. See articles 127-139. Article 128 formulates the following sanctions: suspension of administrative services, suspension of activity in the field, administrative fine, and revocation of license.

A specific element of enforcement is investigation. This instrument is regulated in chapter XIII of the law and consists of only one article (article 77). It regulates the establishment and competence of the civil servant investigator (Penyidih Pegewai Nogeri Sipil; PPNS). The core of it is that the investigator can institute an inquiry into the accuracy of the reports and information with regard to criminal acts in the forestry field. In addition, he can hear witnesses and call in experts for assistance. The investigator must inform the police (Republic of Indonesia Police; POLRI) about the start of his inquiry. He must also draw up an official report of his findings and make this available to the Public Prosecutor. The investigation instrument is also an expression of the increasing intention to improve the enforcement of the law.

A last point in relation to enforcement is the civil lawsuit by class action. Article 71 states that a community has the right to bring a class action to a court and/or report to an enforcer of the law concerning forest damage which inflicts damage on the community. Also, organizations in forestry affairs (like NGO's) can bring a class action suit to court. This provision indicates that the Forestry Law incorporates an instrument, which was already introduced in the Environmental Management Law of 1997.[28]

Perusing the set of instruments for sanctions, one could say that this subject is regulated quite well. However, the implementation of these instruments in practice has been as yet poorly developed.

In the context of the increasing attention to enforcement of the law, it is recommended to use the criminal sanctions, especially for real criminal violations of the law. In other situations which need enforcement, administrative sanctions should be used, especially the administrative fine. Other countries have learned that this instrument is very efficient and effective. One of the advantages of this instrument is that the forest manager is not dependent on the police and the public prosecutor. So, he can act firmly and quickly.

3.3 Conclusions and Summary

[28] See Law No. 23/1997, article 37. Law No. 23/1997 has replaced Law No. 4/1982.

General

1. During the New Order period, the Forestry Law of 1967 and the implementing regulations based on the law were the legal base for the implementation of forestry policy. Until the 1980's, this policy was primarily exploitation-orientated. In the 1980's, a modification took place in the policy and legislation to bring more attention to protection. But, the performance of the policy in practice was still strongly centralistic and sector–oriented, with little attention to the environmental and social problems which arose as a consequence of this practice.
2. The Forestry Law of 1999 is an important first step forward to address the problems and create a basis for integrated forestry management. The attention is no longer oriented towards development (exploitation), but towards management in a wide sense. Besides development, issues like conservation and protection, customary rights, and participation of local community are also substantial parts of the law. The wider approach of the law is explicitly expressed in the articles about the principles and objectives of the law.
3. The subjects included in the act are only provided in outlines. The substantive elaboration which takes place in government regulation applies to almost all subjects. This makes the act a typical framework act. Several implementing regulations came into effect. An important one was PP No.34/2002 on Forest Management Plan, Forest Utilization, and Use of Forest Zone. This PP was replaced in 2007 by PP No. 6/2007. The main aims for the new PP were deregulation, de-bureaucratization, and the revised decentralization legislation of 2004.
4. The scope of the law is the forest. So, the law is about forest management. However, in practice, many forests are logged and no longer exist. It is questionable if the scope of the law is also oriented towards management of these de-forested areas. In essence, this has to do with land use and that is not the object of the law. The question of the land's status is unclear and creates a lot of confusion. This needs to be addressed clearly.

Institutional set-up

5. The division of authority and responsibilities between the Government and the regional government (provinces, districts/municipalities) is not regulated clearly, neither in the forestry legislation, nor in the decentralization legislation. The consequence of this lack of clarity was a chaotic situation in the first years after the enactment of the Forestry Law. Until today, after the revision of the decentralisation legislation in 2004, the division of authority creates confusion.
6. The establishment of the forest management unit (KPH) within one river basin (DAS) or one ecosystem area is a renewed issue in the organisational structure of forest management. In fact, this was already regulated in the old law, but never established. The degradation of the forests is an important motive for the establishment of KPH.

Rights of local communities

7. The position of local community is strengthened in the law. It covers substantive rights and procedural rights. They are formulated in general terms in several places in the law. In practice, the strengthening of the position of local community is a long, slow process with a lot of conflicting situations. Involvement of local community in the decision-making process was, for decades, not practiced. The same can be said of the substantive rights. The situation has not really changed.

Status and functions

8. Forests are divided into public-owned or state-owned forests and private-owned forests. However, state forest can exist in the form of *adat* forest. Forest is divided into three aspects: conservation forest, protection forest, and production forest. For decades, forestry management was dominantly oriented towards the exploitation of production forests. Under the new law, this practice, in essence, has not changed.
9. Private forests are also an object of the law. That means that private owners are limited in their activities. They need, for instance, permission from the local government to sell and transport logged trees.

Planning

10. Planning is part of forest management and is an important instrument for formulating and implementing forestry policy. Planning was already a subject of the old forestry legislation, but never implemented. The new law brings attention back to planning. The government has to prepare forestry management plans by taking into account environmental and social aspects. The law contains no further provisions about content and procedures.
11. The planning arrangement in PP 6/2007 is also rather short. The PP lacks a provision about the duration and review of the plans and the procedures for the establishment/review of the plans. Something related to spatial planning is also lacking.

Utilization

12. Utilization consists of the use of a forest area. The use is different depending on the type of forest. The arrangement in the law for utilization is formulated rather generally. Further provisions are regulated in PP No. 6/2007. The license arrangement in this PP is differentiated, detailed, complex and (from a legislative point of view) insufficiently transparent.
13. Forest rehabilitation and reclamation is an important aspect of forestry management, but it is regulated in the law in general only. An implementing government regulation is not yet available. That is a pity, because reforestation as part of rehabilitation is an important part of forestry management. Already, in the 1980's, the Government started reforestation programs, but the performance until now has been imperfect. One of the reasons for this has been a lack of a clear, regulatory framework.
14. The detailed prohibition system for forest protection and conservation in the law is questionable. It is unclear if this is an exhaustive enumeration of forbidden activities or not. From a legislative point of view, it is better to formulate only a general prohibition in the law. A more detailed elaboration can be done in a government regulation. Such a system is more flexible and can anticipate actual developments more efficiently.
15. Despite the law's purpose to keep protection forests free from exploitation for commercial purposes, 13 mining companies were excluded in 2004 and got permission for mining activities in protection forests.
16. The establishment of special police authorization to certain forestry officials to ensure the implementation of forest protection expresses the increasing attention to prevent further degradation of the forests.

Empowerment

17. Empowerment (research and development, education and training, and forestry information) is important for a successful implementation of the law. The empowerment instruments are not only important for the involved government agencies, but for strengthening the position of the local community.

Supervision

18. Supervision (observation, monitoring, and evaluation) is an important instrument for a balanced implementation of the law and further improvement of regulatory framework.

Enforcement

19. Enforcement comprises of all the instruments to enforce compliance with the law. The law only provides criminal sanctions. The arrangement for administrative sanctions is not regulated in the law itself, but in PP No. 6/2007.
20. A specific element of criminal enforcement is the investigation instrument. The law provides the establishment and competence of the civil servant investigator (Penyidik Pegawai Negeri Sipil; PPNS). The investigation instrument is an expression of the increasing intention to improve the enforcement of the law.
21. Perusing the set of sanction instruments, one could say that this subject is regulated quite well. But, the implementation of these instruments in practice has been poorly developed. In the context of the increasing attention to enforcement of the law, it is recommended to give more attention to the use of administrative sanctions, especially the administrative fine. Experience in other countries has shown that this instrument is very efficient and effective.

4. Spatial Planning and Management

In April 2007, the new Spatial Management Law (Law No. 26/2007) was enacted. This law replaces the Spatial Management Law of 1992 (Law No 24/1992). The new law is an important step in the aspiration to create a more coherent, integrated and participatory approach of the development and implementation (including enforcement) of spatial management policy.[29]

The structure of this Chapter is as follows: Section 3.1 gives an overview of the Spatial Management Law of 1992 and the performance of the law in practice; Section 3.2 is about the new Spatial Management Law of 2007; Section 3.3 offers some conclusions.

4.1 Spatial Management Law 1992

This section provides an overview of the Spatial Management Law of 1992 and the performance of the objectives of the law in practice. After a brief description of the rationale of the law, a general picture of the content of the law will be given. It puts attention on the institutional set-up and the strategic and operational instruments which were created in the law. Based on that overview, an impression will be given of the performance of the law in practice.

4.1.1 Rationale for the Law

The characteristics of the period of the 1970's and 1980's were increasing demographic development and the booming economic activities (with much foreign investment) in Indonesia and, in particular, on the island of Java. The guidance and management of this development process has taken place in the context of different planning systems.

Regulation of spatial management started under the Dutch with the Town Planning Ordinance of 1948.[30] This regulation was made in the context of the reconstruction of destroyed cities. The regulation applied only to 12 cities. A decree in 1986 from the Minister of Public Works widened this regulation to all cities.[31] Non-urban areas were handled directly by the various sector agencies. Among them, the ministries of Forestry, Energy and Mining, and Public Works were the most important.

The Ministry of Forest was and still is the biggest land manager in Indonesia, with 70% of Indonesia's land area under its control. The Ministry of Energy and Mining is a key player in the development of areas for mining activities all over the country. The Ministry of Public Works acts both in urban areas and non-urban areas by developing infrastructures for public interests (highways, waterways, irrigation canals, dams, reservoirs). It was this ministry that issued, in 1986, a decree which widened the Town Planning Ordinance of 1948. The Minister of Home Affairs did the same in Regulation No. 2/1987. This reflects the competition between the two

[29] The term "spatial management" has a broad scope. It contains all relevant aspects: planning, utilization, control, supervision, and enforcement.
[30] The transition of power took place in 1949.
[31] Kepmen PU 640/KPTS 1986.

ministries and led to confusion in the local government.

Furthermore, in 1989, the National Development Planning Agency (Bappenas) was given authority to start planning for areas important in natural resources and location, both of which received special attention and were developed rapidly under full support by the central government (hereinafter referred to as Government). Regional government (provinces, districts, and municipalities) had no influence in the decision-making process. So, there were good reasons for a law that would create better conditions for a spatial planning system, which would form a bridge between the existing types of planning systems: town planning, sector planning, and development planning.

4.1.2 Content of the Law

Objectives
In brief, the law is aimed to promote a coherent, integrated and open approach to the different aspects of spatial planning. Article 3 states that the main objectives are:

- to realize an intelligent, noble, and prosperous future for the nation;
- to achieve the integrated utilization of natural resources and artificial resources;
- to increase the utilization of these resources in an efficient, effective and appropriate way to improve the quality of human resources;
- to realize the protection of space and prevent, as well as to overcome negative environmental impact;
- to demand a balance between the interests of prosperity and security.

To realize these ambitious objectives, the law provides several organizational and substantive facilities. The first aspect concerns the formulation of the authority and responsibilities of the various government agencies involved in spatial management. The second aspect is aimed at empowering these authorities with (juridical and other) instruments to enable them to perform their tasks properly. The integrated approach also has the intention that local communities can participate in the decision-making process about spatial management on a strategic and operational level.

Character
The law is rather short. It contains 31 articles. The subjects included in the act are only provided in outlines. The substantive elaboration which takes place in government regulation applies to almost all subjects.[32] This makes the act a typical framework act.[33] This approach is in accordance with the modern principles of legislation towards complex policy areas. The following implementing government regulations became effective in stages[34]:

- PP No. 96/1996 on public participation[35];
- PP No. 47/1997 on national spatial plan;
- PP No. 10/2000 on detail of regional spatial planning maps;

[32] This can be one or more. There is a widespread misunderstanding about this. Often a lot of articles in a government regulation state that further provisions should be made. The legislator is free to do that in one or (for mostly pragmatic reasons) more regulations.
[33] Also often called: umbrella act.
[34] The original deadline to establish the implementing regulations was March 1998. In practice, this deadline had only symbolic meaning.
[35] Government Regulation is called in Indonesian: Peraturan Pemerintah.

- PP No. 16/2004 on land use/zoning.

Authority and Responsibilities
The arrangement about the authority and responsibilities of the several government agencies is very general. Article 7 states that spatial management is based on administrative aspects and encompasses the Central Government, Province Region Level I and District/Municipality Region level II. Article 8 contains a provision for coordination for cross-provincial and cross-district/municipality situations. Article 24 states that the implementation of the spatial management is performed by the Government. Article 29 establishes a coordinating board for the management of the national territory, chaired by the Minister of National Development Planning.[36]

Public Participation
An important issue of the law is public participation. This issue is stated in several articles. Article 4, for instance, states that every person has the right to participate in the preparation of a spatial plan and the control how space is utilized. Article 12 states that spatial management shall be undertaken by the Government with community participation. The further elaboration of this issue took place in PP No. 96/1996 and in Regulation No. 9/1998 from the Minister of Home Affairs.

Planning Structure
Each government level (central government, province, district/municipality) has to make a spatial plan. The relationship between these plans is organized as follows. The first aspect is the relationship between the plans on several government levels (vertical coordination). The national spatial plan formulates the basic policies on spatial utilization in the national territory.[37] These policies form a guide to spatial planning by the regional government (article 20). In accordance with this, article 21 states that the provincial spatial plan shall be the elaboration of the strategy created in the national spatial plan. The district/municipal spatial plan shall be the elaboration of the provincial plan. So, the regional government has to take into account policies and guidelines at a higher level. The intention of this is to ensure that policies on the lower level are in compliance with the policies on the higher level. So, the planning structure is hierarchical. The second aspect is the relationship between plans on the same government level (horizontal coordination). The law lacks concrete provisions for this situation.

Utilization and Control
Utilization and control are the more operational elements of the spatial management system. Utilization of space shall be made through the implementation of a spatial utilization program and the funding thereof. Incentives can be used to provide stimuli for activities complying with the objectives of a spatial plan. Also instruments designed as disincentives can be added. The space utilization permit is an important instrument. In principle, the permit can only be obtained if the activity is in compliance with the spatial plan. A permit in contradiction to the plan has to be annulled (article 26). Control (in the context of the law) consists of supervision and enforcement.[38] Supervision consists of reporting, monitoring and evaluation. The law is unclear about the content of enforcement.

Article 18 only says that enforcement shall be undertaken by applying sanctions in

[36] This minister was appointed as co-coordinating minister for spatial planning by Presidential decree in 1993.
[37] The first National Spatial Plan under Law No. 24/1992 was promulgated on 30 December 1997.
[38] See article 17. For good reasons the new law of 2007 makes a distinction between control and supervision and formulates the arrangement of both instruments in separate chapters.

compliance with applicable legislation. It does not provide further details, neither about the type of sanction, nor where it is found. So, it lacked a legal basis for criminal sanctions.

An overview of the structure of the law is given in **Annex 6**.

4.1.3 Performance of the Law in Practice

The ambitions of the law of 1992 were high. However, the implementation of them in practice was not very successful. Here we mention the most important problems in implementation.[39]

The first is the institutional set-up. Parallel to the centralistic development planning system, the spatial planning structure was oriented top-down. So, the role of the Government was dominant and the role of the regional government was rather weak. This institutional set-up changed completely after the fall of the Soeharto-regime in 1998. The Regional Autonomy legislation of 1999 gave the regions far-reaching (administrative and financial) autonomy.[40] This legislation, based PP No. 25/2000, brought an end to hierarchy in spatial management. The district heads felt autonomous in almost all government sectors, including spatial management. Natural resources were a special object of district policy. All districts tried to get revenues from the resources in their area.

The forestry sector is a good example. A lot of district heads (Bupati) gave logging licenses for two or thee years and generated a lot of income. The consequences were disastrous. For instance, in Java almost all the forests in the upper catchments areas disappeared. Formerly, licenses were based on the district spatial plan, but often no plan existed. The districts also felt autonomous in relation to the province. In their opinion, the governor was not on a higher government level. So, in cross-boundary issues they did not appeal to the governor.

To address this chaotic situation, in 2004, the Parliament reviewed the decentralization laws of 1999. The new regional Autonomy law (Law No. 32/2004), among others, enhanced the role of the Governor, especially in the field of control and supervision. Regulation 38/2007, which has replaced PP No. 25/2000, expresses the re-introduction of the vertical coordination system.

The second problem is the content of the spatial plans of the regional government. The plans are often weak and vague. This is the result of several causes. One of them is the lack of clear central guidelines. Another element is the lack of institutional capacity. For that reason, the formulation of a spatial plan is often contracted out to consultancy firms. The lack of actual data is also a problem. The quality of spatial data holdings is poor. Furthermore, the scale of the base maps for rural areas is not detailed enough for granting/refusing a utilization permit, based on the spatial plan.

The third constraint is the role of public participation. The ambition to involve the public more in the decision-making process is a point of attention. The public consultation process is still weakly developed. Often public consultation takes place

[39] This paragraph is mainly based on interviews with people who have long-time experience with spatial planning. I thank Paul Kimman, Johannes Hasiholan Toruan and Dadang Rukmana (Head of Legal Department DG Spatial Planning Ministry of Public Works) for their useful information.
[40] Law No. 22/1999 on Regional Autonomy and Law No. 25/1999 on Financial Relations between the Centre and the regions. They took into effect in 2001.

at the end of the planning process. That reduces public participation to a symbolic instrument. That was not the intention of the law.

The fourth problem is the relationship with the environment. One of the objectives of the law is "to overcome negative environmental impacts," which are a real problem. An important instrument for a coordinated approach between spatial management policy and environmental policy is the Environmental Impact Assessment (EIA); in Indonesian it is known as *Analsis Mengenai Dampak Lingkungan* (AMDAL). Even though this instrument was already introduced in 1986, it still plays a limited role in the spatial planning process. Often they are treated as mere formalities.

The fifth problem is the inaccuracy of boundaries, especially in areas under the management of the Ministry of Forestry. About 70% of Indonesia's land is officially state-owned forest. Under the decentralization legislation, the actual situation changed very little.

The sixth problem is enforcement. A legal basis for criminal sanctions was lacking. Furthermore, the set of administrative sanctions was incomplete.

This short overview of the performance of the law shows that reviewing the law was necessary. In the next section, we will see if and how the new Spatial Management Law of 2007 has addressed the problems with implementation indicated here.

4.2 Spatial Management Law 2007

This chapter provides an overview of the content of the new Spatial Management Law of 2007 (Law No. 26/2007) with attention to the question of how the implementation problems mentioned above are solved.

4.2.1 Objectives and Character

Objectives
The new law is an important step in creating better conditions to address the problems mentioned in Section 3.1.3. The objectives of the law are, in essence, the same as the objectives of the old law. Article 3 formulates the following objectives:

- harmony between the natural and artificial environment;
- integrity in the utilization of natural and artificial resources with respect to human resources;
- protection of space and from a negative impact to the environment due to space utilization.

These objectives guide the spatial management process in all stages of decision-making, not only at the planning level, but at the implementation level. Although unmentioned as such in the new law, the Elucidation makes clear that an important goal of the law is to overcome the "deadlock" situation caused by the decentralization legislation of 1999, which did not show clear provisions for coordination (like cross-border situations).

It is remarkable that the objective regarding protection against negative environmental impact due to space utilization is made more concrete in the form of a protection norm of 30% in articles 17 and 29. Article 17 stipulates that at least 30% of

a river basin has to be forest area.[41] Article 29 stipulates that at least 30% of the urban area must be open green space.[42] These norms have to be elaborated further by a regulation. Implementation of a norm which does justice to regional differences will be an enormous challenge.

Character
The new law is better structured than the old law (see **Annex 7)** and is less general and vague. Most of the subjects in the law are formulated more clearly. The Elucidation of the law is better structured. The law has grown considerably in size in comparison to the old act: from 31 to 80 articles. Nevertheless, a lot of subjects still have to be elaborated by government and/or ministerial regulation. Also, the new law is a typical framework law. The implementing regulations of the old law came into effect in stages, and that has created a lot of problems for the regional government. The new law tries to prevent this by the stipulation in article 78 that government regulation should be completed in a maximum of two years after the enactment of the law. A presidential regulation applies for a period of five years, and a ministerial regulation three years.[43] This is designed to stimulate the completion of regulations as soon as possible. However, there is no sanction in a case where these deadlines are not reached. Until the new regulations come into effect, the old regulations are still in force.

Many articles in the law state that further provisions are to be made by government regulation. In total, it treats 18 subjects. So, the law is heavily reliant on implementing regulations. It is a pity that the Elucidation lacks information about the further regulation process. Information from the ministry has made clear that 6 PP's are under preparation now. One of them was recently enacted: PP No. 26/2008 on National Spatial Plan. The other PP's deal with the following subjects:

- maps;
- spatial plan defense;
- public participation;
- utilization of land use, water use, airspace use, and use of natural resources.
- remaining subjects;

A point of attention is the distinction in the law between government regulation and ministerial regulation. Sometimes further provisions have to be made by government regulation, sometimes by ministerial regulation. It is not always clear on which base this distinction is made. In my opinion, only subjects that are more technical and have to be actualized more frequently (like technical guidelines) can be regulated in a ministerial regulation. All other juridical-relevant subjects have to be regulated in a government regulation.

4.2.2 Authority and Responsibilities

The arrangement of authority and responsibilities is more comprehensive and clear

[41] The Indonesian term (used in article 17 of the Spatial Planning Law) for river basin is: Daerah Aliran Sungai (DAS). It is noted that the Water Resources Law (Law No. 7/2004) uses another term: Wilayah Sungai (WS). This term means: river basin management territories. So, a WS as a management unit can consist of one or more DAS's. These different terms cause a lot of confusion. The 30% norm for a river basin was adopted from the Law on Forestry (Law No. 41/1999). See article 18 of that law.
[42] Recently the Jakarta administration has announced that 13,9% of Jakarta will be made into parks and forests by 2010. The existing green zones are now 9% of its total size.
[43] Provincial regulations must be established or adjusted at a maximum of two years and the Districts/Municipal regulations have to be adjusted in three years.

than in the old law. The tasks of the several government agencies are formulated in separate articles (chapter V, articles 7-11). One of the tasks of the Government is to establish a manual on spatial management. Such a manual is already available and is used to create the conditions for a quick and good implementation of the law by the regional government.

It has been remarked that the position of the municipal government has improved. This can be expressed, for instance, in the chapter about the spatial plans. This chapter (VI) now shows a separate sub-section about municipal spatial planning.

4.2.3 Public Participation

Public participation in all stages of the decision-making process is an important issue in the law. It is part of the "considering-paragraph" and article 2 mentions the principles. The subject is further regulated in the chapter about "Right, Liability, and Role of the Society" (chapter VIII, articles 60-66). Reading this chapter, it makes clear that the term "public participation" has a wide sense. It includes not only participation in the preparation of a spatial plan, but control over spatial utilization. The instruments for society's role to participate at the implementing level is formulated in the form of several rights, like right to compensation, and right to file a lawsuit (for instance, in cases where an activity results in loss or an activity is in conflict with the spatial plan). These rights were not yet formulated in the old law. So, the role of society in spatial management is strengthened.

4.2.4 Planning Structure

The planning structure is regulated in chapter VI (Execution of Spatial Planning). Arrangement for the planning structure is much more comprehensive than in the old law. The arrangement of spatial plans is formulated for each government level in separate sub-sections. The essential elements of the content of the spatial plan are formulated. They have to be treated in the plan in any case. Also, the duration of the plans is stated. They were different in the old law, but now harmonized.[44] They all hold a duration of 20 years. Furthermore, all plans have to be reviewed every 5 years.[45] The procedures for the establishment and review of the plans are not regulated in the law. That will be done by ministerial regulation (article 18).

The relationship between the plans on the different government levels (vertical coordination) is also formulated in the law. The characteristic of this relationship is that spatial plans on the lower level have to be based on the plans of the higher level. The preparation of a lower level plan is carried out with respect to a high level plan. The law tries to express, with these terms (based on, with respect to), how the planning structure has to be seen. A strong, juridical instrument in this relationship is the approval of the regional spatial plans by the Government (article 18)[46]. The spatial plans of the districts/municipalities are sent for approval to the Government with a recommendation from the Governor.

[44] The duration of the plans under Law No. 24/1992 was 25, 15, and 10 years respectively. The lower the level, the more frequent a renewal of a spatial plan takes place. This concept also tries to stimulate a bottom-up approach. In practice this concept so far has failed.
[45] This regular update is linked to the five-year cycle of the development planning structure.
[46] The approval is given by the Ministry of Public Works for the technical aspects, and by the Ministry of Home Affairs for the legislative aspects. This construction reflects the old rivalry between the two ministries.

The planning structure is still hierarchical; but, with attention to the decentralization legislation, regional government has more autonomy. The Elucidation of the law is rather short and general about this. See the general part of the explanation, sub 5. It could be more comprehensive, as is has given so much confusion in the past. It is noted that approval of all regulations of regional spatial plans by the Government is based on the decentralization legislation.[47] This will be unworkable in practice, because the capacity on a central level is not sufficient for that. It is expected that the Minister of Public Works will use the possibility to defer the approval for district/municipal plans to the Governor.

Besides the vertical coordination, the planning arrangement of the law also pays attention to horizontal coordination. The preparation of the provincial plan has to take place with respect to the spatial plan on bordering provincial regions (article 22). A similar coordination construction is made for the spatial plans of the districts/municipalities. The Elucidation of the law is rather short and general about the horizontal coordination mechanism.

A last point to mention here is the shift from a sector approach to an integrated approach. This is also called the external coordination and contains the relationship between spatial planning and sector planning. The law tries to express this in several articles. Mostly, it is expressed in very general terms, as, for instance, in articles 2 and 3 about principles and objectives. It is also expressed in the articles about the content of the spatial plans. The Presidential Decree No. 62/2000 and Ministerial Decree No. 147/2004 are more concrete, both based on the old law of 1992. The first decree established the National Coordination Commission for Spatial Management. The second decree did the same for the provincial and district level. It is expected that these official coordination bodies will be continued (and reviewed) under the new law.

4.2.5 Utilization, Control, and Supervision

Utilization
For the implementation of the spatial plans, the law makes arrangements for utilization, control and supervision. Spatial utilization is carried out through a spatial utilization program and, along with funding, happens in phases. Articles 32-33 formulate some principles about this. Among others, article 32 states that the execution of spatial management has to be synchronized with the execution of spatial management in the surrounding administrative area. Article 33 states that it is necessary to create a balanced use of land, water, air, and other natural resources. To prevent speculation, article 33 stipulates that, in conservation areas, government agencies have the right to first priority to acquire the transfer of land from the right holder. Article 34 says that spatial utilization is executed according to: minimum service standard on spatial management, quality standard of the environment, and environmental support and accommodation. These principles are rather general and need more concrete elaboration. This will be done in a government regulation.

Control
Control over spatial utilization is addressed in articles 35-40 and consists of zoning regulation, permit, incentives and disincentives, and sanction imposition. Zoning regulation has the function of controlling the permit. That is necessary, because

[47] Article 189 of Law No. 32/2004 stipulates that regional spatial management regulations (*Perdas*) need approval from the Minister of Home Affairs.

detailed plans are often not detailed enough to check the application of the permit against the spatial plan. The zoning regulation formulates a lot of specific requirements and is the assessment framework for the application of the permit. The space utilization permit is required for, in principle, every activity.

The third control instrument is: incentives vs. disincentives. Examples of incentives are: tax deduction, infrastructure development, compensation, and easy permits. Examples of disincentives are: high taxation, limitation in the provision of infrastructure, compensation, and the imposition of sanctions.

The imposition of sanctions is the fourth control instrument. Article 39 is rather vague about it. It states that imposing sanctions is an action to create order in spatial utilization which is unsuitable with the arrangement of spatial planning and zoning regulation. The arrangements for sanctions are scattered throughout the law. See paragraph 3.2.6 hereinafter.

Supervision
Chapter VII (articles 55-59) deals with supervision. Supervision consists of monitoring, evaluation, and reporting. The old law had the same supervision instruments. In practice, the performance of these instruments was poor. For instance, a periodical evaluation of plans was not done. Also, a systematic evaluation of the old law, as the base for the preparation of the new law, was not done. In any case, such an evaluation was not the object of public discussion. Hopefully, the instruments for supervision will really be implemented.

4.2.6 Enforcement

Enforcement comprises of all instruments to enforce compliance with the law. The authorities charged with the implementation of the law must have adequate powers to be able to fulfill their responsibilities. In general, two types of enforcement can be distinguished: administrative enforcement and criminal enforcement. These two instruments are regulated in the law in different places. Chapter XI (articles 69-75) handles criminal sanctions. This arrangement is new and comprehensive. (It was not regulated explicitly in the old law.) This can be seen as an expression of the awareness that enforcement of the law is needed.

The arrangement about administrative sanctions is spread over articles 37 and 63. They are partly overlapping. This is not transparent. Article 37 treats the permit as part of the control instrument and mentions the following administrative sanctions: annulling the permit (in case of illegal procedure and when the permit is no longer appropriate due to changes in the arrangement of spatial planning) and revoking the permit (when granted in conflict with the spatial plan).

Article 63 mentions that administrative sanctions not only have to do with the permit, but are wider in scope.[48] Article 63 formulates the following administrative sanctions: written warning, activity suspension, public service suspension, closing down a location, revoking a permit, permit annulment, building demolition, spatial planning restoration, and administrative fine. The latter is a new sanction which did not exist in the old law. This sanction offers the appropriate authority an efficient and effective

[48] They also apply to everyone who violates the orders mentioned in article 61. This article states that every person is obliged to: abide by the prevailing spatial plan, utilize a space according to the spatial zoning permit, comply with the requirements to obtain a permit, and provide access to areas which are designated by regulation as public property.

ability to tackle undesirable conduct quickly.[49]

4.3 Conclusions and Summary

Spatial Management Law 1992

1. In the 1970's and 1980's, planning was sector-oriented and organized top-down . The Spatial Management Law of 1992 was a first step towards creating better conditions for a spatial planning system which would form a bridge between the existing types of planning systems: town planning, sector planning, and development planning.

2. The ambitions of the law of 1992 were high. However, the implementation was not very successful. The spatial planning structure had a hierarchical character. In practice, the role of the regional government was weak.

3. After the fall of the Soeharto-regime in 1998, the institutional set-up changed completely. The Regional Autonomy Law of 1999 gave the districts/municipalities far-reaching autonomy. The district heads felt autonomous in almost all government sectors, including spatial management. For an overview of these institutional and other implementation problems, see paragraph 3.1.3 of this report.

Spatial Management Law 2007

Objectives and character

4. The new Spatial Management Law of 2007 is an important step to create better conditions to address the problems with spatial planning.

5. The objectives of the new law are, in essence, almost the same as the objectives of the old law. One of them is to prevent negative environmental impacts due to space utilization. This objective is made more concrete, among other things, in the form of a protection norm. At least 30% of a river basin has to be forest area and at least 30% of the urban area must be open green space. The implementation of this norm in a way which does justice to regional differences will be an enormous challenge.

6. The law has grown considerably in size in comparison to the old one: from 31 to 80 articles. Nevertheless, a lot of subjects (18 in total) have to be elaborated by government and/or ministerial regulation. So, the law is a typical framework law. 1 PP is recently enacted and 5 are under preparation now.

7. To prevent a slow implementation of the new law, there are deadlines for the preparation of central and regional regulations. That provides a good stimulus. However, passing the deadlines is not sanctioned. The timely establishment of regulations under the old law were not positive experiences. Until the new regulations come into effect, the regulations based on the law of 1992 are still in force.

8. A point of attention is the distinction between government regulation and

[49] The Dutch laws about spatial management, water resources, and environment have already had this instrument for a long time. Their experience with the application of this instrument is very good.

ministerial regulation. It is not always clear on which base this distinction is made in the law. In my opinion, only subjects which are more technical and have to be actualized more frequently (like technical guidelines), can be regulated in a ministerial regulation. All other relevant juridical subjects have to be regulated in a government regulation.

Authority and responsibilities

9. The arrangement of authority and responsibilities is more comprehensive and clearer than in the old law. Also, the position of the municipal government has improved. This is expressed, for instance, in the chapter about the spatial plans, which now shows a separate sub-section about municipal spatial planning.

Public participation

10. Public participation at all stages of the decision-making process is an important issue in the law. It includes not only participation in the preparation of a spatial plan, but also in spatial utilization and control over spatial utilization. The instruments for society's role at the implementing level is formulated in the form of several rights, like right to compensation, and right to file a lawsuit (for instance in the case an activity results in loss or an activity is in conflict with the spatial plan). These rights were not yet formulated in the old law. So, the role of society in spatial management is strengthened.

Planning structure

11. The arrangement for the planning structure is much more comprehensive than in the old law. The arrangement of spatial plans is formulated for each government level in separate sub-sections.

12. The new law tries to find a balance between the necessity of a strong vertical coordination mechanism and the decentralization principles. The requirement for approval of all of the regulations of regional spatial plans by the Minister is based on the decentralization legislation. This will be unworkable in practice, because the capacity on the central level is insufficient for that. It is expected that the Minister of Public Works will use the legal possibility to defer (technical) approval for the district/municipal plans to the Governor.

13. The planning arrangement of the law also gives attention to the horizontal coordination mechanism. The preparation of the provincial plan has to take place with respect to the spatial plan on bordering provincial regions. A similar coordination construction is made for the spatial plans of the districts and municipalities. This is a challenge which needs to be addressed.

14. The law tries to express the shift from a sector approach to an integrated approach. However, this external coordination mechanism is formulated mostly in general terms, as, for instance, in the articles about principles and objectives. It is also expressed partly in the articles about the content of the spatial plans. It is expected that the coordination bodies for spatial management, established under the old law, will be continued and reviewed.

Utilization, Control, and Supervision

15. Spatial utilization is carried out through a spatial utilization program, along with funding. The arrangement for spatial utilization is formulated in rather general

terms and needs further elaboration. This will be done in a government regulation.

16. Control over spatial utilization is done through (a) zoning regulations, (b) permits, (c) incentives and disincentives, and (d) imposition of sanctions.

17. The function of zoning regulation is to control the permit. That is necessary because detailed plains are often not detailed enough to check the application of the permit against the spatial plan. The zoning regulation formulates a lot of specific requirements and is (together with the spatial plan) the assessment framework for the application of the permit.

18. Supervision consists of monitoring, evaluation, and reporting. These instruments have as yet been poorly developed. Hopefully they will be implemented, since they are really important for the quality of the law's implementation.

Enforcement

19. Enforcement comprises of all of the instruments to enforce compliance with the law. The arrangement for criminal sanctions is new and comprehensive. This is an expression of the awareness that enforcement of the law is needed.

20. The arrangement for administrative sanctions is spread over articles 37 and 63. They are partly overlapping. This is not transparent.

21. The administrative fine is a new instrument for administrative sanctions. This sanction instrument offers the appropriate authority an efficient and effective tool to tackle undesirable conduct quickly.

5. Peatland Management

The coastal lowland peatland forests of Indonesia were relatively undisturbed until the early 1960's. They were inhabited only by indigenous people (Dayak in Kalimantan, and Kubu tribes in Sumatra). Since then, these peatlands have degraded enormously in a short time due to activities like logging, development of irrigation and drainage systems, and plantations. One of the biggest interventions was the so-called 1 million ha project in Central Kalimantan which was carried out by the Government in the 1990s. The result was an environmental disaster because the peatland was unsuitable for lowland development. As a result of the logging and drainage measures, the area has been damaged dramatically.

The Government is now preparing a Presidential Regulation, which has the goal to create better conditions for sustainable peatland management. This chapter is about this regulation. The structure of this report is the following: Section 5.1 gives an overview of the existing legislation related to peatland management; Section 5.2 describes and discusses the draft regulation about peatland management; Section 5.3 provides some conclusions and recommendations.

5.1. Existing Legislation

Several sector laws (and regulations based on these laws) from the period before 1990 were related to peatlands, but the peatlands were not the object of these laws. Examples of relevant laws are: Agrarian Law (Law No. 5/1960), Forestry Law (Law No. 5/1967), Mining Law (Law No. 11/1969), Water Law (Law No. 11/1974). All these laws formulated, in some way, principles about the sustainable implementation of the law. However, this was too vague to avoid environmentally undesirable activities in vulnerable peatland areas. The Environmental Law of 1982 (Law No. 4/1982) had effect only on the policy level of sectors and not on the sector laws themselves.

The lack of sufficient attention in these laws was the reason to issue Presidential Decree No. 32/1990 for the management of protected areas. It stipulates that peat areas deeper than 3 meters are protected and should remain undeveloped. The scope of the decree was oriented towards peatlands in uplands and not towards lowlands. The reason was that the problems in the uplands in that period needed quick action due to unsustainable forestry activities in those areas. The decree of 1990 only formulated criteria and did not designate concrete peatland areas which needed protection.

A more structured provision for the protection of peatlands is made in PP No. 47/1997 for the National Spatial Plan. The regulation renewed the 3-meter criterion and, furthermore, the scope of protection was widened to all peatlands; so, not only to peatland in uplands, but peatlands in lowlands.

In practice, the criterion of 3 meters was not suitable to guide all types of activities in peatlands. An important constraint of the 3-meter criterion is that reclamation and drainage of the outer zone of a peat dome of less than 3 meters would affect the inner peat dome with a depth of over 3 meters. Furthermore, agricultural guidelines stipulate that only areas with peat up to 76 cm deep are suitable for conversion to agriculture. The fact is that the 3-meter decree is not implemented well.

Due to new regional autonomy legislation, all of the aforementioned sector laws were replaced by new laws.[50] The Forestry Law of 1967 was replaced by Law No. 41/1999, the Mining Law of 1969 was replaced by Law No. … /2002, the Water Law of 1974 was replaced by Law No. 7/2004, the Environmental law of 1982 was replaced by Law No. 23/1997. Furthermore, it is noted that the Spatial Management Law of 1992 (whose object also was not peatland management) is replaced by Law No. 26/2007.

The new laws formulate explicit principles which create conditions for a sustainable implementation of the law. Also, however, these new laws are not concrete enough to avoid undesirable activities effectively in peatland areas. Furthermore, these new laws are not sufficiently harmonized to guide activities successfully in vulnerable peatlands.

To address the problems in the peatlands (deforestation, fires and haze, carbon emissions), the Government has decided to establish new legislation quickly about peatland management. For that reason, a Presidential Regulation about Peatland Management has now been prepared by an inter-departmental working group under the initiative of the State Ministry of the Environment. A draft is already available. This draft (version March 2008) will be described and discussed in the next paragraph.

5.2 Draft Presidential Regulation about Peat Land Management

The draft Presidential Regulation about Peatland Management (hereinafter: the regulation) is rather short. It contains 28 articles, divided over 14 chapters. For an overview of the structure of the regulation, see **Annex 8**. Hereinafter, we will first describe the content of the regulation in headlines. Based on that overview, we will make some remarks on the regulation.

5.2.1 Brief description

Objective and Scope (Article 3-4). The objective of the regulation is to improve the conservation and cultivation of peatland management. Peatland management in the context of the regulation contains a series of activities covering the hydrological-based management of peatland. This has been implemented wisely and harmoniously, and will be able to prosper for the present and into the next generation with appropriate technology which can be applied by the community.

The scope of the regulation is related to the objective of the regulation. So, the scope concerns peatland areas with respect to conservation and cultivation. To realize the goal, the regulation formulates provisions for the following subjects: inventory, preservation, utilization, damage control, fire control, coordination, supervision, reporting, financing, and transition (see also Annex 8).

Inventory (Articles 5-6). Every government (Government, province,

[50] Law No. 22/1999 on Regional Autonomy and Law No. 25/1999 on Financial Relations between the Centre and the regions. They took effect in 2001. These laws were revised in 2004 and replaced by Law No. 32/2004 and Law No. 33/2004.

district/municipality as their authority) is obliged to make an inventory of peatland. The criteria for the inventory are formulated in Annex I of the regulation. The result of the inventory becomes the basis for the spatial plans on the various government levels and the master plan for the conservation and cultivation of peatland area. Setting up peatland as an area for cultivation should meet criteria as formulated in Annex II of the regulation.

Preservation (Article 7). Every government authority, according to its authority, should keep peatland in good condition. Such a peatland should meet the criteria as stipulated in Annex I.

Utilization (Articles 8-12). These articles deal with the use of peatlands for cultivation purposes (perennial and seasonal plants, and oil plantations) and for conservation. Criteria for cultivation purposes are formulated in appendix II and appendix IV. One of the articles stipulates the duty that anyone who utilizes peatland should maintain its sustainability. A sanction provision in case of violations is lacking.

Damage control (Articles 13-14). The articles in this chapter state that everyone who conducts activities in peatland should control any damage to the area. Control of activities includes prevention, mitigation, and recovery. Guidelines for recovery are provided in annex III of the regulation.

Fire Control (Articles 15-17). The articles of this chapter formulate an absolute prohibition against clearing peatland with the slash-and-burn method. Furthermore, everyone whose peatland is burning should combat the fire. Also, the government should do the same and monitor the impact of the fire.

Coordination (Articles 18-22). This chapter provides the establishment of a coordination team on every government level for the implementation of peatland management. Organization, structure, tasks and the function of the team are provided in Annex V of the regulation.[51] The general implementing strategy of peatland management is provided in Annex VI of the regulation.[52]

Supervision (Article 23). The Minister, Governor, Head of the District/Municipality should supervise peatland utilization. The instruments for that task are not mentioned.

Reporting (Article 24). Every government authority should report the implementation of peatland management under its authority to the President in coordination with the Coordinating Minister of Public Welfare. The Head of District/Municipality should do this to the Governor.

Financing (Article25). The financing of peatland management is based on state budget, district budget, and/or a funding source as law and regulation.

Transition provisions (Articles 26-27). These articles formulate transition provisions. One of them states that an activity in a conservation area with a license should be adjusted according to the regulation no later than 5 years after the issuance of the regulation. Article 27 states that all the laws and regulations related to peatland management remain in full force and affect as far they do not conflict with this Presidential Regulation.

[51] Not yet available.
[52] Not yet available.

5.2.2 Analysis and Comment

In this section, we give some analysis and comment on the regulation. The following subjects will be discussed: (a) criteria, (b) institutional set-up, (c) enforcement and (d) transition provisions.

a) Criteria
One of the key points of the regulation is the formulation of criteria for the decision-making process about the conservation and cultivation of peatlands. The goal is to widen the set of criteria so that conservation and sustainable use of vulnerable peatlands can take place.

Before discussing the sets of criteria used in the regulation, it is noted that the first question is which criteria are necessary. In my opinion, the first criterion required is to get a realistic impression of the situation. These inventory criteria have only a descriptive function. The second set of criteria deals with the question of whether a peatland area needs conservation or can be cultivated for certain purposes. The third set of criteria deals with how the conservation or cultivation should be done (utilization).

How can we find this in the current regulation? The regulation formulates criteria for:
1. unused/unconverted protected peatland;
2. peatland for trees/perennials and annual crops;
3. good vs. degraded peatlands;
4. peatland for biomass production.

The first set of criteria concerns the inventory aspect. The third set of criteria deals with the question of conservation or cultivation. The second and fourth set of criteria extends to utilization. It is unclear why specific criteria are developed for cultivation and biomass production. It seems logical to have a single set of criteria for all kinds of utilization. The practical use of the criteria is therefore also more transparent.[53] That is not the case now.

The system chosen for the 4 sets of criteria is complex, not transparent and will cause confusion in practice.

The separate sets for agriculture and biomass production refer to development. But, that is only one of the goals of the regulation (see article 3). The other goal is conservation. That goal is not expressed thoroughly enough in the criteria. One of the most important tools for the management of peatland is water management.[54] That should be an explicit part of the criteria. It should also be emphasized more in the regulation itself. Article 7 of the regulation is the only substantive article about conservation. The article is too generally formulated now.

Criteria set 3 about good vs. degraded peatlands is missing an important classification between “good” and “degraded”. The suggested system is not workable in practice. It now states that a peatland with a water table level of less than 25 cm has good condition, and a peatland with a water table level of more than 100 cm has a degraded condition. A classification for an in-between level would be more

[53] Transparency is one of the requirements for good legislation. See Law No. 10/2004 about the Establishment of Laws.
[54] It is remarkable that the Law on Water Resources (Law no. 7/2004) is not mentioned in the preamble of the regulation.

desirable. This is also more in harmony with reality. Many peatlands are partly degraded, but still valuable. These peatlands can and should be conserved/protected.

Closely related to this is the drainage component. Almost all peatlands are drained, as are protected peatlands where drainage from logging is common. The consequence of this, as formulated in set 3 of the criteria, would be that no peatland meets the criteria for good condition. That cannot be the intention of the regulation.

A last remark about the criteria is that they are very technical and detailed. A lot of them are not clear.

b) Institutional set-up
The regulation follows the normal institutional set-up. That means that peatland management follows the general system of the division of tasks between the various government levels. There is one important exception. Article 24 states that the involved government agencies on the various government levels should report to the President about the implementation of peatland management. This article expresses the awareness, at a central level, of the necessity for real attention to the problems of peatland. However, the instrument chosen (reporting directly to the President) is not elaborated concretely. How and when this should be done is unclear. It is questionable if this instrument, with such a broad conception, will be workable in practice.

A second aspect of the institutional set-up extends to the establishment of coordination teams on the various government levels. One could ask if an extra coordination body, besides the existing coordination bodies with their broad tasks, is necessary. It would be better to integrate this function into one of the existing coordinating bodies, like the coordination body for spatial management.

c) Enforcement
The regulation is lacking (administrative and criminal) sanction provisions. That makes the regulation un-enforceable.

d) Transition provisions
An important question, legislatively, is the relationship between the regulation and the existing legislation which is related to peatland management. Article 27 of the regulation states that “all the laws and regulations related to peatland management remain in full force and effect as far they do not conflict with this Presidential Regulation”. This is not a very clear solution and, in essence, not acceptable from a modern legislative point of view. The questions are immediate: what is “not conflict”, who decides, through what process?

5.3 Conclusions and Summary

1. The lack of sufficient attention in the sector laws in the period before 1990 was the reason to issue Presidential Decree No. 32/1990, which stipulates that peatlands in uplands deeper than 3 meters should not be developed. A more structural provision for the protection of peatlands is made in PP No. 47/1997 about the National Spatial Plan. The regulation renewed the 3-meter criterion and, furthermore, the scope of protection was widened to all peatlands. However, the criterion of 3 meters was unsuitable in practice to guide all types of activities in peatlands.

2. The draft Presidential Regulation about Peatland Management contains 28 articles, divided over 14 chapters. See Annex 8.
3. One of the key points of the regulation is the formulation of criteria for the decision-making process about the conservation and cultivation of peatlands. The goal is to widen the set of criteria so that conservation and the sustainable use of vulnerable peatlands can take place.
4. It is unclear why there are separate criteria for cultivation and biomass production. It seems logical to have a single set of criteria for all kinds of utilization. That makes the practical use of the criteria also more transparent. That is not the case now. The chosen system with its 4 sets of criteria is complex, not transparent, and will cause confusion in practice.
5. Criteria set 3 about good vs. degraded peatlands is missing an important classification between “good” and “degraded”. The system suggested in the regulation is not workable in practice. It now states that a peatland with a water table level of less than 25 cm has good condition, and a peatland with a water table level of more than 100 cm has a degraded condition. It is desirable to formulate an in–between classification. This is also more in harmony with reality. A lot of peatlands are partly degraded, but still valuable. These peatlands can and should be conserved/protected too.
6. Almost all peatlands are drained, as are protected peatlands which were drained for logging. Under the criteria in set 3, no peatland would meet the standard for good condition. That cannot be the intention of the regulation.
7. The criteria are very technical and detailed. A lot of them are not clear.
8. The goal of conservation is an essential part of the regulation. Water management is an important tool to realize this goal. This should get more attention in the regulation itself. The chapter about conservation consists of only one article, which is very open and gives no attention to water management.
9. The regulation follows the regular institutional set-up. There is one important exception. The involved government agencies should report to the President about the implementation of peatland management. This expresses the awareness, at the central level, of the necessity for real attention to the problems of peatland. However, the openness of the requirement to report makes it questionable if such an instrument can be workable in practice.
10. The establishment of a coordination team on the various government levels creates an extra coordination body besides the existing coordination bodies with broad tasks. It would be better to integrate this function into one of the existing coordinating bodies, like the coordination body for spatial management.
11. The regulation is lacking (administrative and criminal) sanction provisions. That makes the regulation un-enforceable.
12. Related current laws and regulations are regulated too broadly. Article 27 states that “all the laws and regulations related to peatland management remain in full force and effect as far they do not conflict with this Presidential Regulation”. This “open end” arrangement is not acceptable from a modern legislative point of view. The questions are immediate: what is “not conflict”, who decides, through what process?

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