

# The Last Remnants of Mega Biodiversity in West Java and Banten:

*An In-Depth Exploration of RaTA  
(Rapid Land Tenure Assessment)  
in Mount Halimun-Salak National Park, Indonesia*

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*Gamma Galudra, Rojak Nurhawan, Afif Aprianto, Yaya Sunarya and Engkus*

Southeast Asia



World Agroforestry Centre  
TRANSFORMING LIVES AND LANDSCAPES

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Working Paper nr 69



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**Correct citation:**

Galudra G., R. Nurhawan, A. Aprianto, Y. Sunarya, Engkus. 2008. The Last Remnants of Mega Biodiversity in West Java and Banten: An In-Depth Exploration of RaTA (Rapid Land Tenure Assessment) in Mount Halimun-Salak National Park, Indonesia. Bogor, Indonesia. World Agroforestry Centre. 33p.

Titles in the Working Paper Series aim to disseminate interim results on agroforestry research and practices and stimulate feedback from the scientific community. Other publication series from the World Agroforestry Centre include: Agroforestry Perspectives, Technical Manuals and Occasional Papers.

Published by the World Agroforestry Centre  
ICRAF Southeast Asia Regional Office  
Jl. CIFOR, Situ Gede, Sindang Barang, Bogor 16680  
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ICRAF Southeast Asia website: <http://www.worldagroforestrycentre.org/sea>

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Working Paper nr 69

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## **Abstract**

In Indonesia, land tenure conflicts occurred after 1997 financial crisis. Many scientists and policy makers tried to solve these conflicts, but failed to address their underlying cause of, causing the conflicts re-emerge after they were claimed settled. Land tenure conflicts mostly emerge because there are many competing claims by various stakeholders on land. There is a need to study about this kind of conflict and ICRAF, in 2006, developed a manual called RaTA to address this need. RaTA aims to explain the competing claims and underlying cause of these claims among different stakeholders. This method was then conducted in Mount Halimun-Salak National Park, where the area not only contains different competing claims but also different needs and interests from various stakeholders. A policy analysis and historical analysis was also used to explain the cause of these competing claims, revealing a different perspective from stakeholders' perceptions toward their claims

## **Keywords**

Conflict, land tenure, policy, national park, biodiversity, preservation, Indonesia

## **Acknowledgements**

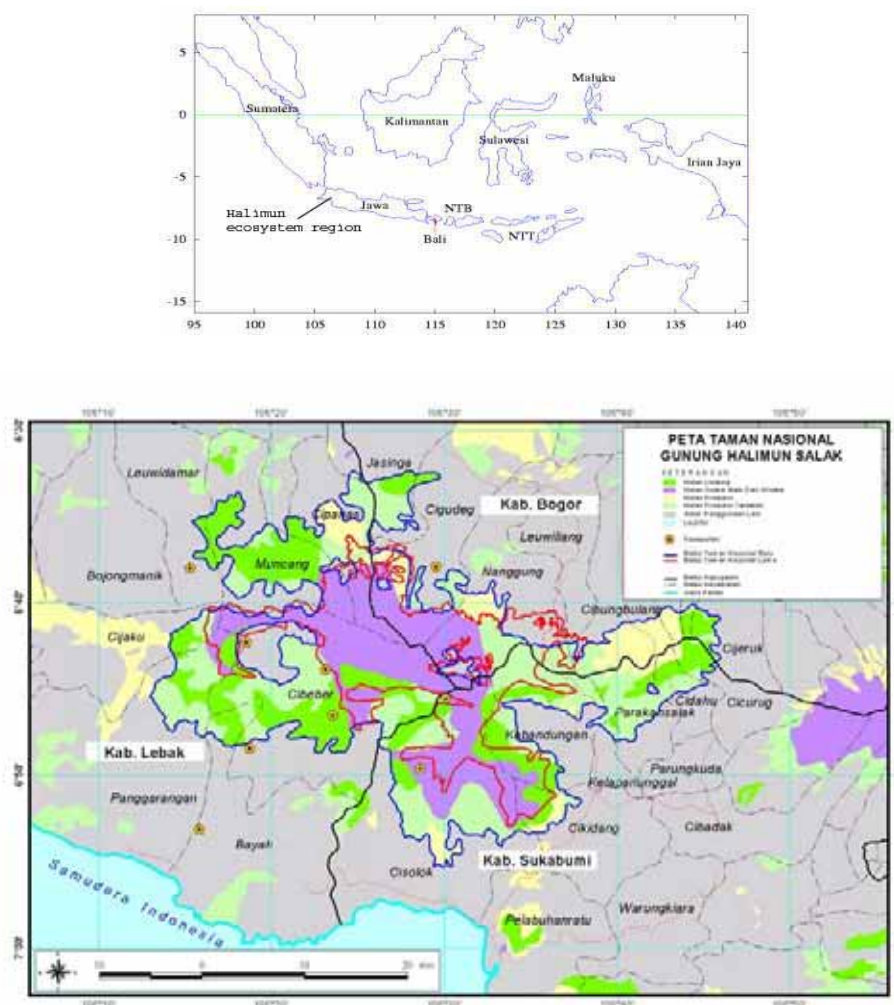
The report was part of a collaboration program in Mount Halimun-Salak National Park area between RMI (The Indonesian Institute for Forest and Environment), HUMA (Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis) and WG-T (Working Group on Tenure) on land rights and tenure. Special thanks to Martua Sirait for his valuable inputs and comments to the working paper.

## Contents

About the authors .....	i
Abstract .....	ii
Keywords .....	ii
Acknowledgements .....	iii
Contents .....	iv
Introduction .....	1
<b>RaTA (Rapid Land Tenure Assessment): A Method to Explore Competing Claims on Land .....</b>	<b>3</b>
<b>The Scientific Rationale and Its Discourse behind the National Park Designation .....</b>	<b>6</b>
<b>What Lies Beneath? The Competing Claims on Forest Access and Ownership.....</b>	<b>10</b>
Stakeholders Analysis .....	10
The Legal Claim of the Forest Department over Mount Halimun-Salak National Park Designation .....	11
The Legal Claim of the Local People over Mount Halimun-Salak National Park Designation .....	14
The Legal Claim of the Local Government of Lebak District over Mount Halimun-Salak National Park Designation .....	19
<b>Clear as Mud: Policies and Laws that Brought Competing Claims .....</b>	<b>21</b>
The Policies that Brought Forestry Department and Local Communities in Dispute .....	21
The Policies that Brought Bupati of Lebak and Forestry Department in Dispute ...	22
<b>A History Approach: Unravel a Truth beyond Perceived Legal Basis.....</b>	<b>24</b>
<b>Discussion and Conclusion: Policies Options and Interventions.....</b>	<b>27</b>
References .....	31

## Introduction

The Government of Indonesia (GoI) declared Mount Halimun-Salak Area to be a national park in 2003 based on ecosystem richness and hydrological function. Administratively, it is located in West Java and Banten Provinces within three regencies (namely Bogor, Sukabumi and Lebak) covering an area of 113,357 hectares (see Picture 1). The national park itself can be reached within four hours of journey from Jakarta, capital of Indonesia, toward the interior of Rangkasbitung City, capital of Lebak District.



**Picture 1:** The Mount Halimun-Salak National Park (Source: FWI-RMI-ICRAF)

When the government changed the status of Mount Halimun-Salak into a national park, the people living within its boundaries saw this as infringement on their land rights. Several signposts of the national park were erected surrounding its boundaries, causing concern among the people. According to the government officials, the people have never had legal rights to settle and farm the land. Fearful from being evicted, on 16<sup>th</sup>-18<sup>th</sup> October 2003, the people from 31 villages within the national park held a meeting in Bogor and refuted the



government's declaration. To support their resistance and claim over their land rights, the people set up a local organization, named *Forum Komunikasi Halimun Jawa Barat-Banten* (FKMHJBB) (RMI, 2003). These resistances by local people and the refusal of government to recognize the local people rights had been reported by many national and local newspapers (Kompas, 2003a).

Even though many institutions tried to solve these conflicts through negotiations, none of them has been successfully resolved to date. These conflicts became worse in early 2008 as the District of Lebak pleaded to the national legislative (*Dewan Perwakilan Rakyat*) to exclude 15,000 hectares of designated national park land. The district's leader used several laws and policies as a basis to claim land within the designated national park. One of the failures to settle these conflicts is that none of those institutions studied the stakeholders' perceived legal claims toward the national park land. These claims may be influenced by their perception or understanding on laws or caused by the conflicting of different laws and policies.

Therefore, the objective of this paper is to study the perceived legal claims of each stakeholder who use and control the designated national park land. Moreover, it gives policy options or interventions for the policy makers or negotiators on strategic solution to these perceived legal claims disputes.

A RaTA method was used to explain the reasons of these competing claims. Several questions are being used as follow:

- Who are the stakeholders? What are their roles to the conflicting legal claims?
- What are their legal claims? What are the perceptions of these stakeholders towards others' claims?
- How and why do these conflicting legal claims emerge? Is it caused by conflicting policies or different understanding of policies or others?
- What kind of policy options or interventions that can help to settle these competing claims?

The paper is divided into six sections. First, it describes the RaTA method and its steps in describing and analyzing stakeholders' competing claims. Second, it shows the scientific and political purpose and debate behind the national park designation. Third, it depicts the perceived legal claims among competing stakeholders and their roles toward these land disputes. Fourth, it discusses also the conflicting policy that may cause these competing legal claims. Fifth, it describes a historical views and perspectives toward these competing claims. And last, it provides a policy options and interventions to reduce or solve these heated competing legal claims.

# **RaTA (Rapid Land Tenure Assessment): A Method to Explore Competing Claims on Land**

A RaTA (Rapid Land Tenure Assessment) method was developed to respond to many competing claims that had emerged after the reformation period in Indonesia and the needs of many policy makers and negotiators to understand the perceived legal basis of these claims among the disputants. Many scientists related deforestation, illegal logging, and forest fire to land conflicts (Angelsen, 1995; Colchester et al, 2006; Dove, 1983; Potter and Badcock, 2004; Suyanto, 2007), but none of them delve intensively on the perceived legal claims of the competing stakeholders to land resources. The main source of these claims can be traced to unsecured and unclear legitimacy and legality of land tenure policies. Land tenure conflicts are about perceptions and the different meanings that people give about their right over land resource.

Several land tenure methods studied land tenure systems and conflicts (Bruce, 1989; Engel and Korf, 2005; Freudenberg, 1994; Herrera and da Passano, 2006), but these methods did not thoroughly explain the basis of perceived legal claims of the competing stakeholders. On the other hand, a USAID method on land tenure explores the legal claims of the disputants and also gives policy intervention to solve the land tenure conflicts (USAID, 2004). However, it fails to relate these competing claims to national land tenure policies. Unlike those methods above, RaTA (Rapid Land Tenure Assessment) tries to explore in-depth on competing claims among different stakeholders and assumes that these competing claims related to unsecured and conflicted land tenure policies.

RaTA is not a stand-alone tool, but rather a tool in which approaches to rapidly collect data and appraise the competing claims of an area are combined, summarized and adapted. Different techniques such as Rapid Rural Appraisal, Stakeholder Analysis and an exploration of science analysis such as history are amongst the methods or approaches that have been taken into account in different phases of RaTA. In this case study, RaTA used three-step approaches; stakeholders analysis, competing claim assessments (perceived legal base, policies/laws and historical sciences), and policy options/interventions (see Picture 2).

## **1. Stakeholder Analysis**

The stakeholder analysis is used to determine several parties that have interest to the natural resources. Here, the analysis is used to determine who has claim and influenced other parties to claim to the natural resources, what kind of natural resources that are being claimed and

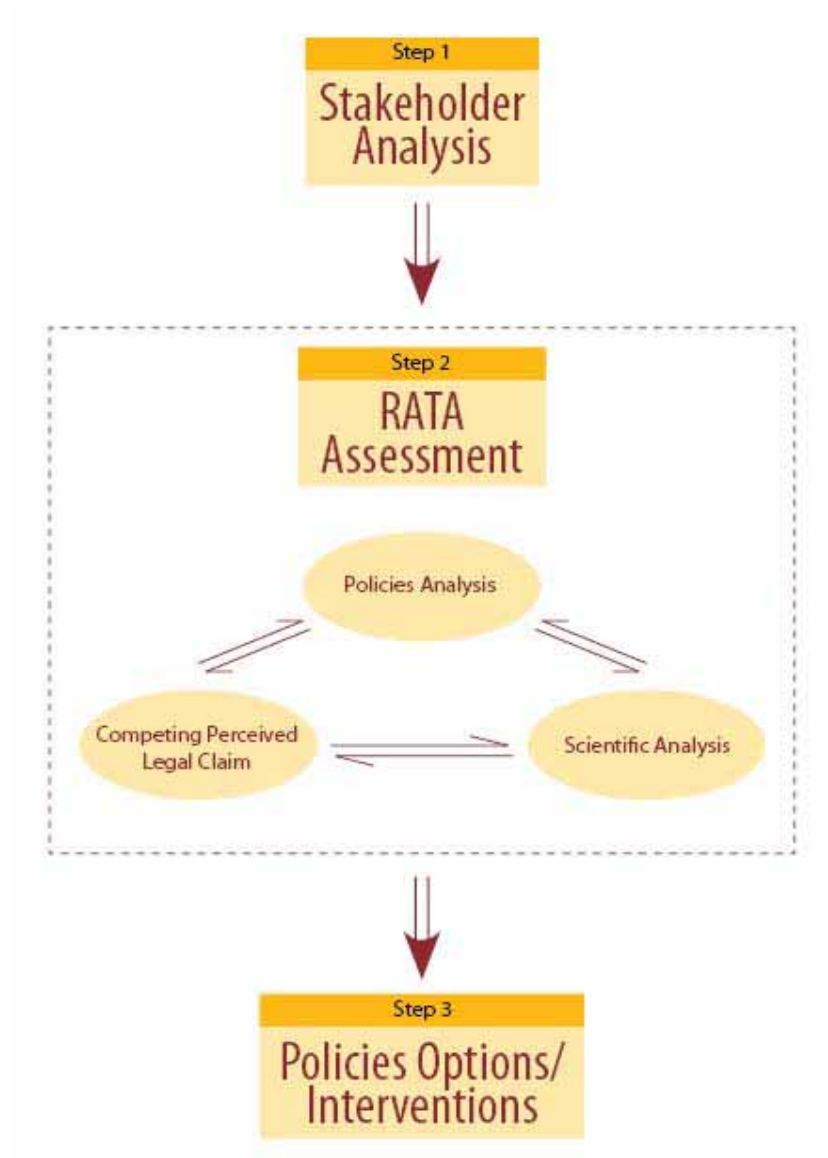
contested by the disputants, what kind of relationship between the parties and the natural resources, what the parties' perception to each parties' relationship to the natural resource.

## **2. RaTA Assessment**

To get better understanding and explanation about competing claims among the stakeholders, this RaTA assessment is divided into three analyses: first, competing perceived legal claims among identified stakeholders; second, policy analysis that are being used by the stakeholders to exert legal claims; and third, scientific analysis to explain the underlying cause of these competing claims. This case study used historical analysis, based on official documents and archives, as our scientific explanation. These three analyses have different perspectives and give better understanding about these competing claims.

## **3. Policies Options/Interventions**

Based on RaTA assessment, this study proposes several policies options based on existing policies that might resolve these competing claims. If none of these policies can provide a solution, then this study will try to create different policies from the existing current policies.



**Picture 2.** The Three Steps of RaTA Analysis

# The Scientific Rationale and Its Discourse

## behind the National Park Designation

The history of the preservation in Indonesia began in the 1880s under the Dutch Colonial regime. At the beginning, the initiative for preservation was taken predominantly by Dutch NGOs and individual members of the elite rather than Colonial Forestry Service. For example, in 1889, the Director of the Bogor Botanical Garden, Melchior Treub, appointed the Cibodas Forest in West Java as a nature reserve under the Botanical Garden management. Another significant contribution came from an NGO, the Dutch Organization for Nature Protection, which proposed to the Colonial Forestry Service that it be allowed to manage 12 forested areas in Java under the nature reserves type of management. The Colonial Forestry Service was reluctant to devolve power to the organization and responded by issuing the 1916 Staatsblad No 278. This Staatsblad 278/1916 established a legal basis called *domeinverklaring* for gazetting nature reserves under the control and management of the Dutch Colonial Regime (Departemen Kehutanan 1986; Peluso, 1992).

Perhaps, the best known preservation regulation issued under the Dutch Colonial regime were those in the 1941 Ordinance for Nature Protection (*Natuurbeschermings Ordonantie* 1941) that invalidated the 1932 Ordinance for Nature Reserve and Wildlife Sanctuary (*Natuurmonumenten en Wildreservaten Ordonnantie* 1932). Under the Article 2(3) of the 1941 Ordinance, the rights of indigenous people are recognized and had to be taken into account when establishing nature reserves, as follow (Danasaputro, 1985). However, it was still uncertain how these indigenous people' rights can be addressed. Shortly before the Second World War, the Dutch established 55 state forestlands as nature reserves, including those proposed by the Dutch NGO.

During that period, the Mount Halimun-Salak area was not yet being designated as nature reserve, but rather as a protected forest. The scientific justification to designate Mount Halimun Salak at first was not based on its biodiversity richness, but rather based on its hydrological functions. A commission, consisted of forester, engineer, and agriculture researchers, was set up to study the hydrological value of this vast area. The study explained that the forest should be protected from deforestation as it had reduced water resource of many rivers. The water supply was decreasing while this supply was necessary to irrigate water in the future. In conclusion, the commission urged the government to create forest reserve in Mount Halimun-Salak area (Hoemacommissie Bantam, 1932). This study gave the government justification to declare Mount Halimun Salak as protected forest. Several

gazettement and delineation processes in order to determine forest boundary between state and non-state forestland were conducted within 1906 to 1939 period (Galudra *et al*, 2005a; Galudra *et al*, 2005b).

In early 1940, the Dutch Colonial government started to consider Mount Halimun-Salak as a nature reserve, but this idea did not continue after independence. During two decades, through the 1950s to end of 1960s, preservation efforts were very minor due to political unrest and governmental transformation from the Dutch Colonial regime to the Indonesian leadership. Another significant reason is that the preservation idea was considered by most independence leaders to be associated with colonial values (Jepson and Whittaker, 2002).

Nevertheless, the preservation narrative still remained in the minds of Indonesian foresters, university lecturers and policy makers. During the reign of the New Order, which occurred throughout the period of 1967 to 1997, preservation remained the dominant narrative for the management of protected areas. First, Basic Forestry Law No. 5/1967 (BFL) specifically the articles relating to the protection of forests, which continued to strongly reflect the preservation narrative contained in the 1941 Ordinance for Nature Protection. Second, the preservation narrative carried out with it the assumption that only the state (in this case, the government), which had the right to access and control, was capable of protecting the uniqueness of nature or wildlife species. This policy had actually already been in place since the Dutch colonial period with the issuance of the 1916 Staatsblad No. 278.

Ultimately, these preservation idea and policy affected the management policy in Mount Halimun-Salak. In 1979, by using forest gazettement during the Dutch Colonial, the government declared Mount Halimun as nature reserve, covering an area of 40,000 ha. The declaration was enacted through Minister Decree No 40/1979. The reason for this declaration is to secure and protect forest habitats that contain many endangered species such as *Hylobates moloch*, *Presbytis aygula* and *Panthera pardus* from extinction. Javanese Rhino (*Rhinoceros sondaicus*) and Javanese Tiger (*Panthera tigris sondaicus*) were found extinct from this area since 1974 due to its habitat encroachment (Ryadisoetrisno, 1992).

Perum Perhutani, state forest logging concession in Java, rejected this policy because 1,000 ha of its teak forest were being subjugated into this designated nature reserve. After many discussion and dialogue among government entities, the government decided to exclude this teak forest area from natural preservation, resulting to reduction of its size to less than 38,000 ha. Many conservationists regretted this policy because the reduction has excluded the possibility to create a corridor for wildlife passage between Mount Halimun and Mount Salak (Badan Planologi Archives, unpublished). Even so, the idea to protect the wildlife corridor still remained in their thoughts.

In early 1990s, there was a great concern on how to deal with several problems occurred in Halimun Nature Reserves. Problems on forest boundaries, people access to forest, and overlapping claims were the major issues at that time. Rather than directly deal with underlying causes of these problems, the government and many scientists purely focus to address what kind of conservation management in Halimun that can deal with natural preservation and communities welfare, according to the new Law on the Conservation of Biological Resources and its Ecosystem (CBR) in 1990 (Law No. 5/1990) (Ryadisoetrisno, 1992). This law contained stipulation about nature conservation areas, which included national parks, grand forest parks and nature recreation parks. Even though most scientists were still debating on the future of Halimun Nature Reserve's status, in February 1992, the government decided to change it into a national park.

It was uncertain the reason behind this changing status, but definitely it was related to political consideration rather than scientific arguments. In the New Order Regime, protected areas such as national park were basically leveraged in order to get political support from the international community. Natural resources were positioned by the government as economic resources in order to fulfill two political purposes simultaneously: triggering economic growth and winning political support from the international community, in particular the West. Nine national parks, including Mount Halimun National Park, established not long after the establishment of CBR in 1990, in actually, were created primarily to improve Indonesia's image in the international world.

The changing status, however, did not accommodate some conservationist concern on Halimun-Salak forest corridor. This forest corridor provided many animals like Javanese gibbon and Javanese leopard to migrate within it. The conservationist feared that this forest corridor would be degraded and deforested due to logging activities and communities' encroachment, causing many protected species living in danger. Their fear seemed to be happened as the corridor lost nearly 50% of its forest from 666.508 ha to 347.523 ha within the 11-year period (1990-2001) under Perum Perhutani management.

It was not until the following disasters that took the government alert about this deforestation and wildlife issues. In 2001, around 102 villages in Lebak, Pandeglang and Serang Regencies (western part of Halimun-Salak area) were under flood; causing more than 60,000 people became refugees. In the southern part, several landslides had destroyed 2000 houses, causing 94 people killed and others homeless. The natural disaster in surrounding Mount Halimun-Salak area became a major headline in national newspaper and gave the conservationist justification to push the government to declare the whole area as protected areas. Water crisis had been used also as a justification by the conservationist to put 40% of West Java land, including Mount Halimun-Salak area, as protected areas (Kompas, 2003b). Their claims certainly in line with local government bureaucrats' consideration to allocate 40% of its

province land as protected areas, despite uncertain reason behind their consideration (FKKM, 2000).

Furthermore, deforestation had been also used as an allegation of Perum Perhutani's mismanagement (Kompas, 2003c and 2003d). Within the period of 1989 to 2001, Mount Halimun Salak area lost 22,000 ha or 25% of its forest cover due to logging activities and illegal agricultural expansion, causing water crisis to the surrounding areas and disenfranchisement of wildlife habitats (JICA, 2006). The reason to enlarge the national park, based on the needs to protect two corridors (namely, Mount Halimun- Mount Salak and Mount Sanggabuana- Mount Endut), was used as a justification by the national park authority.

Based on these reasons, in 2003, the government issued a decree (Minister Decree No. 175/2003) that claimed all Mount Halimun Salak area as national park. Even though the Perum Perhutani tried to resist (Perum Perhutani officer pers. comm., 2003), its effort failed as it had already lost their legitimacy to control the area due to mismanagement. This decree meant as a triumph by the conservationist, but how the government controlled this area under the national park management will certainly have a different implication.



# What Lies Beneath? The Competing Claims on Forest Access and Ownership

After the national park designation in 2003, people became aware with threats that imposed to their livelihoods and access rights. Fear from being evicted and lost their livelihood access, the local communities refuted the national park designation. The local people claimed that they have the rights and legality to cultivate and dwell within the Mount Halimun-Salak National Park boundaries, while the government claimed that the Mount Halimun-Salak area in terms of legality and legitimately belongs to state property. Another party from local government claims also the land for mining activities and other uses. Some local NGOs tried to facilitate these different claims, but none of them tried to delve the basis of these stakeholders' claim. In this section, the analysis is divided into four sub-sections, first, the stakeholders analysis, second, the basis claim of the government (Forestry Department), third, the basis claim of the local people and fourth, the basis claim of local government district of Lebak.

## Stakeholders Analysis

A stakeholder analysis was used to determine as who are involved in the conflict and the relationship to the issues and to each other. The final objective of the analysis is to understand the positions of associated individuals and institutions with respect to the competing claims. Three strata of analysis, central, districts and villages, have been conducted to understand the parties' position and interest.

The initial findings in central level is that there are five important groups of stakeholders who indirectly involved in this competing claim, Directorate Land Reform of National Land Agency (BPN), Planning Agency of Forestry Department (*Baplan-Dephut*), Perum Perhutani Unit 1 of West Java and Banten, the Law Bureau of Forestry Department (*Biro Hukum-Dephut*) and the Nature Reserve and Forest Protection of Forestry Department (*PHKA-Dephut*). At this scale, these five stakeholders hold many policies regarding on land status, resulting to current competing claims. The *Baplan-Dephut*, *Biro Hukum-Dephut* and *PHKA-Dephut* supported the government claim on national park designation as they provided the legal basis of this designation. On the other hand, Perum Perhutani is less interested to be involved in this conflict, but its decision to allow local people to cultivate and dwell within the Mount Halimun-Salak area during Perum Perhutani's reign causes problems in the future.

Meanwhile, the BPN takes a more neutral position with respect to competing claims. Yet, this agency is indirectly responsible to the current competing claims in 1960s. These five government offices' position and their role to this competing claim will be explored in the next section.

At the districts level, these groups of stakeholders are national park authorities, local government offices and Non-Government Organization (NGO). As Mount Halimun-Salak area covered three districts, it has been a difficult task to interview all of government offices regarding their position to the competing claims. However, it can be concluded that the most important government offices that seem to have significant role are District of Forest and Estate Crop (*Dishutbun*), District Planning Agency (*Bappeda*), District of Spatial Allotment (*Dinas Tata Ruang*), District Legislative (*DPRD Kabupaten*) and Head of District (*Bupati*) offices. At village level, there are at least four groups that have been identified. These are national mining officers, villagers, government officers and customary institution, also known as *lembaga adat*. All of these groups have certain roles and significant influence over the development and expected outcome of these competing claims.

## The Legal Claim of the Forest Department over Mount Halimun-Salak National Park Designation

At first, it was uncertain what the legal claim of the Forestry Department to designate Mount Halimun-Salak area was based on. Previously, hydrological function and biodiversity richness were the reason to claim Mount Halimun-Salak as a national park, but these claims are based on scientific and political arguments rather than legal claims. The Minister Decree of 195/2003 and Minister Decree of 419/1999 stipulate that Mount Halimun-Salak area within West Java and Banten Provinces are forest zone. The area has been allocated through the result of the harmonization of "forest land use by consensus" (TGHK) completed in 1994 and provincial spatial development plans (RTRWP) of 1999. Although these two decrees provide a legal claim for Forestry Department, another decree (Minister Decree of 175/2003) urged to the government and local government to delineate and gazette the Halimun-Salak area, before it can be declared as state forest zone.

This urgency from the minister decree led to other government entities and NGOs to believe that the area are still not yet being delineated and gazetted (WG-T, 2005). Even the *Baplan* believes that only 68,2 km from 539 km of this new designated national park had been delineated, leaving the rest unprotected in terms of legality. Therefore, it required further delineation and gazette process according to Forestry Law of 1999 (see Appendix 1) (Baplan Officer pers. comm., 2004). However, this information was misleading.

In fact, based on Perum Perhutani archives, most of the Mount Halimun-Salak area had been designated, delineated and gazetted during the Dutch Colonial Period. The Table 1 shows

that several government decrees had been issued to designate Mount Halimun-Salak as state forest zone. Within the period of 1906-1939, the government had managed to finalize the gazettelement process. To support these gazettelement processes, about 93.8 ha of dwellings and agricultural lands, owned by the local people, were bought and reforested by the government. The finalized gazettelement processes gave the legality for the Dutch Colonial Government to register most forest area in Mount Halimun-Salak as state forest zone based on Forestry Law of 1927 and Government Regulation of 1932. Therefore, in terms of legality, these state forest zones were well protected.

Table 1: Registered Forests in Mount Halimun-Salak Area by the Dutch Colonial Government (1905-1930)

No	Registered Forest	Government Decree	Date of Gazettelement Finalization	Size (ha)
1	Jasinga I	Gov. Decree No 14/1927	13 July 1934	5.800
2	Jasinga II	Gov. Decree No 14/1927	23 May 1934/14 Sept. 1939	2.865
3	Nanggung	Agric. Dir. No 3613/1930	28 Mar. 1934	-
4	Salak Utara	Gov. Decree No 17/1925	1 Mar. 1926	-
5	Salak	Ind. Staatsblad 562/1911	1 Aug. 1906	-
6	Halimun	Ind. Staatsblad 42/1905	17 Sept. 1914	-
7	North Sanggabuana	Gov. Decree No 6/1915	4 Jan 1933	4.568
8	South Sanggabuana	Gov. Decree No 6/1915	30 Sept. 1924/11 Nov 1935	30.023
9	Bongkok	Gov. Decree No 6/1915	9 Oct. 1919	6.646

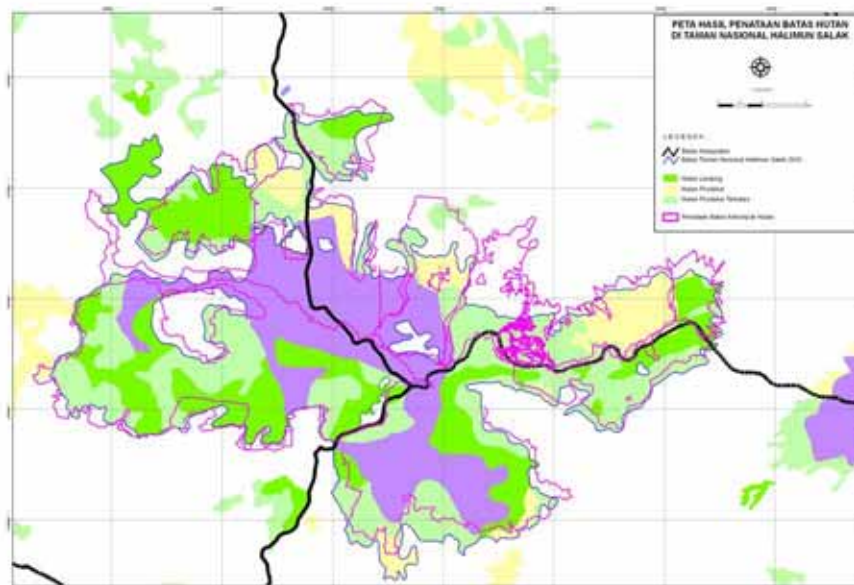
Source: Perum Perhutani Unit III West Java-Banten Archives

These gazettelement processes occurred not only during the Dutch Colonial Period, but also during the Japanese Occupation and after Independence Period. During the Japanese Occupation, most policies endorsed forest conversion into agricultural fields and logging activities by the local people to finance war against the Allies. The conversion policies by the Japanese rulers were truly contradicted to the forest protection policies by the Dutch Colonial. However, they still maintained some part of Dutch Colonial legacies, just like in Mount Halimun-Salak. Based on Government Decree of 4/1924, the Japanese rulers expanded the Mount Halimun-Salak state forest zone by reforesting 91 ha of local people dwellings and 370.7 ha of private crop estate plantation in Lebak District.

Dutch Colonial legacies were still continued even after the Independence Period. The Ministry of Agriculture in 1954 issued Ministerial Decree No. 92 aiming to designate 68,000 ha private plantation lands, including the Mount Halimun-Salak area, in Java (that were left by the owners) to become state forest zone. Once again, a hydrological function argument during the Dutch Colonial Period was used as the main consideration by the Ministry of

Agriculture to convert and reforest these private plantations as state forest zone. About 14,562.3 ha of private plantation had been gazetted at that year. Two state forest zone designations to private crop estate plantations in Mount Halimun-Salak area were also done in 1967 and 1992. In total, about 419.17 ha of private plantations were gazetted also during that period.

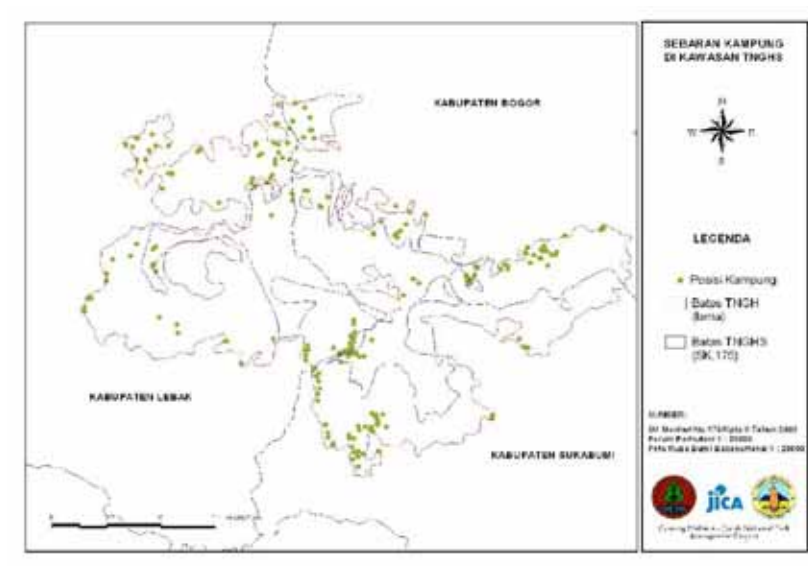
In conclusion, from 1280 km, nearly 1170 km of Halimun-Salak area had been delineated and gazetted since the Dutch Colonial until today. Within this gazettelement, many local communities' and crop-estate plantations' land had been excluded from the forest land (see Picture 3). However, there is a need to gazetted further to the rest of Halimun-Salak area in Lebak District and Sukabumi District about 110 km. Consequently, this fact was used by the Department of Forestry as a legal claim for Halimun-Salak designation (*Baplan-Dephut* officer pers. comm., 2006). An idea to regazette the national park as an alternative land conflict resolution (Galudra, 2005; Galudra *et al*, 2005a; Galudra *et al*, 2005b) was rejected by the Forestry Department simply because all state forest zone in Mount Halimun-Salak area that had been registered during the Dutch Colonial and gazetted during the Independence Period cannot be regazetted (*Baplan-Dephut* officer pers. comm., 2006).



**Picture 3:** The Result of Mount Halimun-Salak Gazettelement Process (ICRAF Internal Data, 2006)

## The Legal Claim of the Local People over Mount Halimun-Salak National Park Designation

Based on recent report from JICA (2006), there are about 343 hamlets that are located within and surround the Mount Halimun-Salak National Park. From 343 hamlets, around 314 hamlets were identified overlapping with national park designation (see Picture 4). There is also an issue on several usage by local people to the national park forest land such as non-timber forest products (rattan, bamboo, etc), timber, and land for agriculture and mining activities (Galudra, 2003a; Galudra, 2003b), but lack of findings on the perceived legal claims by these local people.



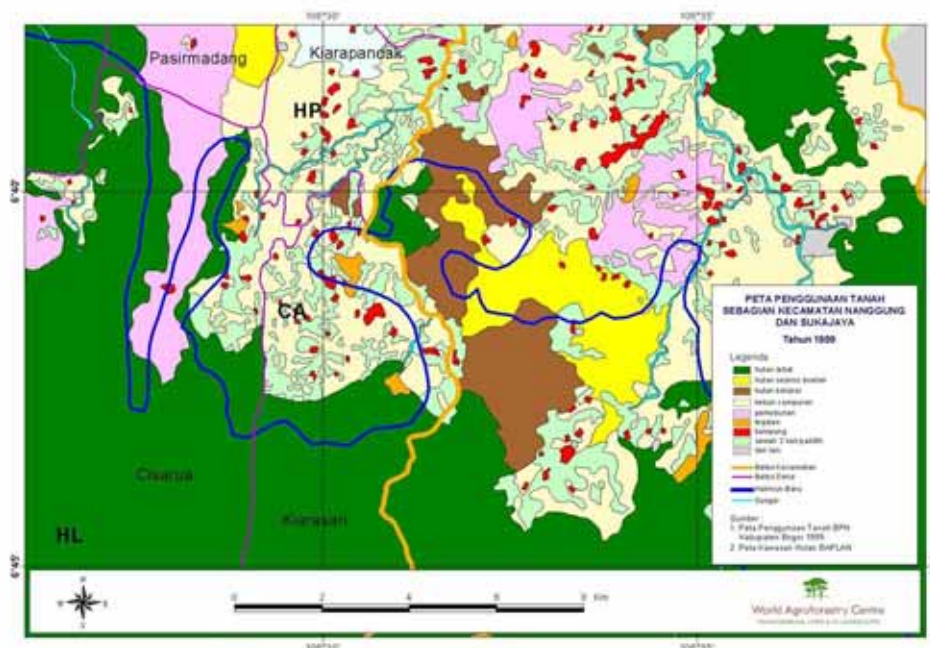
**Picture 4:** The Settlements within the National Park Boundaries (JICA, 2006)

Many local people have different perceived legal claims. Some of the perceived legal claims are not derived from legal aspect, but related to local people's socio-culture interaction to the forest. The shifting cultivators claim the designated national park land based on their ancestors' land rights or customary rights. They claimed that they have opened and cultivated this area since 1920s. Others claimed that this area has been used and accessed since 1940s. These shifting cultivators, called as *kasepuhan*, claimed themselves as descendants from Pajajaran Kingdom and ancestor of a one elite army of the kingdom. They practices their shifting cultivation based on their ancestry's ways of live by using forest farming area, *ngahuma*. They also frequently move their home from area to another area, looking for *uga lebak cawane*, the promised land by their ancestors (Adimihardja, 1992).

They also created their own environmental knowledge by classifying forest into three types, *leuweung geledegan/kolot* (primary forest and protected areas), *leuweung titipan* (ancestral forest/entrusted forest) and *leuweung sampalan* (man-made forest, including grassland and fallow area) (Adimihardja, 1992; Galudra, 2003b; Hanafi *et al*, 2003). These local people have different knowledge, norms and values from the forestry law and also beyond forest authorities' perspective.

Unfortunately, there is no conclusive study on how many people have claim within this national park land and how many hectares of national park lands are being claimed by them. A survey by communities' leader reveals that around 8,000 ha of land within the national park are being claimed as ancestor land (Communities' leader pers. comm., 2005). Another report from RMI shows that around 9520.4 ha of national park lands are being claimed by the shifting cultivators as their ancestor's land (Santosa *et al*, 2007). Yet, the RMI's report only surveys two *kasepuhan* groups, while eleven *kasepuhan* groups surrounding the national park have not yet been assessed.

Some of the legal claims by the local people have private ownership rights issued by the National Land Agency in 1960s. This claim was discovered in Bogor and Lebak Districts (See Picture 5). No available data about how many hectares of designated national park are overlapped with these private ownership land, but a survey in Malasari Village, Bogor District, shows that about 40 ha of designated national park land have been certificated as private ownership land since 1960s (Nurhawan *et al*, 2006; JICA, 2006).



**Picture 5:** Overlapping Claim of Land Status in Sukajaya and Nanggung Sub-Districts, Bogor District (ICRAF internal data, 2005)

Historically, the distribution of ownership rights to local people in 1960s is part of national policy on agrarian reform. People who cultivate the land were the main target for agrarian reform by providing land certificate for tenure security. They were invited to register their land before receiving land ownership rights. These processes mostly occurred between 1950s and 1960s (Nurhawan et al, 2006). Regrettably, this problem will be solved by the Department of Forestry through a litigation process (*Baplan-Dephut* pers. comm., 2005). The National Land Agency tried to defend its certification process by claiming that forest boundaries are still unclear. Therefore, forest delineation process must be implemented to determine clearly the land controlled by the Forestry Department (National Land Agency officer pers. comm., 2005).

Before the area was designated as a national park, the forest authorities during 1950s to 1970s tried to solve these overlapping claims. They allowed the local people to farm the land with the condition that they must share 25% of their farming profit to the forest authority. This mechanism was used since 1950s until it was abolished in 2003, after the area became a national park (Hanafi *et al*, 2003; Galudra *et al*, 2005a; Galudra *et al*, 2005b). The mechanism certainly provided land tenure security and legal claim for the local people to farm the lands, even though in terms of its legality, it was quite doubtful.



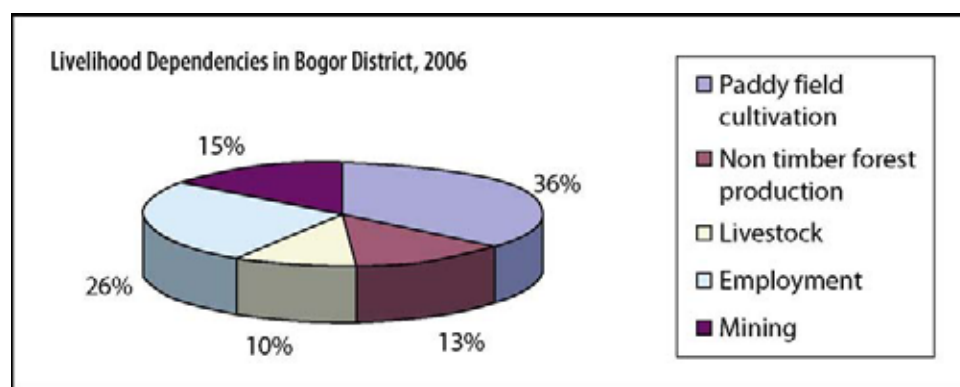
**Picture 6:** Paddy Field Cultivation within Forest Boundaries

When the forest zone became a national park in 2003, this mechanism was used by many people to secure their access rights. The national park authorities refused to recognize such claims, but they did not give any solution to it. Consequently, the local people tried to search



secure land tenure mechanism through collaboration process such as Sub-Village with Conservation Designation and Local Government Regulation for Customary Land. However, others tried to register their land to obtain ownership-right certificates from village offices and National Land Agency through the communities' leader and corrupted villages' officers, creating more conflicting situation with the national park authorities (HUMA Internal Data, 2005a and 2005b).

Their claims to the national park land are so persistent because they may be related to livelihood aspect. The following figure elaborates the finding in Bogor District by using group discussion (see Picture 7). The findings suggested that more than half (64%) of local people's income in Bogor District came from rice production, NTFP collection and mining activities. These three activities mostly are using national park land (Nurhawan et al, 2006).



**Picture 7:** Livelihood Dependencies in Bogor District, 2006

Another claim came from the miners, who lived nearby a national mining concession in Pongkor Mountain, Bogor District. The total number of this people is less than 100 people (ANTAM, 2002). They are mostly local and migrant people, which mostly marriage with local people. Since 1992, a national mining, called PT Aneka Tambang (ANTAM), explored this area based on Contract Exploitation No. 893/West Java/1992. The area under this contract was 4,058 ha, before it was expanded in 2000 to 6,047 ha. All of this area is within the national park boundaries. Since then, many people either local or migrants flocked to this area. To avoid further conflict, the national mining authorities allowed many people to mine abandoned area within the exploitation area. This local people certainly caused water pollution to surrounding area since they used mercury for gold processes.

Even though this illegal activity was taken place within the national park boundaries, the national park authorities were hesitant to close this activity since it was within the exploitation area of the national mining company. The national park authorities' hesitancy



and the mining company's tolerance brought legal perception by the miners to their activity (Nurhawan et al, 2006).



**Picture 8:** Mining Activities by Local People within the Forest Boundaries

From the explanation above, some local people perceived that they have legal claim through land certificates from the National Land Agency, while most people claim that their land are their ancestor lands and through profit-sharing mechanism's rights. Interestingly, gold miners assume to have legal activity due to national park authorities' hesitancy and mining company's tolerance. Several underlying cause of these claims may relate to the lack of understanding by the forest authorities to customary rights, the clarity of forest boundaries and livelihood dependencies to the disputed land. Unfortunately, the national park authorities' response did not address the underlying cause of these claims, but rather to challenge these claims through litigation process, causing more problems in the future.

## The Legal Claim of the Local Government of Lebak District over Mount Halimun-Salak National Park Designation

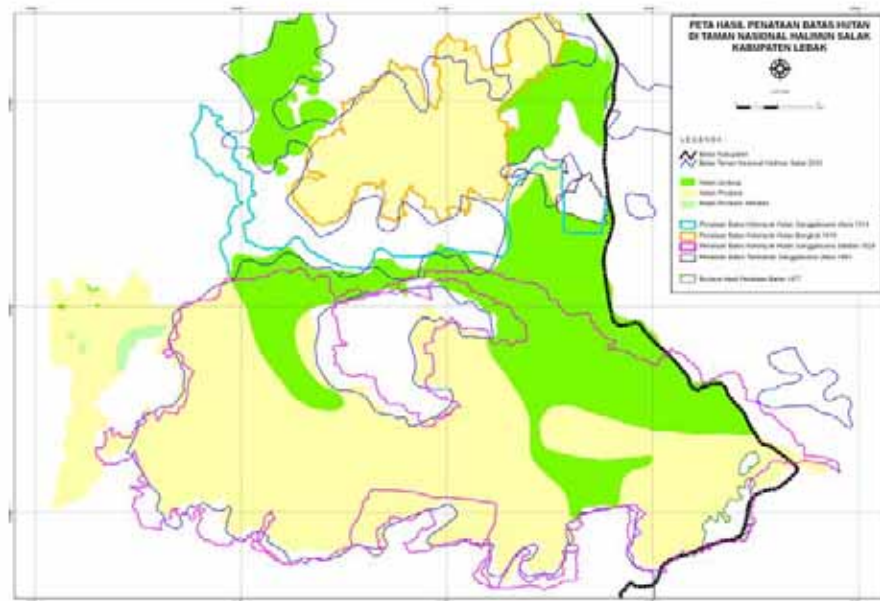
Unlike other local government districts, the Local Government of Lebak District has certain interest on Mount Halimun Salak land and its resource. In early 2008, the head of Lebak District (*Bupati*) presented his case to the national legislative (*Dewan Perwakilan Rakyat*) on land tenure issue in Mount Halimun-Salak. He requested to exclude 15,000 ha of national park land in Lebak District for mining, plantation and infrastructure development. The national park authorities feared that this request will have serious negative ecological and hydrological impacts including significant reduction of the watershed buffer area and loss important block of forest habitat for endangered species, like Javan hawk-eagle, Javan leopard and Javan gibbon (National Park officer pers. comm., 2008).

Others concerned that the *Bupati*'s request will reduce also the forest of Banten Province. The province now has 201,000 ha (24.6%) of forest and approximately will be reduced to 186,000 ha (22.7%) if the *Bupati*'s request is accepted. This reduction is contrary to the efforts to save the remaining forests in Java, which according to Forestry Law of 1999 (based on carrying capacity assessment of the island) should be at least 30% covered with forest; whereas the remaining coverage is now only 17.2% (*PHKA-Dephut* pers. comm., 2008).

On the other hand, the *Bupati*'s legal claims actually are based on the historical uses of this area for mining activities. Since 1936, this area with approximately 8,000 ha was used for mining activities by the Dutch Colonial government, before it was closed in 1991 because of its unproductive gold yield. However, it is still under the mining company's (PT Aneka Tambang) control based on Government Law No. 91 of 1961.

Unfortunately, the area became open-access and many people started to mine the area looking for gold. A report in 1994 calculated that about 347 people were living and mining the area. About 29% of them were local people (Suhaeri, 1994). This mining activity caused 6,000 ha of national park deforested and degraded (Pikiran Rakyat, 2003). In the middle 2007, the mining company left and abandoned the area, resulting to no one's control.

This historic evidence led the *Bupati* to claim the area for mining activities and other uses. Moreover, he also alleged that the national park designation had caused fear to the local people and many of them were being evicted after the national park designation. The Forestry Department countered this allegation and responded that this area had been gazetted since the Dutch Colonial. Nevertheless, it is uncertain who has the legal claim in that area since both parties use the same map to claim the land (see Picture 9).



**Picture 9.** The Dutch Colonial Map that Causes Confusion

The Bupati claimed that, based on Dutch Colonial map, the area had been excluded and became enclave, while the Forestry Department claimed that this map confirmed the Forestry Department's claim as state forest zone. Obviously, the validity of this map is quite dubious as both parties interpreted in different perceptions. This competing claim between the Bupati and the Forestry Department will be explored in detail in the next publication.

# Clear as Mud: Policies and Laws that Brought Competing Claims

As mentioned before, many of these competing claims by the stakeholders refer to several policies. This section will explore the policies' ambiguities that caused these competing claims by the stakeholders. First, it discusses the policies that brought two actors (Forestry Departments and local communities) on conflicts and then it shifts to the policies that brought others (Forestry Department and local government district of Lebak) on disputes.

## The Policies that Brought Forestry Department and Local Communities in Dispute

Most of the policies that are being used by the Forestry Department to claim Mount Halimun-Salak area came from the Forestry Law of 1999 and some government regulations as well as minister decrees. This law and other decrees are being used to give legality and legitimacy for the Forestry Department to control and manage the forest areas.

*First*, it forwarded gazettment process' result, which is aim to determine state forest zone and non state forest zone boundaries. This is derived mainly from Forestry Law No. 41 of 1999 and Government Regulation 44 of 2004, which contain the need for the government to gazette and delineate the forest zone boundaries. They stipulate that the government have the power to designate an area into state forest and state forest into non-state forest. Other minister decrees such as Minister of Forestry Decree No. 32/2001, 70/2001 and 48/2004 discuss also how to set up the gazettment process in the field.

A forest can be claimed as a state forest if none of any rights overlap within this forest; therefore, gazetterment process is needed. Since all the areas of Mount Halimun-Salak have been gazetted according to these policies, this situation brings a legitimacy that the Mount Halimun-Salak forest area did not contain any communities' and others rights, resulting the Forestry Department legally controls and manages the area as state forest zone. This claim may need more thorough investigation as there is an opposite view about it.

*Second*, Halimun-Salak area contain many endangered species so the government should protect these endangered species and their habitats. The Government Regulation No. 68 of 1998 provides a basis claim for the government to designate forest conservation based on several criteria such as its landscape uniqueness, wildlife habitats, endangered species etc. As

it was described before, several researches in Halimun-Salak area showed that it contains many endangered species and wildlife habitats. As a result, the government can claim it as state forest zone due to its biodiversity values. How the government control and manage this conservation forest can be manifested from Government Regulation No. 68 of 1998, No. 7 of 1999 and No. 8 of 1999.

On the other hand, the communities have claim to Mount Halimun-Salak area but they did not discuss much about their claims related to policies. Nevertheless, there are certain link to the policies concerning on their claims. **First**, some of local people hold land ownership right certificates from the National Land Agency. This kind of right is considered as the strongest and fullest rights that can be given to a person over the land and is being well-protected by the Agrarian Law of 1960. **Second**, despite no directly link to the policies, these kind of shifting cultivators' customary right and access are considered being legally protected through Constitution Amendment of 1945, Agrarian Law of 1960, Forestry Law of 1999, Constitution Court of 2003 and Regional Government of 2004 (RMI-Huma-ICRAF Internal Data, 2006). However, these laws do not discuss about what kind of rights should be given to customary people. The Government Regulation No. 10 of 1960 and Government Regulation No 24 of 1997 stipulate that customary rights can be registered and given certain land rights as just what the National Land Agency had already given to the local people in Bogor District in 1960s.

From the description above, the Forestry Department had legal claim based on national policies, whereas the local communities may have some difficulties to relate their claims to policies. Yet, some of local people have ownership rights from the National Land Agency within the designated national park and this kind of right is well protected by the law. Unfortunately, this right is being considered as illegal by the Forestry Department officers, even though they did not mention the reason of it.

## The Policies that Brought Bupati of Lebak and Forestry Department in Dispute

Unlike other districts, the District of Lebak has claim within the designated national park. It is still unclear what the basis of laws/policies Bupati currently used to claim this area as a mining operation. Therefore, in-depth study to both parties will be analyzed later in the next publication. However, this paper could speculate what laws/policies Bupati will be using against the Forestry Department's counter-claim.

**First**, the Cikotok mining area has been under the PT Aneka Tambang control since 1958. Through the Government Regulation No. 91 of 1961, the Cikotok mining site was 2596 ha and it was enlarged to Corotan with a size of 1978 ha. Though, this law did not mention that this concession area is belonged to state forest zone. Therefore, it could be considered that

the land is under the control of the state, but not as a state forest zone. **Second**, based on Government Regulation No. 75 of 2001, the Bupati had the privilege to designate a mining area. Since the designated mining area contains granite and precious stone, based on Government Regulation No. 27 of 1980 and Government Regulation No. 37 of 1986, the Bupati has the power to claim and regulate the area under its jurisdiction.

On the other hand, the Forestry Department tried to counter the Bupati's claim by providing several legal claims based on policies. **First**, the Forestry Law of 1999 stipulates that each province should have 30% of designated forest zone (based on carrying capacity). Since the Banten Province only has 24.6% of forest zone, the reduction may well against the Forestry Law mandate. **Second**, the Forestry Law of 1999 allow the conversion of forest zone limited only to forest zone that has been designated by the Ministry of Forestry as converted forest production zone. Since Mount Halimun-Salak area is being categorized as forest conservation area, the conversion could not be carried out. **Third**, once again, the gazettelement process in Mount Halimun-Salak has been finalized. Based on Forestry Law of 1999 and Government Law No. 44 of 2004, the area can be claimed as state forest zone after the gazettelement process has been conducted and finalized.

## **A History Approach: Unravel a Truth beyond Perceived Legal Basis**

As it has been explained before, the forest gazettement in Mount Halimun-Salak area had begun since the Dutch Colonial period. In 1933, a commission was set up to give a justification to designate the area as state forest zone. Within the period of 1905-1996, several forest gazettements were implemented to determine forest boundaries from local people claims. According to Contreras-Hermosilla and Fay (2005), the finalized gazettement process gives legality for the government to claim an area as state forest zone. In Mount Halimun-Salak case, the area can be considered as state forest zone.

On the other hand, as times goes by, the competing claims within these forest boundaries still exist until today. The local people have claimed in this area by using historic claims. This condition raises a question on why these competing claims emerge. The historical analysis was used to explain and understanding these competing claims. Unlike those two analyses (policy analysis and legal perceived claims), historical analysis will definitely give a different perspective. It shows that forest land ownership definition and weak legal land tenure system during the gazettement process have caused this ongoing land disputes. This analysis may help to understand the persistence of these disputes and question the legality of these gazettement processes by the government.

Before the government conducted forest gazettements within Halimun Salak area, many local people had used the area for shifting cultivation. The Dutch Government tried to control this shifting cultivation through several government regulations like Government Decree 1896, Government Decree No. 6/1900 and Government Decree No. 8/1909. Nevertheless, these government regulations did not address the legal rights and tenure security for shifting cultivators on their land. The Resident of Banten took an initiative by legalizing their land through Resident Decree No. 10453/7/1924. This decree allowed the cultivators to farm their lands based on rent right with unlimited period, but with restricted area. Furthermore, it gave an authority to village leaders to allocate and distribute the land to the shifting cultivators. Since 1901 to 1925, the Banten Residency had distributed about 101,140 ha of land for shifting cultivation (Kools, 1935; ANRI, 1980; Galudra, 2006). This decree certainly provided legal tenure security for the shifting cultivators to farm their land.

Regrettably, the Dutch Forest Service in this area did not exclude the designated shifting cultivators' land from the gazettement map. Based on this map, the forest service tried to

control and used severe punishment to those who access the gazetted forest area. In 1922, about 3000 shifting cultivators were putted in jail. The resident objected to the gazettement processes since he believed that many local people's land were being seized as state forest zone. Based on his short survey, he identified that around 3000 ha of shifting cultivators' land had already been taken as state forest zone and more likely more (see Table 2). He also condemned the Dutch Forest Service's carelessness by not involving local people's consent during the forest gazettement and claimed that even the forest authorities themselves could not proved where the state forest boundaries were, causing many local people and regencies' confusion (ANRI, 1976; ANRI, 1980). He also claimed that the Forest Service had broken the law because all of shifting cultivation land was secured legally through resident decree (Kools, 1935).

Table 2: The Registered Forest that Overlap with Resident Decree Recognition of Shifting Cultivation Land in 1934

Forest Register	Government Decree	Delineated	Approved	Size (ha)	Under the Control of
G. Kendeng	G.B. 7-10-'15 no 6 II no. 5 G.B. 26-4-'27 no 4 IV d	11-2-'24 30-3-'27	10-3-'25	14319	Perum Perhutani Forest Zone
G. Pengasaman	G.B. 7-10-'15 no 6 I no. 5 G.B. 26-4-'27 no 4 III a	21-10-'24	19-2-'28	18844	Perum Perhutani Forest Zone
G. Padoe	G.B. 7-10-'15 no 6 II no. 6 G.B. 26-4-'27 no 4 4 c 1	23-3-'20	25-11-'20	3514	Perum Perhutani Forest Zone
G. Sadapoelang	G.B. 7-10-'15 no 6 II 2 G.B. 26-4-'27 no 4 IV/1	11-10-'22	1-1-'23	2376	Perum Perhutani Forest Zone
G. Tjabe	G.B. 7-10-'15 no 6 II 1 G.B. 26-4-'27 no 4 IV b 3	9-9-'22	19-12-'22	3432	Perum Perhutani Forest Zone
G. Bongkok	G.B. 7-10-'15 no 6 II 4 G.B. 26-4-'27 no 4 IV b 5	19-12-'19	9-6-'20	6646	National Park Forest Zone
G. Sanggabuana Zuid	G.B. 7-10-'15 no 6 II 3 G.B. 26-4-'27 no 4 IV e 1	5-7-'24	6-2-'25	30023	National Park Forest Zone

Source: Kools, 1935



The Dutch Forest Service defended their claim that during the forest gazettement process, there was no local communities' property rights existed within the state forest boundaries. Their claim was based on state domein of Agrarian Law 1870 and being used to interpret state forest zone definition that all land that could not be proven to be owned (individually or communally) by villagers (i.e. land that was not currently under tillage or that had lain fallow for more than three years) was the property of the state. At that time, the fallow period was between 6-7 years (Kools, 1935) so therefore; it would not legally fit into individual/communal land ownership. Later, in 1934, the Governor General intervened this dispute and ordered both parties to map the area of state forest zone and shifting cultivation land. Until the World War II, no further information regarding this dispute.

The current government does not even know about this historical dispute. The Department of Forestry thinks that all the registered forest during the Dutch Colonial had been gazetted in order, but it does not realize that these state forest zones were still possessed competing claims from the shifting cultivators who historically were being legalized by the resident. People will perceive that the Department of Forestry has weak legal claims on Mount Halimun-Salak area, creating weak land tenure to the area.

This weak legal claim eventually caused reclaiming from local people, resulting to deforestation, during the Independence Period. A report by the government in Lebak District and Sukabumi District in 1955 showed that around 1,576 ha of state forest zone in Mount Halimun-Salak have been converted to dwellings and farming system by 2,546 households. The report also stated that this conversion was based on villagers' claim that the area previously was belonged to their ancestor' shifting cultivation land, before it was brought by the Dutch Colonial Government as state forest zone (*Baplan-Dephut*, unpublished). A study in Mekarsari Village, Lebak District have reported similar situation (Galudra et al, 2005b). Another recent study in 2006 in Bogor District found also the local people's reclaiming based on their ancestors' shifting cultivation land during the Independence Period and during the Reformation Period (Nurhawan et al, 2006).

The historical evidence shows that the gazettement process in Mount Halimun-Salak area had neglected the existing legal use by the shifting cultivators during the Dutch Colonial period. No solution was given to compromise this conflicting legal issue, but the current government used this gazettement process as a basis legal claim to control Mount Halimun-Salak area as a national park. The government unaware on this historical evidence and certainly it should solve the legal issue of the shifting cultivators, before designating as a national park.

## Discussion and Conclusion: Policies Options and Interventions

Basically, the definition of forest land ownership and forest gazettement processes based on Dutch Colonial regulations have caused these land disputes in Mount Halimun-Salak. The current government unaware with this condition and mostly preferred to maintain the Dutch colonial policies and even expand upon colonial regulations concerning forests, as these provided a readily available basis for the expansion or consolidation of state control over land and its resources in Mount Halimun-Salak area. Consequently, when the government declared Mount Halimun-Salak area as a national park based on gazettement process during the Dutch Colonial, several stakeholders repudiated it. The land tenure conflict among the stakeholders in Mount Halimun-Salak area can be summarized into four categories:

- ***Use right's conflict.*** This conflict has been found when some local communities forwarded livelihood aspect and mining activities as their legal claims to the designated national park.
- ***Access right's conflict.*** This conflict can be located within the area that is being claimed by the customary people.
- ***Security right's conflict.*** Sharing profit mechanism was informally recognized by previous forest authorities. But when the area changes its status into a national park, this mechanism could not be used; therefore, conflicts erupted.
- ***Control/ Ownership right's conflict.*** This type of conflict can be found between the Bupati of Lebak and Forestry Department's conflicting claims.

Table 3 shows these competing perceived legal claims and the utilization of policies/ laws to exert greater legal basis by these competing stakeholders.

Table 3: The Competing Perceived Legal Claims and Policies Usage by Stakeholders in Mount Halimun-Salak Area

Stakeholders	Perceived Legal Claims	Policies/ Laws
Forestry Department	Gazettement Process (Perum Perhutani Achieves)  National Park Designation Map based on Minister of Forestry Decree No 175/2003  Forest Zone Designation Map based on Minister of Forestry Decree No 195/2003 and 499/1999	Forestry Law No. 41 of 1999 Government Regulation No. 68 of 1998 Government Regulation No. 7 of 1999 Government Regulation No. 8 of 1999 Government Regulation No. 44 of 2004 Minister of Forestry Decree No. 32/2001 Minister of Forestry Decree No. 70/2001 Minister of Forestry Decree No. 48/2004 Minister of Forestry Decree No 175/2003 Minister of Forestry Decree No 195/2003 Minister of Forestry Decree No 419/1999
Communities	Ancestor Land/ Customary Land rights  Land Ownership Rights certificates  Sharing profit mechanism  Mining rights  Livelihood aspect	Constitution Amendment of 1945 Agrarian Law No. 5 of 1960 Forestry Law No. 41 of 1999 Constitution Court Law of 2003 Regional Government Regulation of 2004 Government Regulation No. 10 of 1960 Government Regulation No. 24 of 1997
District of Lebak	Gazettement process (Perum Perhutani Archives)  Historic claim  Cikotok Mining Exploration Map	Mining Law No. 11 of 1967 Government Regulation No. 75 of 1961 Government Regulation No. 27 of 1980 Government Regulation No. 37 of 1986

Based on this finding, there are many policy options and interventions that can be given to help to settle these conflicts. However, these conflicts resolution depend on what type of land tenure conflict are being competed by these stakeholders (See the RaTA manual for more explanation (Galudra et al, 2006)). The conflict resolution between the Bupati of Lebak and the Forestry Department will be explored in-depth in the next publication.

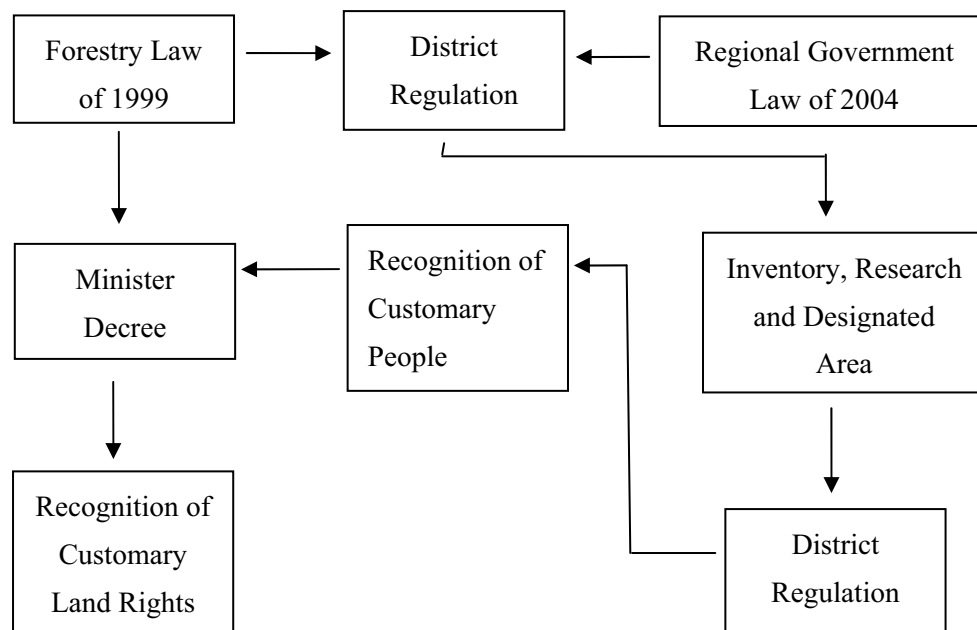
### **1. Access Rights based on Minister of Forestry Decree No. P 56/2006 and P 19/2004**

People who have use rights' claim within the national park can be addressed through traditional zone or religious and culture zone (Minister of Forestry Decree No. P 56/2006). This decree is also supported by many laws and decrees such as Conservation Law of 1990, Government Regulation No. 6 of 1990, Government Regulation No. 68 of 1998 and Minister of Forestry Decree No P 19/2004. Based on these laws and decrees, the Government of Indonesia currently promotes a Conservation Village theme as a way to settle this kind of

conflict within and surrounding the national park. Despite many people's enthusiasm on this approach, this conservation village theme could not be applied to whole area of the national park. The Forestry Law of 1999 forbids this kind of rights being implemented to the area of core and utilization zones within the national park.

## 2. Recognition of Customary Rights within the State Forest Zone

The recognition of customary rights is clearly stated and protected in several laws such as Constitution Amendment of 1945, Agrarian Law No. 5 of 1960, Forestry Law No. 41 of 1999, Constitution Court Law of 2003 and Regional Government Regulation of 2004. Except the Forestry Law of 1999, the other laws do not stipulate on what type of rights that can be given to this customary people. The Forestry Law of 1999 can give access rights to the customary people to manage and use the forest. However, this customary land right can be given if thoroughly study and district regulation can show the legitimacy of this customary people. Picture 10 shows the process of how customary land rights can be given within the state forest zone.



**Picture 10:** The Recognition Process of Customary Land Rights within the State Forest Zone based on national policies

However, this process has certain limitation. *First*, it only deals with access and use rights. Therefore, if the land tenure conflict is dealing on access and use rights, then this kind of process can settle the conflict. However, some of conflict in Mount Halimun-Salak is talking about control and ownership rights and this process is hopeless on solving this kind of

conflict. **Second**, this process involves many stakeholders, including district government, research institutions, district legislative and Forestry Department, causing high transaction cost for the customary people to get their customary rights. In some cases, this process requires an NGO's facilitation just like what RMI does in Lebak District.

### **3. Re-delineate and Re-gazette State Forest Zone**

Re-delineate and re-gazette state forest zone can be offered to settle the ownership/ control rights conflict. The purpose of delineation and gazettement process is to determine between state forest and non-state forest area, giving more legitimacy that the designated state forest does not contain any overlapping claim of rights. The government have used the gazettement process during the Dutch Colonial as its legal base to claim Mount Halimun-Salak area as a national park. However, the historical evidence shows that this process in the Dutch Colonial neglects the shifting cultivators' rights so that re-delineation and re-gazettement process are required. Unfortunately, there is no law/ policy that can give a legal base for such activities.

### **4. Forest Rights Definition Policies**

The Forestry Law of 1999 defines state forest as a forest that is not being under any rights with it. However, it did not stipulate any definition of what kind of rights that could be overlapped with the forest. A Minister Decree No P.26/2005 defines forest under title rights such as ownership right (*hak milik*), cultivation right (*hak guna usaha*) and right to use (*hak pakai*). It seems that the forest policy only recognizes three land rights title, while there are 10 land titles that are being regulated by the Agrarian Law of 1960 but not being accommodated by the Forestry Law. One of those rights that may be overlapped is land clearing rights (*hak membuka hutan*) and forest cultivation rights (*hak memungut hasil hutan*). These laws are under the customary rights category and many of these rights have been used by the shifting cultivators to use and access the forest in Mount Halimun-Salak area. It should be considered by the government to include these rights so that during the gazettement process, these kinds of rights should be taken account as forest rights (*hutan hak*).

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## Our vision

Our Vision is an 'Agroforestry Transformation' in the developing world resulting in a massive increase in the use of working trees on working landscapes by smallholder rural households that helps ensure security in food, nutrition, income, health, shelter and energy and a regenerated environment.

## Our mission

Our mission is to advance the science and practice of agroforestry to help realize an 'Agroforestry Transformation' throughout the developing world.



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