

Chapter 5

Conflict of Legitimacy Over Tropical Forest Lands: Lessons for Collaboration from the Case of Industrial Tree Plantation in Indonesia



Takahiro Fujiwara and Nariaki Onda

Abstract Industrial Tree Plantation (ITP) in Indonesia has been controversial due to its significant environmental, economic, and social impacts and the severe conflicts among stakeholders. Therefore, it is crucially important to discuss the fundamental structure of the conflicts to promote going forward. We introduce the concept of “legitimacy” and discuss the (1) inequality of the landholding structure and (2) legal pluralism established by historical circumstances as the fundamental structure of the conflicts. Our discussions present some key lessons in promoting collaboration among stakeholders. The first lesson is that the degree of interest and priority for problems differs among stakeholders. Therefore, an understanding of these differences is the first step toward collaboration. The second lesson is about the importance of considering history. Awareness of the problem, interpretation of the historical facts, and evaluation of other stakeholders by a certain stakeholder change over time. Therefore, to start a collaboration, it is necessary to build a consensus among stakeholders as a time point to go back to in order to discuss the problem. The third lesson is that a procedure for data presentation agreeable among stakeholders as independent, neutral, and fair is essential for their collaborations. Especially in cases where conflicts among stakeholders are intensive, it appears that confidence in and interpretation of presented data are different for each stakeholder. Therefore, data presentation agreeable to all stakeholders is essential to promote their collaborations. Unlike conventional scientific research, scientists are required to uphold various values existing in society to collaborate with stakeholders in transdisciplinary research of Future Earth.

Keywords Multiple functions of forests · Wealth inequality · Legal pluralism · Various values · Fairness

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119

1 Introduction

A tropical virgin forest is a biocenosis where biodiversity is the highest on earth; as many as 44% of all species of vascular plants and 35% of all species in four vertebrate groups are confined to 25 hotspots (Myers et al. 2000). Indonesia has extensive tropical forests, next only to Brazil and the Democratic Republic of the Congo, which include 2 of the 25 hotspots: Sundaland and Wallacea. Indonesia is therefore called a “mega-diversity country” because it contains so many species, while only covering approximately 1.3% of the land area of the world (Kawamoto 2011).

Approximately 70% of the national territory of Indonesia (approximately 130 million ha) is “state forest area (*kawasan hutan*)”; it is classified into three categories: (1) conservation forest (*hutan konservasi*), (2) protected forest (*hutan lindung*), and (3) production forest (*hutan produksi*). The proportion of each area is as follows: the conservation forest is 16.2% (approximately 21 million ha), the protected forest is 24.5% (approximately 32 million ha), and the production forest is 59.3% (approximately 78 million ha) of the total forest area (Kementerian Kehutanan 2012a).

To utilize the state forest area, there are six types of forest and wood product utilization licenses (IUPHHK: *Izin Usaha Pemanfaatan Hasil Hutan Kayu*): (1) natural forests (HA: *Hutan Alam*) (hereafter, NF/HA), (2) industrial tree plantation (HTI: *Hutan Tanaman Industri*) (hereafter, ITP/HTI), (3) ecosystem restoration (RE: *Restorasi Ekosistem*), (4) community tree plantation (HTR: *Hutan Tanaman Rakyat*), (5) community forestry (HKm: *Hutan Kemasyarakatan*), and (6) village forest (HD: *Hutan Desa*). The community tree plantation (HTR), the community forestry (HKm), and the village forest (HD) are aspects of social forestry that aim to improve the welfare of local communities and customary law communities, while balancing the environment and sociocultural dynamics (the regulation of Minister of Environment and Forestry No. 83 in 2016 regarding social forestry).

Companies carry out their businesses with these licenses. In the last 20 years, the ITP/HTI was increasingly used in Indonesia (Fig. 5.1). Therefore, ITP/HTI is becoming increasingly important when considering forest conservation in Indonesia. In terms of mandatory and voluntary systems for forest conservation in the ITP/HTI area in Indonesia, the Ministry of Environment and Forestry (MoEF) obliges ITP/HTI companies to allocate more than 10% of the operation area as a protected area (the regulation of Minister of Environment and Forestry No. 12 in 2015 regarding the development of industrial tree plantation). In addition to this mandatory obligation, some pulp and paper companies have voluntarily declared a zero-deforestation policy to carry out production activities using only planted trees procured from ITP/HTI area without cutting down natural forests.

ITP/HTI has attracted many stakeholders. However, ITP/HTI has been controversial due to its large impact on environmental, economic, and social aspects. Some stakeholders expect ITP/HTI to meet growing timber demand, create employment opportunities, and contribute to national economic development. In contrast, other stakeholders, such as environmental and human rights nongovernmental

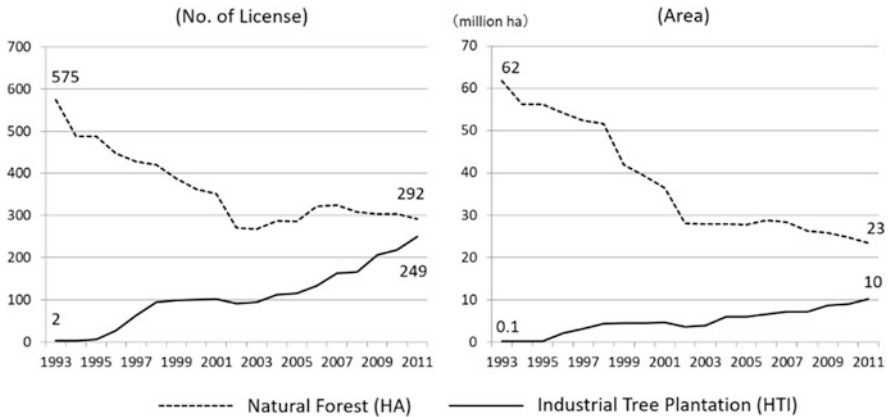


Fig. 5.1 The transition of natural forest (HA) and industrial tree plantation (HTI) licenses between 1993 and 2011 (source: translated Fujiwara et al. (2015) from Japanese to English by authors. Original date came from Kementerian Kehutanan (2012a))

organizations (NGOs), strongly criticize ITP/HTI for biodiversity loss caused by converting natural forests (including past conversion), forest and peatland fire owing to inappropriate peatland management, and land disputes due to violation of local people's rights. To promote collaborations among stakeholders (i.e., co-design, co-production, and co-delivery) for forest conservation in ITP/HTI, it is therefore crucially important to discuss the fundamental structure of these conflicts. Here we introduce the concept of "legitimacy." Miyauchi (2006) defines legitimacy as a situation where social recognition and/or approval is established about who should engage and manage a certain environment and under what value or what kind of mechanism (or the manner of recognition and/or approval). Abe (2006) characterizes present forest issues in Indonesia as an interactive process in which multiple legitimacies have different levels that need to be followed and/or competed.

In the following sections, we discuss (1) inequality of landholding structure and (2) legal pluralism established by historical circumstances as the fundamental structure for conflicts of legitimacy over the land of ITP/HTI in Indonesia.

2 Inequality of Landholding Structure

The Sustainable Development Goals (SDGs) contains 17 goals. Among these, Goal 1, "No Poverty," aims to end poverty in all its forms everywhere, and Goal 10, "Reduced Inequalities," aims to reduce inequality within and among countries.

In recent years, the economy of Indonesia has grown rapidly. Consequently, the percentage of people living under the international poverty line (\$1.90/day) declined significantly from 39.3% in 2000 to 6.5% in 2016, despite the fact that 31.0% of Indonesian people still live under the lower- and middle-income poverty line (\$3.20/

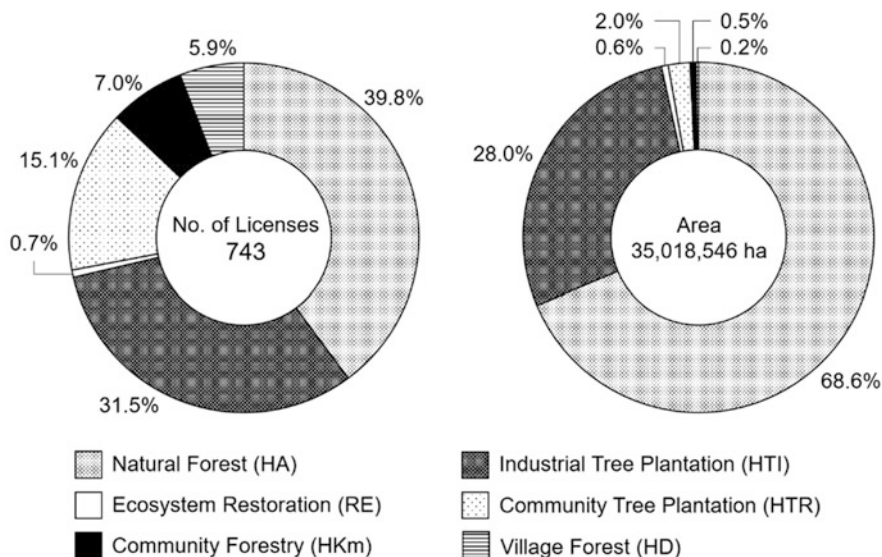


Fig. 5.2 Percentage of forest and wood product utilization license (IUPHHK) area (source: translated Fujiwara et al. (2015) from Japanese to English by authors. Original date came from Kementerian Kehutanan 2012b)

day) (World Bank 2018a). In contrast, economic disparities have tended to expand in Indonesia, and the Gini index reached 38.4 in 2016 (World Bank 2018b). According to the Oxfam briefing paper by Gibson (2017), Indonesia is the sixth-worst country for inequality of wealth in the world; in other words, the four richest billionaires had more wealth than the poorest 100 million people combined in 2016. This inequality of wealth leads to the inequality of opportunity to access health and education services as well as inequality of power with regard to who decides rules, who controls capital and resources, and who can challenge the status quo (Gibson 2017).

Although the drivers of wealth inequality in Indonesia are complex and multi-layered, one of them is a concentration of land ownership in the hands of a few companies and wealthy individuals (Gibson 2017). According to Kementerian Kehutanan (2012b), as of November 2012, 743 forest and wood product utilization licenses (IUPHHK) were issued for approximately 35 million hectares of state forest area. Of these areas, 68.6% were for NF/HA, and 28.0% were for ITP/HTI (Fig. 5.2). Therefore, almost all the issued licenses (i.e., 96.6%) were for NF/HA and ITP/HTI operated by companies. The area designated for improving the welfare of local communities and customary law communities by social forestry (i.e., the sum of community tree plantation (HTR), community forestry (HKm), and village forest (HD)) accounted for only 2.7%.

Furthermore, there is a concentration of land ownership by some NF/HA and ITP/HTI companies. Seventy-nine percent of NF/HA licenses (234 licenses) and 89.8% of ITP/HTI licenses (210 licenses) were for areas of less than 100,000

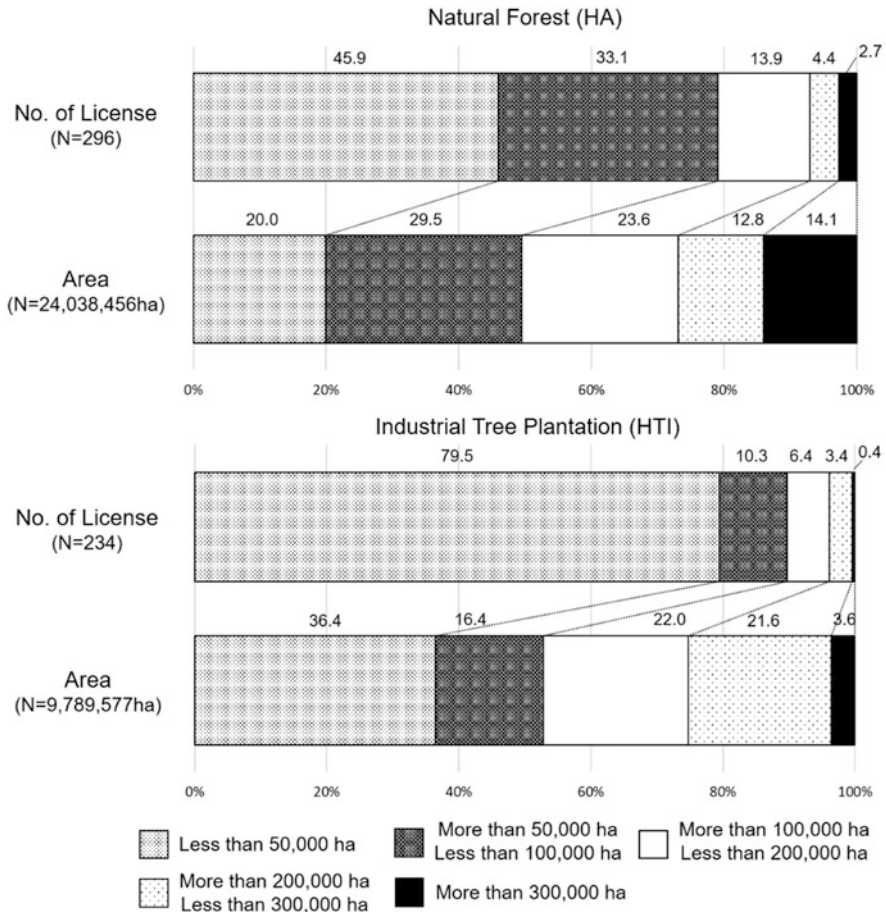


Fig. 5.3 Holding situation of natural forest (HA) and industrial tree plantation (HTI) licenses based on classification by area (source: translated Fujiwara et al. (2015) from Japanese to English by authors. Original date came from Kementerian Kehutanan (2012b))

hectares. Only 7.1% of NF/HA licenses (21 licenses) and 3.8% of ITP/HTI licenses (9 licenses) were for areas of more than 200,000 hectares. However, 7.1% of NF/HA license holders for areas of more than 200,000 hectares held 26.9% of the total area (approximately 6.5 million ha). Similarly, 3.8% of ITP/HTI license holders held 25.2% of the total area (approximately 2.5 million ha) (Fig. 5.3). Therefore, few companies held large-scale forestlands. Furthermore, some companies held plural licenses as a group. As of 2010, 28.6% of the total NF/HA area (approximately 7.07 million ha) was accumulated by only ten company groups, and 39.0% of the total ITP/HTI area (3.5 million ha) was accumulated by only two company groups (Kementerian Kehutanan 2010).

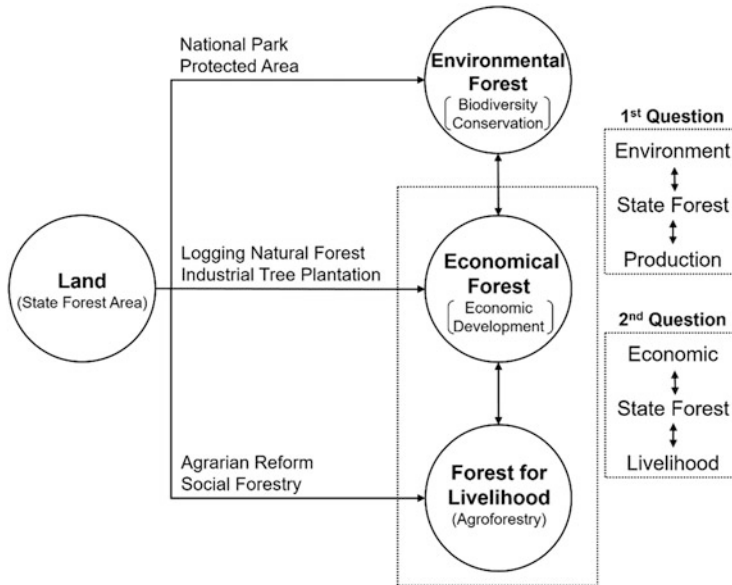


Fig. 5.4 Multilayered controversies on the land allocation and zoning of state forest area

In other words, there are companies with several millions of hectares of land, whereas there are many people who do not have 1 hectare of land in Indonesia. Thus, the correction of the largely distorted landholding structure has been an important policy issue in Indonesia. For this reason, the Government of Indonesia has set a goal to redistribute 9 million hectares of state land, including 4.9 million hectares of state forest area (TORA: *Tanah Obyek Reforma Agraria*) and 12.7 million hectares of social forestry (PS: *Perhutanan Sosial*), in its National Medium-Term Development Plan (RPJMN: *Rencana Pembangunan Jangka Menengah Nasional*) 2015–2019.

As we have seen so far, the problem with ITP/HTI is one concerning land allocation and zoning in the state forest area. There are multiple interests and multilayered controversies on land allocation and zoning of state forest area (Fig. 5.4). The first question in meeting this goal is deciding which parts of the state forest area should be designated for conservation and production. The second question is which part of the production forest should be designated for economic development by companies (i.e., NF/HA and ITP/HTI) or livelihood by local people (i.e., state land redistribution and social forestry). The degree of interest and priority for problems differs among stakeholders ranging from local to international.

3 Legal Pluralism Formed by Historical Circumstances

The Forestry Law (Law No. 41 in 1999) of Indonesia defines the “state forest area (*kawasan hutan*)” as follows: a specific territory designated by the government as permanent forests. The state forest area is also called “political forest,” which is defined as *political land-use zones meant to remain in permanent forest* (Vandergeest and Peluso 2015, p. 162).

After the independence of Indonesia, the government violently enclosed the state forest area by the Basic Forestry Law (Law No. 5 in 1967) and the following forest zoning (TGHK: *Tata Guna Hutan Kesepakatan*) in the early 1980s (Resosudarmo 2004; Wollenberg et al. 2009). This enabled the government and companies to accumulate huge profits (Peluso 2011). In contrast, it caused many land conflicts among the government, companies, and local people, which carry through to the present day. One area of contention was that these enclosures incorporated a large part of the Outer Islands (islands excluding Java Island and Madura Island) into the state forest area and overrode the customary rights of local people, despite the fact that many people lived in those areas (Fay and Sirait 2002).

Looking further back into history, the Agrarian Law (*Agrarisch Besluit*), enacted by the Dutch colonial government, declared that all land, which could not be proven to be owned (individually or communally) by villagers, was the state land (Peluso 1992). This Agrarian Law made the basis for scientific forestry, which was governed by a systematic adherence to working plans for logging and replanting (Peluso 1992). The Mizuno and Kusumaningtyas (2016, p. 41) interpret this Agrarian Law as stating that *the domain declaration was issued for this vast territory that is extremely diverse in terms of biology, society, topography, and soil, precisely in order to enable large-scale investment by plantation companies while turning a blind eye to this diversity.*

The state lands were further classified into two subsets: (1) unfree state domains (*onvrij landsdomein*), which were subject to the hereditary right for individual use (*erfelijk individueel gebruik*) or the right to possession by indigenous people (*inlanders bezitrecht*), such as proactively cultivated wet-rice fields and other lands by indigenous people, and (2) free state domains (*vrij landsdomein*), which were subject to customary disposal right (*beschikkingsrecht*), such as shifting cultivation lands (Mizuno 1997; Mizuno and Kusumaningtyas 2016). Long-term concessions (*hak guna usaha*) for Westerners were issued for the free state domains (Mizuno 1997; Mizuno and Kusumaningtyas 2016). Additionally, there was an ideology of state forest management in the colonial era that was characterized as the utilitarian view (i.e., the greatest goods of the greatest number of people) and scientific forestry, and those looked down on the ecological knowledge of local people (Peluso 1992; Vandergeest and Peluso 2006a, b).

After the independence of Indonesia, the Basic Agrarian Law (Law No. 5 in 1960) was enacted in 1960. This law aimed at a legal unification of the dual structures of Western European law and customary law, and it recognized the existence of “customary communal right of disposal (*hak ulayat*)” (Mizuno 1997;

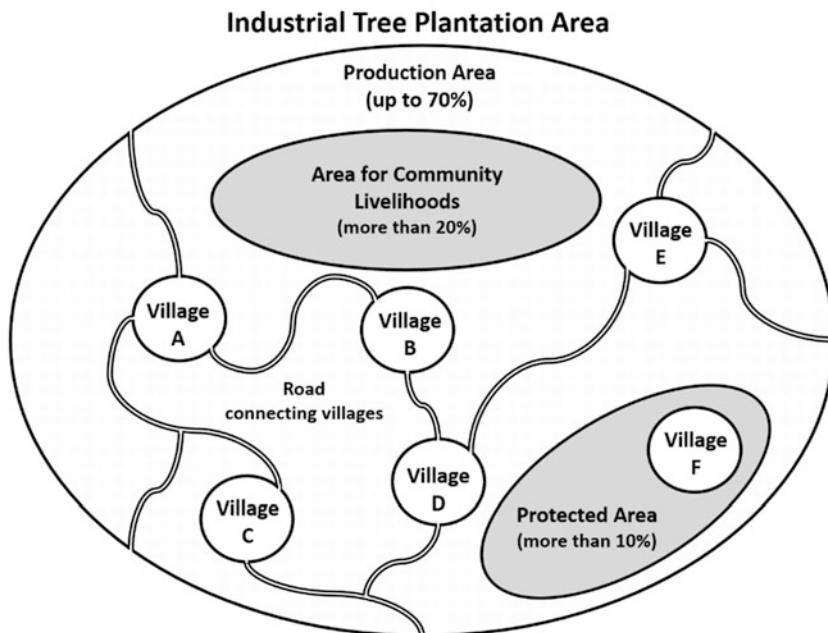
Mizuno and Kusumaningtyas 2016). Additionally, it is acknowledged that land rights were based on customary laws' land rights (i.e., it recognized customary land rights of local people for lands that were not proactively cultivated, such as fallow lands of shifting cultivations, as long as customary land rights had existed previously) (Mizuno 1997; Mizuno and Kusumaningtyas 2016). However, the methods for proving the existence of customary land rights varied according to the times, and it was very difficult for local people to claim their customary land rights positively in the era of a developmental dictatorship government of the New Order regime led by President Soeharto (Mizuno 1997; Mizuno and Kusumaningtyas 2016).

After the New Order regime reached its end, land claims by local people and the movement of land reforms have become very active again (Lucas and Warren 2003). For example, the article 4 (j) of the Parliamentary Decree IX on Agrarian Reform and Management of Natural Resources (Tap MPR IX/2001) in 2001 specified the necessity to recognize, respect, and protect the rights of customary communities and cultural diversity of the nation on lands and natural resources as the principles of agrarian reform and natural resource management. More recently, the constitutional court's decision, which was finalized in May 2013 (35/PUU-X/2012), declared that the "customary forest (*hutan adat*)," previously prescribed as "state forest to be in the area of the customary law community (*masyarakat hukum adat*)," by the Forestry Law (Law No. 41 in 1999) was "forest to be in the area of the customary law community." Along with this decision, the MoEF reclassified forests of Indonesia from two categories (i.e., (1) state forest [*hutan negara*] and (2) privately owned forest [*hutan hak*]) to three categories (i.e., (1) state forest [*hutan negara*], (2) customary forest [*hutan adat*], and (3) privately owned forest/[*hutan hak*]) (the regulation of Minister of Environment and Forestry No. 32 in 2015 regarding right forest).

From the above discussion, it appears that there is legal pluralism established by historical circumstances in ITP/HTI area and the legality, which companies and local people rely on, as well as the forms of forestry used, often differ. In other words, ITP/HTI companies are conducting scientific forestry to maximize raw material production for pulp and paper productive activities with the forest and wood utilization license (IUPHHK) based on the modern land system formed by ex-Western European Law. In contrast, local people are conducting forestry for livelihood, such as agroforestry, including traditional shifting cultivation, with customary communities' disposal rights (*hak ulayat*) based on a customary land system derived from traditional customary law (Fig. 5.5).

4 Discussion

The tropical forests of Indonesia have attracted many stakeholders because of their high biodiversity, and their conservation is essential to achieve SDGs. In the last 20 years, there has been a trend towards increasing the use of ITP/HTI in Indonesia.



	Company	Local People
Holding Land Right	<ul style="list-style-type: none"> Forest and Wood Products Utilization License (IUPHHK) 	<ul style="list-style-type: none"> customary communities' disposal right (<i>hak ulayat</i>)
Grounds for Legality	<ul style="list-style-type: none"> modern land system formed by ex-Western European Law 	<ul style="list-style-type: none"> customary land system formed by customary law
Form of Forestry	<ul style="list-style-type: none"> scientific forestry monoculture forestry 	<ul style="list-style-type: none"> agroforestry shifting cultivation
Main Purpose of Forestry	<ul style="list-style-type: none"> to maximize raw material production for pulp and paper production 	<ul style="list-style-type: none"> to stable livelihood

Fig. 5.5 A model of industrial tree plantation (HTI)

Therefore, ITP/HTI is becoming increasingly important when considering forest conservation in Indonesia. However, ITP/HTI has been controversial as they have big impacts on environmental, economic, and social aspects, and there are severe conflicts among stakeholders (e.g., government, companies, NGOs, and local people). To promote collaborations among stakeholders (i.e., co-design, co-production, and co-delivery) for ITP/HTI problems, it is therefore crucially important to discuss the fundamental structure of the conflicts. For this reason, we introduced the concept of “legitimacy” and discussed (1) inequality of landholding structures and (2) legal pluralism formed by historical circumstances as the fundamental structure for conflicts of legitimacy over the land of ITP/HTI in Indonesia. The discussions

regarding ITP/HTI in Indonesia shows some key lessons in considering promoting collaborations among stakeholders in Future Earth.

The first lesson is that the degree of interest in and priority for problems differs among stakeholders ranging from local to international. In the case of ITP/HTI, the problem concerns land allocation and zoning of the state forest area, and there are at least three different interests among stakeholders: biodiversity conservation, economic development, and livelihoods of local people. Additionally, these interests are often in a trade-off relationship. Recently, it appears that attention to the conservation of tropical forests and their biodiversity is steadily increasing. In contrast, some scholars express deep concern over community displacements in the name of environmental conservation (also called Green Grab) (Harada 2018). Therefore, understanding that stakeholders have different priorities and perceptions of problems is the first step in collaboration, and coordination of conflicting interests among stakeholders is crucial to create legitimacy for the collaboration. Regarding the ITP/HTI problems of Indonesia, the correction of the largely distorted landholding structure is extremely important to create legitimacy for collaboration among stakeholders. Conservation and production activities should be based on fair use and equitable allocation of forestlands.

The second lesson is the importance of considering history. There was legal pluralism formed by historical circumstances in the ITP/HTI area. It appears that stakeholders claim their legitimacy based on different legalities formed by historical circumstances. In other words, the problem differs depending on the time point considered when discussing the problem. For example, recently, some pulp and paper companies in Indonesia have voluntarily declared a zero-deforestation policy to carry out production activities using only planted trees derived from ITP/HTI without cutting down natural forests. For the production activities based on the zero-deforestation policy of pulp and paper companies in Indonesia, some stakeholders highly appreciate their policy as significantly contributing to conserving tropical forests and biodiversity. In contrast, some stakeholders such as environmental and human rights NGOs strongly criticize companies based on the historical facts that immense forest land enclosed by companies to realize production with zero-deforestation may contain lands converted from natural forests as well as lands enclosed by violence and by ignoring the customary land rights of local people.

Looking further back on the history, some pulp and paper companies in developed countries also received international criticism for converting tropical forests on a large scale and for violating the rights of local people in days past, just like what is being currently done by Indonesian pulp and paper companies. However, those are now regarded as environmentally friendly companies, and some of them have become cooperative members of NGOs. Therefore, awareness of the problem, interpretation of the historical facts, and evaluation of other stakeholders by certain stakeholders change over time. In other words, in order to start a collaboration, it is necessary to build a consensus among stakeholders as to which time point should be considered when discussing the problem.

The third lesson is that a procedure/method of data presentation agreeable among stakeholders as independent, neutral, and fair is very important for their

collaboration. In cases in which conflicts among stakeholders are intensive such as for ITP/HTI in Indonesia, it appears that confidence in and interpretation of presented data are different for each stakeholder. For example, it is supposed that high biodiversity is found in a protected area of the ITP/HTI area managed by a company through a scientific survey. Some stakeholders, who achieve a friendly relationship with the company, can receive the survey results positively and interpret it as a company changing their business attitude and making an effort for forest conservation. In contrast, some stakeholders, who take a critical and confrontational attitude, may receive the same survey result negatively and interpret it as a company destroying extensive natural forests with high biodiversity and then implementing conservation efforts, which are insufficient and for public relations only (also called greenwashing). Data and information provided by opponent stakeholders may be unreliable (i.e., is it a fact or an advertisement?). Therefore, data presentation agreeable among stakeholders is essential to promote their collaborations.

Stakeholders have varying sets of values, and they rely on different legitimacy. In other words, stakeholders have different perceptions and priorities for the *problem* (e.g., biodiversity conservation, economic development, the livelihood of local people). Additionally, they have different historical awareness of the *problem* (e.g., which time point do we go back to, to discuss the land tenure *problem*?). Unlike conventional scientific research, scientists are required to adhere to various values existing in society to collaborate with stakeholders to facilitate transdisciplinary research of Future Earth.

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