

Un-Tangling the 'Web': REDD+ Regulatory Agencies in Indonesia

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Abstract

REDD+ or Reducing Emission in Forest Degradation and Deforestation in Indonesia is a very complex issue. Not only does it involve 18 ministries in the governmental level and complex business with the local community, REDD+ also involves international community as the donors for the activities. This article is an empirical study to introduce the main regulatory agencies in REDD+ Indonesia, explore their organizational structures, and describe related REDD+ regulations and the agencies' roles in REDD+ networking in Indonesia. It lays out the 'web' in the existing institutional networking of REDD+ in Indonesia; analyzes how these agencies perceive themselves ideally in REDD+ networking, and compares these ideal positioning to their roles. The current government-to-government donor funding projects is also explored, as an explanation of the relation between the Regulatory Agencies of REDD+ and the influence of donor as third parties in REDD+ projects in Indonesia. The interaction between REDD+ regulatory agencies and donor project is part of the effort of un-tangling the web in Indonesia's REDD+ Institutional Networking.

KeyWords: REDD+, Indonesia, Institutional Networking, Regulatory Agency, Regulatory Process, Empirical Study.

I . Introduction: REDD+ in Indonesia's Regulatory Agencies

Indonesia has a range of policies and programs that are of direct relevance to the REDD+: Reducing Emission from Deforestation and Forest Degradation (the '+' sign is an addition to the REDD, the Sustainable Forest Management). There are a few things worth mentioning in this Introduction section: First, there is a major problem in Indonesia's forestry: corruption. The corruption in the forestry sector has been so deep and systematic that it is hard to identify the starting point of the problem.¹ Agencies/ministries, the business sector, even the army, are involved in the so called 'KKN' (*Korupsi, Kolusi and Nepotisme/* Corruption, Collusion and Nepotism) activities. REDD+, as a new initiative fell directly to the responsibility of Ministry of Forestry (MoF) as the coordinator of the forestry sector in Indonesia. But, apparently, due to the problems of corruption, the President of Indonesia has another 'strategy' for REDD+.

Second, it is important to acknowledge that Indonesia has ratified the Ramsar Convention, the UN Convention on Biological Diversity, the UNFCCC, and the Kyoto Protocol. The Ministry of Environment (MoE) is the key agency in developing environmental policies in Indonesia, including policies related to climate change.² The National Council on Climate Change (DNPI) leads Indonesia's negotiations in the UNFCCC (previously before the National Council was established, the Ministry of Environment was the focal point for the climate change negotiation in Indonesia).

Third, the Ministry of Forestry (MoF) has so far pro-actively driven REDD+ process in Indonesia, starting with the establishment of the IFCA (Indonesian Forest Climate Alliance) in 2007 to conduct initial steps in REDD Readiness.³ Since 2008, The Ministry of Forestry has issued four National Regulations on

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1. Based on recapitulation of audits in 2009-2010-2011 done by National Auditing Agency (BPK), MoF ranks as no.6 most corrupt department in Indonesia. Berita Daerah, 10 Kementerian Rawan Korupsi – Berdasar Audit BPK, Kejagung Nomor Satu, Kementerian Dalam Negeri (July 16, 2012, 10:06:57 AM), <http://www.kemendagri.go.id/news/2012/07/16/10-kementerian-rawan-korupsi-berdasar-audit-bpk-kejagung-nomor-satu>.
 2. Indonesia, UN-REDD PROGRAMME, <http://www.un-redd.org/UNREDDProgram/CountryActions/Indonesia/tabid/987/language/en-US/Default.aspx>.
 3. *Id.*

Reducing Emissions from Deforestation and Degradation in order to guide implementation of national REDD policy.

REDD and REDD+ came to Indonesia from international forums. It all started in the UNFCCC COP 13 Bali in 2007, when Indonesia decided to launch the National Action Plan of Climate Change (NAP). The action plan covers activities for climate change adaptation and mitigation in forestry, agriculture, land conversion and energy.⁴ In 2009, the President of Indonesia publicly announced Indonesia's voluntary goal of GHG emission reductions: twenty-six percent by 2020 and forty-one percent by 2050.⁵

This commitment came as a surprise to many parties in Indonesia, who see it as creating considerable responsibility and an onerous mandate, particularly for policymakers and relevant sectors.⁶ This incident proves that there is a communication problem between the President and his ministries. Some of the ministries claimed that they did not even know about the commitment before they heard the President's speech in G20 London meeting.⁷ The target set by the President is then calculated based on a 'business as usual' (BAU) scenario, under which Indonesia's emissions are projected to reach 2.95 Gt by 2020.⁸ Based on this projection, of the twenty-six percent emission reduction target, the forestry sector is responsible for fourteen percent with the remaining twelve percent the responsibility of other sectors.⁹

Soon after this commitment speech was given, the Kingdom of Norway contacted the Government of Indonesia (GoI) for possible funding of REDD+ in Indonesia.¹⁰ The dialog between the Government of Norway (GoN) and GoI then

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4. MINISTRY OF NAT'L DEV. PLANNING ET AL., NAT'L ACTION PLAN FOR CLIMATE CHANGE ADAPTATION (RAN – API) (2013), *available at* https://gc21.giz.de/ibt/var/app/wp342deP/1443/wp-content/uploads/filebase/programme-info/RAN-API_Synthesis_Report_2013.pdf.
 5. President Susilo Bambang Yudhoyono, Address at G20 Meeting London (Sept. 25, 2009).
 6. Interview with Ministry of Environment (MoE), in Jakarta (May 2012); G.B. INDRARTO ET AL., *THE CONTEXT OF REDD+ IN INDONESIA* 50 (2012).
 7. Interview with MoE, *supra* note 6.
 8. MINISTRY OF NAT'L DEV. PLANNING ET AL., *supra* note 4.
 9. *Id.*
 10. AGUS PURNOMO, *PROTECTING OUR FOREST: MORATORIUM ON FOREST AND PEATLANDS, A RADICAL POLICY* (2012).

led to the signing of Letter of Intent of REDD+ collaboration between Indonesia and Norway. Other countries such as Japan, Australia and the United States also approached Indonesia to collaborate under REDD+.¹¹

Indonesia REDD+ regulatory agencies were forced under the spot light to shine. REDD+ was a new issue in Indonesia at that time, but some of the regulatory agencies (the ministries: Ministry of Forestry (MoF), Ministry of Environment (MoE), National Planning Agency) have been dealing with deforestation and forest degradation issues for quite a long time.

This research will identify and map out the interaction between the regulatory agencies and measure the influence of donor projects in these agencies' regulatory process.

II. Regulations, Regulatory Process and Regulatory Agencies

It is understandable when the word 'regulation' is mentioned, one would automatically think that we are talking about the measures done and/or created by the government to govern certain issues. In fact, there are several other types of regulation that are also included in 'regulation' or 'regulatory instruments'.

Gunningham et al.,¹² states that at least there are at least four varieties of regulatory instruments: (1) command and control regulation, (2) economic instruments, (3) self-regulation, and (4) voluntarism. The term of 'command and control' or formerly known as 'direct regulation', has spread through the writings of neo-classical economists, who announce 'command and control' as a negative aspect of government interference in the market.¹³ This type of regulatory instrument (command and control) remains the most used and acknowledged type of regulation in the environmental sector of Indonesia. Although other varieties of regulatory instruments exist and are known in Indonesia, most of the government's approaches are still in the command and control 'mode'.

This research pays close attention to the parties in the regulatory process,

11. *Id.*

12. *Id.*

13. NEIL GUNNINGHAM ET AL., SMART REGULATION: DESIGNING ENVIRONMENTAL POLICY (1998).

since they are the ones who make the 'decision' in creating regulations. Parties in regulatory process, to this research, are the ones who are involved in the regulatory making process and external parties who are not directly involved in the regulatory making, but deeply involved in preparing the condition for regulatory making. In 'Environment and Enforcement', Keith Hawkins examined pollution control agencies in England and Wales and found that regulations "are shaped by features inherent in the nature of regulation itself..." and that in the vast majority of cases of regulatory deviance a confusion of interests and values exists.¹⁴ This confusion is manifested in doubts about whether agencies are protecting the public good when sanctioning behavior which is a consequence of economic activity beneficial to the public. Traditionally in regulatory process, also acknowledged by Braithwaite,¹⁵ regulatory process parties are thought to be two eminent parties: the government, as the regulator, and the business sector as the regulatee.

As time goes by, 'third' parties are also involved in the regulatory process. Gunningham, et al., pose that there are third parties such as public interest groups, NGOs, commercial third parties such as green consumers, institutional investors, financial and insurance institutions, and environmental consultants. It has to be acknowledged that although these third parties might seem to be emerging in the regulatory process theory realm, in reality, their influence in regulatory process is still questionable. Here is where this research is going to fill in the 'gap'. This research unfolds the influence of international actors in the form of donor projects in Indonesia's REDD+ regulatory process.

A. Regulatory Agencies and Enforcement

Regulatory agencies as legal institutions¹⁶ are the center point of this research. Kagan¹⁷ argues that these agencies make, enforce, and apply law. Their decisions are subject to challenge and review in the courts and to reversal for failure to adhere to legal justification. This research examines five regulatory agencies (including one national council) who are working on one issue: REDD+. Instead of individually picturing each agency, the interaction between the agencies in

14. KEITH HAWKINS, ENVIRONMENT AND ENFORCEMENT 253 (1984).

15. JOHN BRAITHWAITE, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION 31 (2002).

16. ROBERT KAGAN, REGULATORY JUSTICE, IMPLEMENTING A WAGE-PRICE FREEZE 8 (1978).

17. *Id.*

REDD+ Indonesia is unfolded in this research.

Although this research does not look specifically at enforcement, it is important to have an understanding of the 'continuation' of regulatory process. After a regulation is made, the next step would be implementation and enforcement of the regulation. Hawkins points out that regulatory agencies must operate in a political environment between two broad public views or constituencies with competing views about the proper realm of government in regulating the economy.¹⁸ He calls this 'a reflection of ideological differences' and represents the opposing positions of the fundamental political dilemma of regulation: the extent to which economic restraint by the imposition of legal rules is justifiable.¹⁹

Hawkins²⁰ then argues that regulation may be contemplated by the law as the dispassionate sanctioning of misconduct by the even-handed application of a criminal law unconcerned for the niceties of *mens rea*, but in regulation practice, mediated as it is by a bureaucracy, in which people have to exercise their discretion in making judgments, is funded upon notions of justice. He is saying that although it might seem that enforcement of regulations is not as simple as it seems, there are 'obvious cases' in which there is a clear moral offensiveness, in which the agencies are demonstrably doing something while offending few. There are also cases which are less obvious, for example when causing pollution is often viewed as the inevitable consequence of physical impediment, limited economic means, the result of carelessness or inefficient management, or of accident. The agencies then shifted from formal law to the area of *mens rea* to narrow the field of incidents deserving of prosecution. According to Hawkins, enforcing regulations is done in a moral, not a technological, world.

Hawkins's research, although conducted in a different sector, at different levels and in a different environment none the less has implications for REDD+ implementation in Indonesia. As Hawkins describes, all regulatory agencies face challenges in developing their regulations and enforcing them. This research uses some of Hawkins methods in observing and describing the works of Indonesian regulatory agencies, and their regulatory process implementing REDD+.

18. KEITH HAWKINS, ENVIRONMENT AND ENFORCEMENT 9 (1984).

19. *Id.*

20. *Id.* at 245.

B. Factors Influencing the Regulatory Process

Like all institutions, environmental and resource regimes—assemblages of rights, rules and decision making procedures that influence the course of human-environment interactions—are dynamics.²¹ They are dynamic because they are influenced by change(s).²² Some changes are developmental in character, and enhance the effectiveness of governance systems; some are responses to external events involving the biophysical, socioeconomic or technological settings in which regimes operate.²³ The sources of change can be internal, external or both.²⁴

Young, in his *'Institutional Dynamics: Emerging Patterns in International Environmental Governance'* explores the determinants of patterns of change. He distinguishes between endogenous and exogenous factors. Endogenous factors he defines as those having to do with attributes of the regime, such as the locus of the regime on a hard law-soft law continuum; the nature of the relevant decision rule(s); provisions for monitoring, reporting and verification; funding mechanism; procedures for amending a regime's assemblage of rights, rules and decision making procedures; and so forth.²⁵ Exogenous factors include conditions pertaining to the character of the overarching political setting; the nature of the prevailing economic system; the rise of new actors, technological innovations and the emergence of altered or entirely new discourses; as well as significant changes in broader biophysical systems.²⁶ The categorization of these factors is not limited; there is always possibility that one or more previously unidentified factors will emerge and play an important role in individual cases.²⁷

This study will look at Indonesia's environmental regulatory process, especially in the nature of the relevant decision rule(s); provisions for monitoring, reporting and verification; funding mechanism; procedures for amending a regime's assemblage of rights, rules and decision making procedures—as external pressures

21. ORAN R. YOUNG, *INSTITUTIONAL DYNAMICS: EMERGENT PATTERNS IN INTERNATIONAL ENVIRONMENTAL GOVERNANCE* 1-5 (2010).

22. *Id.*

23. *Id.*

24. *Id.* at 6.

25. *Id.* at 14.

26. *Id.*

27. *Id.*

to the agencies,²⁸ and examines internal factors of the agencies which foster the success of regulatory process within the agencies namely involvement and ownership of the agencies to the (project) activities.

III. The Research

This research interviewed 5 agencies: MoF, MoE, National Council for Climate Change, National Planning Agency and the REDD+ Task Force. The researcher explained clearly that the research is simply a mapping of agencies as actors' involvement in regulatory process and not intended to give any judgment whatsoever on importance of each individual's role. The researcher began each interview by explaining that the discussion is informal and that no comments will be attributed to the respondent. These stipulations are important for protecting the identity of the respondent in a situation in which he or she might face retribution.

The research is using two case study projects: the UNREDD Indonesia and the REDD+ Task Force Indonesia-Norway. They are selected because they are high profile cases funded by donors in Indonesia's REDD+. These case studies elaborate how REDD+ issues are influencing Indonesia's regulatory process. Although they are medium term projects (3-8 years), the expected impacts of these projects are high. The indicators mentioned above, the conditionality of funding, decision making process, monitoring and evaluation activities, contribution in budget, bureaucratic changes and resources delegated to the project and activities of the projects in REDD+ preparation and readiness reflect how these projects interact with REDD+ agencies in Indonesia, and how their activities influence Indonesia's regulatory process.

The research questions are focused on two main factors:

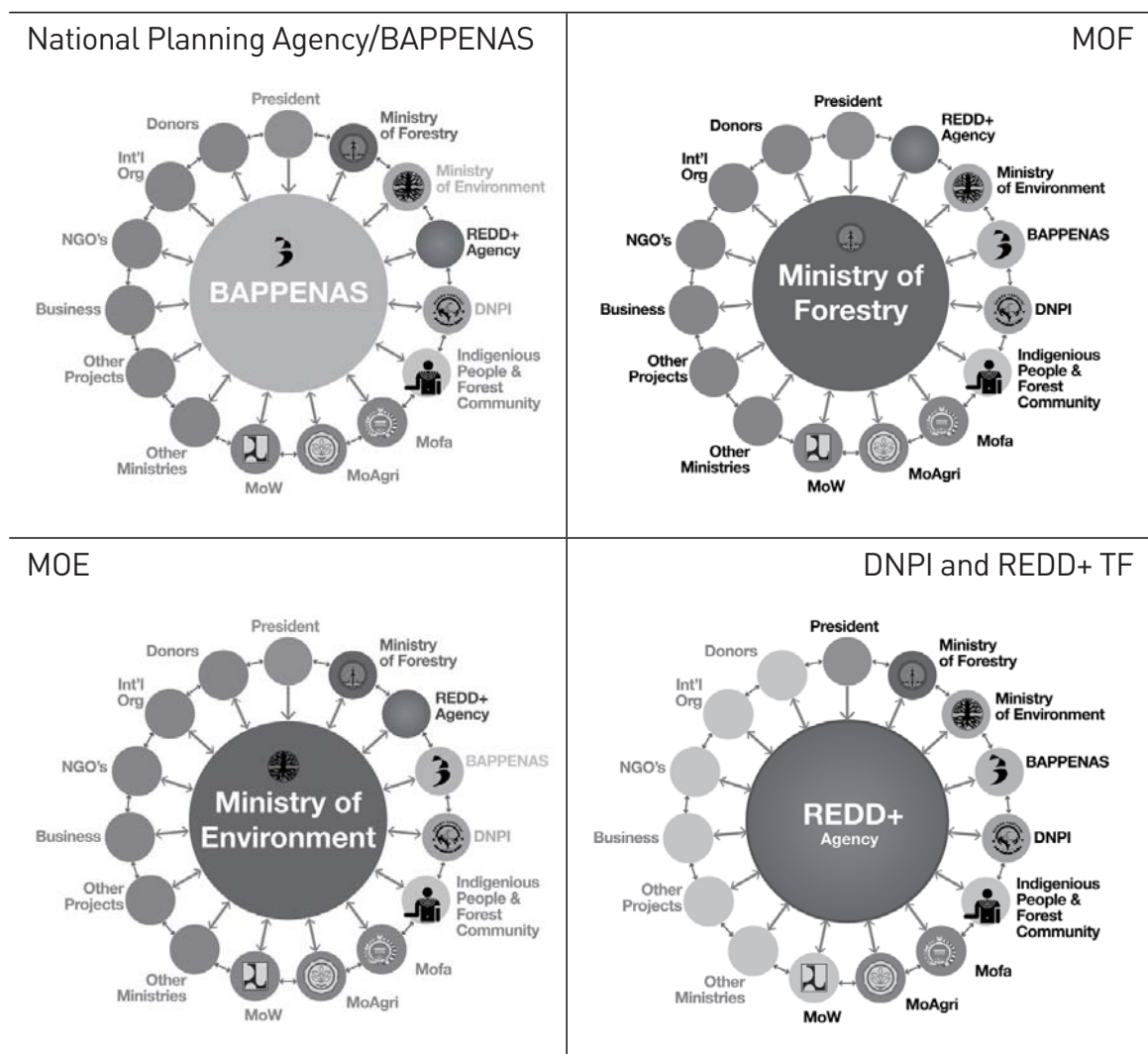
1. Identifying and mapping REDD+ Regulatory Agencies institutional networking in Indonesia
2. Regulatory agencies' perception in working with donor involvement in REDD+ Indonesia (in terms of: conditionality of funding, decision making, M&E process, budget contribution to the REDD+ projects and time and human resources spent for the projects)—in the case study projects.

28. According to Young they are named under the 'endogenous factors.'

A. Institutional Networking of REDD+ Regulatory Agencies

The figures below picturing the five agencies interviewed and where do they ideally see themselves in the REDD+ institutional networking.

Figure 1. Ideal REDD+ Institutional Networking according to Agencies Interviewed

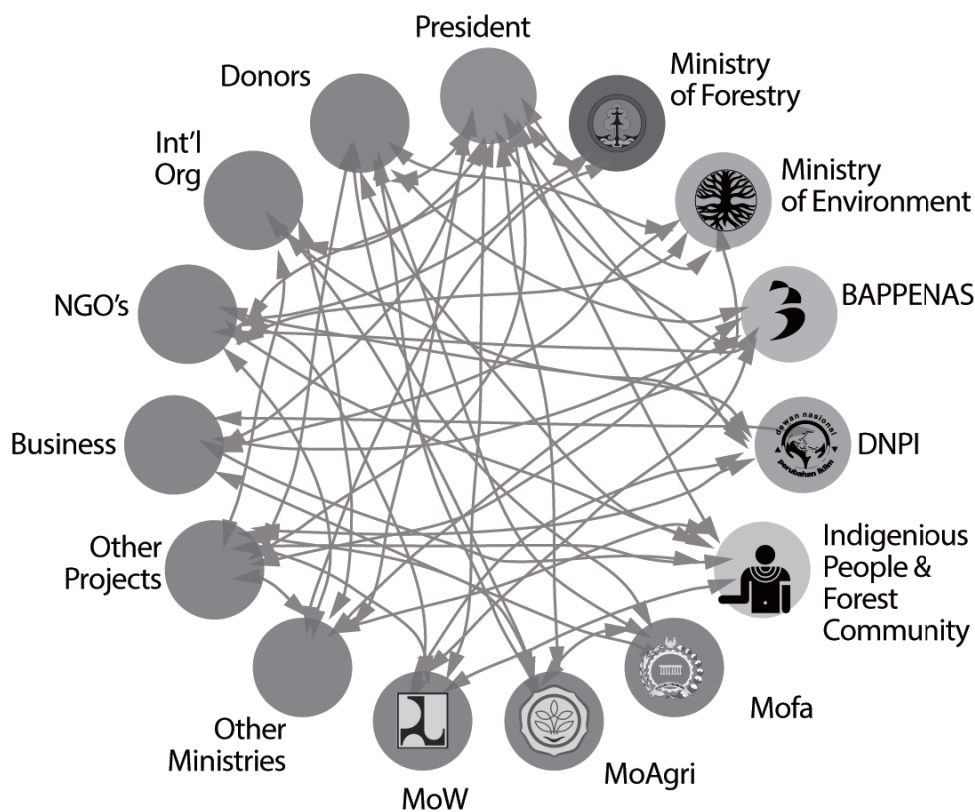


As can be seen, the National Planning Agency, MoF and MoE have a similar tone that the institutional networking is more ideal if each of them will be the center point (or coordinator) of the REDD+. The National Planning Agency thinks that since they are the ones who coordinate the planning of each activity and project into the medium term developmental plan, it will be easier if they coordinated the REDD+ issues. MoF thinks that eighty percent of REDD+ activities are in their workplan, so it is natural if they coordinate the REDD+ issues. MoE, on the other hand, argues differently. They said that they do not have any 'interest' in profiting from REDD+, so they are the right institution to coordinate REDD+ issues—in addition, they also just passed the PP No.71/2011 on MRV in REDD+, and MoE is the coordinator for MRV activities; hence to expand that role to be the coordinator of all REDD+ issues should not be a problem. The National Council for Climate Change has a slightly different tone. They think of themselves as the think-tank of climate change. They are also already responsible for almost all climate change related activities in Indonesia. They completely agree that a specific agency (in this case REDD+ Agency), should be the coordinator of REDD+ network in Indonesia.

This 'confusion' has not escalated into a conflict, and the interviews show that each agency/institution understands that the President has chosen to create the Task Force/Agency as the 'new' coordinator of the institutional networking in REDD+ Indonesia. The 'co-opetition' in the Agencies and Ministries handling REDD+ is apparent on how they handle the program and work with each other. Each of the discussed agencies thinks that they will be the most ideal authority to coordinate REDD+ activities.

As can be seen in Figure 2, there is already an existing institutional networking between the related institution and stakeholders in REDD+ prior to REDD+ Task Force formation. The National Planning Agency, MoF, MoE, National Council for Climate Change and other ministries, have already had established relations among themselves and with other stakeholders (such as NGOs, international organizations, the business sector and donors). This particular networking is not coordinated among them, but more on events based activities. Hence it is partial, sporadic and unorganized.

Figure 2. Previous REDD+ Institutional Networking Prior to REDD+ Task Force



There is reasoning for this perception. Firstly, there is no clear and strong legal background on what is REDD+, so they individually worked with their sectoral mandate.

Secondly, each of them has already dealt with similar issues of REDD+, with a different terminology. Some handled greenhouse gasses emission, some handled deforestation reduction, so they tried to ‘fit’ REDD+ with they previously understood. They each are not very familiar with the REDD+ issues, with its new terminology so most of them are confused with what REDD+ is, and what to do with it.

Thirdly, REDD+ Agency is a newly established agency, with irregular mandate because it can trespass the current mandates of line ministries in REDD+. This somehow ‘disturbs’ sectoral egos of the align ministries—who specialize in the respective mandates for years. Inclusion and involvement of respective ministries officials have also been started by the REDD+ Agency, and this might be a good way to break the ‘barriers’.

Fourthly, the ‘elephant’ in the room is high corruption in the forestry sector. Corruption is an important enabler of deforestation in developing countries has been recognized by the international forest policy community for at least a decade. Corruption within the forest sector is considered to undermine the framing, implementation and subsequent monitoring of policies aimed at conserving forest cover. Establishment of REDD+ Task Force, REDD+ Agency, enactment of Moratorium Decree, and new developments are coming fast and strong, scaring the ‘corruption network’ in the forestry sector. Current evildoers in the sector are trying their hardest to stall the developments.

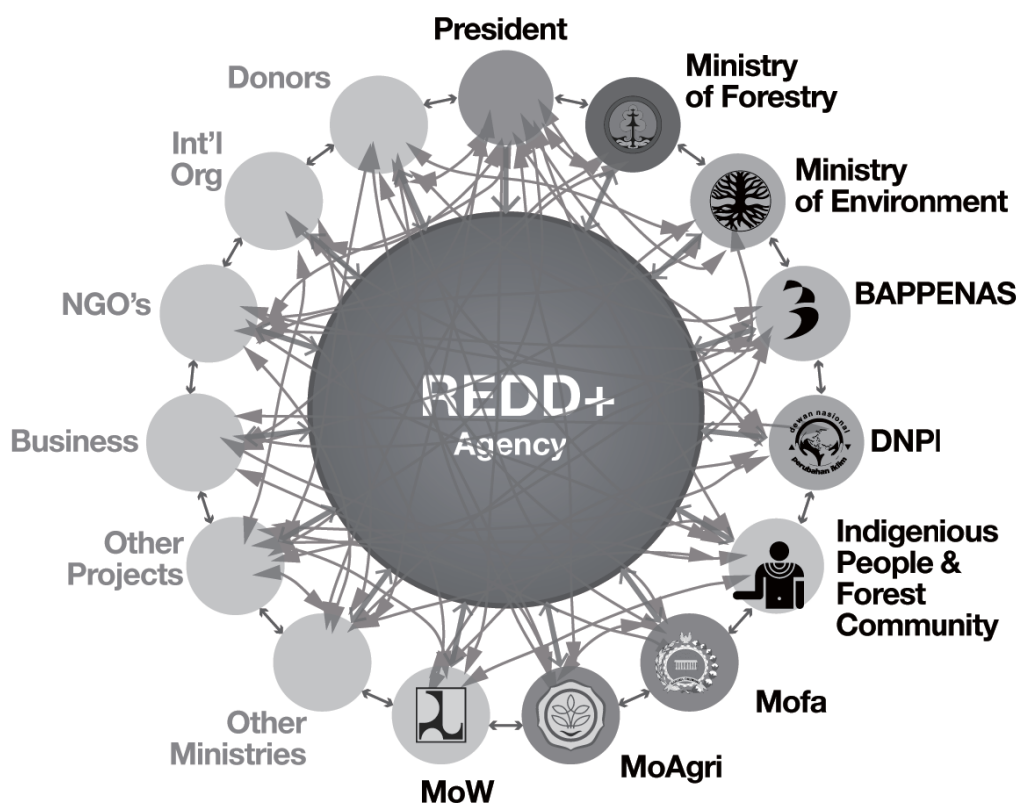
Fifthly, there are big issues in REDD+ itself in Indonesia. REDD+ is based on the valuation of carbon sequestered from the ‘preserved’ forest. In Indonesia, forest tenure is still unclear. MoF supposedly is the designated agency on forestry, but there are also BPN (National Land Agency/Badan Pertanahan Nasional) who also regulates land in the forest and surrounding the forest. Community rights and adat rights on the forest is also unclear. The Basic Law of Agraria No.5/1960 clearly stated that ‘*hak ulayat*’ or adat ownership right is respected, but in reality agencies and ministries often used article 33 of the 1945 Constitution where it is stated that, ‘Land, water and natural resources..are managed by the State will be used for the welfare of the people of Indonesia’. In addition to that, Adat law has subsidiary position in Indonesia’s positive law. Benefit distribution mechanism of REDD+ is also still unclear. Efforts to lay a pathway on the benefit distribution mechanism are also being done by Task Force REDD+ and other projects, but considering that REDD+ activities in demonstration areas have already started, the Task Force REDD+ and GoI need to pick up their phase and make sure that the design and implementation of the REDD+ distribution mechanism involves community’s participation and is pro-poor and pro-community.

Sixthly, it has to be noted, although these regulatory agencies are competing and do not coordinate themselves in terms of REDD+ issues, this co-opetition (coordination and competition) are bringing a fresh dynamic in the regulatory preparation and its processes. Each one of them are competing to prepare and produce up-to-date regulations and policies on REDD+, and as a result Indonesia as a country has an abundant numbers of REDD+ rules, regulations and policies.

Currently, after the establishment of REDD+ Task Force, the institutional networking is starting to take place and has a format. Each of the REDD+ stakeholder has a place in the REDD+ Task Forces’ Working Groups; they meet and work under the REDD+ Task Force. Although, outside of the Working Groups, the stakeholders independently work with one another on different REDD+ activities. The main task for REDD+ Task Force is to compile a data base of these network-

ing in REDD+ sector, so the 'new' REDD+ Agency will also able to be a clearing house of REDD+ institutional activities in the future.

Figure 3. Current REDD+ Institutional Networking with REDD+ Task Force



The answer to the second question of this research, specifically on how do these agencies work with donor involvement in REDD+ Indonesia (in terms of: conditionality of funding, decision making, M&E process, budget contribution to the REDD+ projects and time and human resources spent for the projects), especially in relation to the case study projects, is based on the measurement results from the case study projects. They are:

- (1) **Conditionality of funding from the donors.** In both case study projects, the measurements were High and Very High conditionality of funding from the donors. This was measured by their based agreements (multilateral agreement for UN-REDD, and LoI for REDD+ Task Force). These agree-

ments have very strict requirements, in terms of outcomes to be achieved, timeline and most important, the projects' performance. The projects are setting standards of performance, which were agreed on by the GoI, and hence had also been agreed on by relevant agencies. This means that the demands of the achievements of the 'expected projects' are not only on the projects per se, but also tightly tied to the performance and contributions of relevant agencies. If the relevant agencies decline to work together or to contribute to the donor projects, it will be impossible for the donor projects to be able to reach their expected outcomes and achievements.

- (2) Donors' involvement in the decision making of the project.** In both projects, the donors' involvement in decision making is considered high. The UN Resident Coordinator is the co-chair of UN-REDD's Project Executive Board (PEB), the Board which makes the final decision on important activities, budget, workplan and M&E reporting of the UN-REDD Indonesia. On the other hand, Norway, as the main donor in REDD+ Task Force, although giving 100 percent trust to the GoI in managing the program, explicitly in the LoI, retains the rights to contract an independent reviewer to monitor the development of the program. The continuation of the support will be based on the performance (evaluation) of the program. The projects are setting high standards for relevant agencies because each of the decisions made has to be agreed upon their own management in the agencies as well as the projects.
- (3) Monitoring and Evaluation activities (M&E).** Both projects are measured high because they are administratively tied to UNDP's rules and regulations for M&E. The Project Management Unit has an obligation to organize M&E in the periods of time agreed on by the project's PEB. Additionally in the REDD+ Task Force, Norway organizes a program's review conducted by an independent reviewer for each phase of the program. This clearly shows how careful and meticulous the donors are in checking on their projects and controlling the performance of the projects. Since both UN-REDD and the REDD+ Task Force are working with the government, the M&E of each project also shows the work of relevant agencies that are working together. The projects are bringing more transparency and accountability to the activities of the agencies, at least the ones that are involved in the projects' activities.

(4) Activities allocated for preparation of REDD+ regulatory process in Indonesia. This is an important indicator because preparation activities are vital in the regulatory process. Paving the way for the regulatory process has as much importance as the regulatory process itself.²⁹ UN-REDD is assisting the GoI in reaching REDD+ preparedness, so all of its activities are allocated for the preparation of the REDD+ regulatory process. The REDD+ Task force is within the GoI and preparing the infrastructure for the REDD+ Agency. Hence, what is supported by the donors are vital stages of the regulatory process in REDD+. These projects are gearing the work of REDD+ institutions to REDD+'s regulatory process readiness. Both projects measured 'high'.

All of these are then explained and completed at the receiving end of the measurement; in this case the involvement and ownership in the relevant agencies to the REDD+ issues. In this research, it is proven that involvement of relevant agencies and ownership of REDD+ issues resulted in measurements of overall indicators to be 'high'. The first indicator, '**contribution of agencies to project's budget**' was shown to be 'low', because both of the case study projects are fully donor funded projects which needed no monetary contribution from the host government. But **other indicators**, such as the '**bureaucratic change in relevant agencies**', as well as the '**time and human resources allocated by the agencies**' for both projects measured either 'high', 'very high' or 'medium high'. This just shows that even though the agencies are not giving monetary input on the budget, they are willing to accept bureaucratic changes in REDD+ networking and contribute time and human resources to the projects and to REDD+ activities.

This is an important point for Indonesia's awareness of REDD+. The agencies have shown that they are aware that there is a change of mentality needed to conduct REDD+. As said previously, the elephant in the room is corruption in the forestry sector. The formation of the REDD+ Agency is an alternative step to bypass the existing administration in the forestry sector in order to protect the REDD+ funds from corruption activities. The fact that the agencies accepting the existence of the REDD+ Agency is a major step forward for a mentality change in the forestry sector. The next step then is to eliminate all corrupt behaviors in REDD+ related governmental agencies. Some of the steps have been taken by the GoI: among others, the enactment of the Moratorium Decree and the legal en-

29. Interview with State Ministry of National Development Planning (BAPPENAS), in Jakarta (June 7, 2012).

forcement working group's efforts in the REDD+ Task Force.

Table 1: Case Study 1: UN-REDD

Variables:	Independent Variable: REDD+ Issue/Donor Project as 'external pressure'	Measurement's value	Dependent Variable: Regulatory Process: Involvement and Ownership in Relevant Agencies	Measurement's value
Indicators:	Conditionality of funding	High	Contribution in budget by relevant agencies	Low
	Decision making in project	High	Bureaucratic change in relevant agencies	Medium High
	Monitoring and evaluation activities	High	Time and human resources/staff delegated in project by relevant agencies	High
	Activities allocated for preparation of the regulatory process in this case: REDD+ by each project	High	Project's involvement in regulatory process	High

Table 2: Case Study 2: REDD+ Task Force

Variables:	Independent Variable: REDD+ Issue/Donor Project	Measurement's value	Dependent Variable: Involvement and Ownership in Relevant Agencies	Measurement's value
Indicators:	Conditionality of funding	Very High	Contribution in budget by relevant agencies	Low
	Decision making in project	High	Bureaucratic change in relevant agencies	High
	Monitoring and evaluation activities	Very High	Time and human resources/staff delegated in project by relevant agencies	High
	Activities allocated for preparation of the regulatory process in this case: REDD+ by each project	High	Project's involvement in regulatory process	High

B. The Practice of Regulatory Process of REDD+ Indonesia

There are several findings which needed to be noted from the western regulatory process' theories, and the 'real world' practice in Indonesia.

According to Gunningham et al.,³⁰ regulatory design processes are the preliminary steps which policy makers must go through in identifying their objectives, the characteristics of the environmental problem they confront, the available policy options and issues of consultation and participation. While largely optimistic on mixed instruments approach, Gunningham did not touch upon the possibility of 'pressures' (albeit external or internal) to the regulatory design processes. Young explains clearly that institutions are dynamic, because they are influenced by changes. He calls the determinants of change as the endogenous-exogenous factors. In the case study, endogenous factors are the focus of the research, which means factors having to do with attributes of the regimes, such as the locus of the regime on a hard law-soft law continuum; the nature of the relevant decision rule(s); provisions for monitoring, reporting and verification; funding mechanism; procedures for amending a regime's assemblage of rights, rules and decision making procedures; and preparation activities of the regulatory process.³¹ Based on the research, it can be seen that there are certain activities which are heavily influencing and pressuring the regulatory process in REDD+ Indonesia.

UN-REDD activities for example, from the very beginning have stated that its objective is to 'assist the GoI in REDD+ readiness'. Looking at their activities, one can say that most of what UN-REDD is doing is laying out a pathway for GoI –especially the immediate agencies and institutions in relation to REDD+ to start doing (or reviewing) their regulatory process in REDD+. Multi-stakeholder meetings, consultation meetings and even public consultation meetings are being held by UN-REDD with 'partner agencies' such as the National Planning Agency, MoF, MoE, National Council on Climate Change and DKN (*Dewan Kehutanan Nasional*/National Council of Forestry). In those meetings, problems are discussed, steps are negotiated, and sometimes, even agreements are reached. Although those meetings are not on regulatory design or regulatory process per se, they do 'prepare' necessary actions for regulatory process.

The multi-stakeholder meetings of REDD+ National Strategy Draft, for example, were done with National Planning Agency with the support of UN-REDD. In

30. GUNNINGHAM ET AL., *supra* note 13, at 376.

31. YOUNG, *supra* note 20, at 14.

that meeting, all national REDD+ stakeholders were invited, and problems of the draft were discussed. After the meeting, National Planning Agency then finalized the draft into a final draft of REDD+ National Strategy and sent the document to the REDD+ Task Force. The Task Force then went ahead and reviewed the draft, as well as taking the final draft on a 'road show of REDD+ National Strategy' to all stakeholders in Indonesia. As of June 2012, the REDD+ National Strategy was distributed to the public at large. Thus can be seen how influential the role of UN-REDD as the 'assistance to the government in REDD+ readiness' is, and how REDD+ Task Force as a new government body is taking the coordinative task of REDD+ Issues in Indonesia.

UN-REDD's management is also unique, in the sense that it does not particularly resemble other UN projects. The PEB (Program Executive Board) of UN-REDD consists of very high level executive officers of the donor organizations (in this case UNDP, FAO and UNEP), as well as Director General levels of governmental agencies (in this case MoF, and National Planning Agency), and AMAN (Aliansi Masyarakat Adat Nusantara/Indigenous Peoples Alliance of Archipelago). The importance of the PEB in the project's decision-making is reflected by the highest positions of the members of the PEB in UN-REDD. In each meeting of the PEB, plans for activities and expected outcomes and budget are discussed in detail. Through these meetings the donor organizations can insert their concerns, agendas and suggestions directly to the government agencies attending the meetings who are also members of the PEB UN-REDD, which adds the scope of transparency and mutualism between donors and the host government.

Although this process can be participatory, I would argue that pressures from outside the regulatory agency should be among the important factors accounted for in the regulatory design processes. In this research, it is clear that REDD+ related regulations and institutions (or agencies) are deeply influenced by external pressures (outside the regulatory institutions). In the UN-REDD case, for example, although the project does not directly influence the regulatory process, it still creates the 'ambiance of preparedness' and a pathway towards regulatory process.

The case of the REDD+ Task Force is different to UN-REDD. The REDD+ Task Force is a governmental agency, enacted by the President and it does regulatory and policy design and processes. To prove my argument of external pressures in the regulatory process of REDD+ Indonesia, one has to come back and review the basic agreement for the establishment of the REDD+ Task Force, and the LoI of Indonesia-Norway. Mr. Agus Purnomo, the Secretary of the REDD+ Task Force, who is also the Presidential Special Aide for Climate Change Issues, wrote

a book about the meticulous process of the Presidential Decree of the Moratorium on Forest and Peatlands.³² Much of the book also talks about the process of agreement between Norway and Indonesia in arranging the LoI. He clearly described that word for word in the LoI, especially the targets of each phase, are agreed on and, in fact, pushed by the GoI to be in the LoI. The GoI in the time of LoI negotiations was sure that if everything was written down in clear and concise language, everyone would understand what is expected by the LoI and the articles in the LoI can become targets of accomplishments, more than just mere articles.³³

The REDD+ Task Force has already produced (and/or assisted in the production of) a handful of regulations regarding REDD+ by working together with other agencies of REDD+. REDD+ National Strategy with National Planning Agency, has issued a Moratorium of New Licenses for Primary Forest and Peatland with MoF and DNPI, and law enforcement on forestry cases, and launched an Indicative Map of Moratorium of New Licenses, which are all part of legal apparel in implementing REDD+. From the field research, it is indicated that these regulations have gone through a 'bottom-up' process and the road for the regulatory design has been winding for years. The Moratorium Decree for example, started as a discussion twenty years ago when illegal logging was starting to grow due to the issuance of a 'concession permit' to people and companies who had given 'service' to the GoI under President Suharto. Various environmental NGOs had asked the GoI to enact a moratorium on forest and peatland to protect the forest, but it took them years to be heard. President SBY is the first president of Indonesia who declared a moratorium of licensing on forest and peatland since the independence of Indonesia in 1945. The decree itself has received support and caused optimism, even hope, that this decree would be a 'silver bullet' to end all forestry problems. During SBY's time in the GoI, there were many policies enacted related to forestry, such as the moratorium on forest and peatland licenses, law enforcement on forestry cases, launching of Indicative Map of Moratorium of New Licenses, which are all part of legal apparel in implementing REDD+. This action clearly supports Gunningham's thesis in *Smart Regulations*, which prefers combinations of regulations and instruments that are carefully selected for effectiveness.

32. PURNOMO, *supra* note 10.

33. GoN only concern was putting the 'numerical' commitment in the LoI (the 'one billion dollars'), but in the end they agreed that this numerical commitment is also mentioned. PURNOMO, *supra* note 10.

However, there are no theories which precisely resemble what is happening in REDD+ Indonesia. Within the scope the research, there are five agencies and institutions (four of them with regulatory power, only DNPI is excluded) that lay horizontally in Indonesia's governmental structure and compete with one another. But, as this research is not about the relationship between central and provincial (or local) government but within agencies themselves in the central government, the 'regulatory competition' theories are not suitable for this research.

Geradin's³⁴ theory on regulatory co-opetition is somewhat closer to Indonesia's practice. Regulatory co-opetition, on the other hand, can play out at different levels and involves several types of actors. Three forms of regulatory co-opetition can be distinguished: (1) inter-governmental; (2) intra-governmental; and (3) extra-governmental. This research mainly discusses the intra-governmental and extra-governmental regulatory co-opetition.

In most regulation theories, (Young, Fischel, Harris) it is accepted that regulatory institutions would already know what they are supposed to do (in terms of regulatory process and regulation making). In Indonesia's REDD+ issue, because it is a new issue and everybody is still trying to get a grasp of what REDD+ is, each of the agencies is confused about their own role. This then is reflected in their regulatory products, which overlap and conflict with one another.

In reality, there is confusion in the agencies. Each thinks that REDD+ will be better, if they were the ones who are coordinating the REDD+ networking in Indonesia. MoF thinks that they have been organizing all REDD+ activities since long ago, National Planning Agency thinks that they are the ones who organize the plot of activities and budgeting, MoE thinks that they are 'in charge' of MRV (monitoring, reporting and verification) and hence they will be a very good coordinator, and REDD+ Task Force think they have the strongest mandate to coordinate everyone. This is why they are competing.

Regulatory co-opetition also shows in how these REDD+ agencies increased in activities, and in the numbers of regulations produced. Even though there are many overlaps and conflicts of regulations, on a positive note, the agencies are competing to be the first that gives solutions to REDD+ problems. However, this theory asks for two things: competition and coordination. In Indonesia's case the 'coordination' part is still very weak. REDD+ Task Force and the President are trying very hard to be the coordinators of the stakeholders, a synchronization and

34. DAMIEN GERADIN & JOSEPH McCAHERY, REGULATORY CO-OPERATION: TRANSCENDING THE REGULATORY COMPETITION DEBATE (Jacint Jordana & David Levi-Faur eds., 2004).

coordination between institutions are yet to be achieved.

The regulatory co-competition nightmare, is when the competition is not enforced by the presence of ‘cooperative mechanism’—information sharing, assignment of primary darting responsibilities, and coordinated implementation—to prevent the rivalry between such bodies from degenerating and resulting in duplication of work, regulatory diseconomies of scale, or even decision making stalemates. The worst of the worst is not yet happening in Indonesia, there are still coordination and cooperative efforts made between the agencies, but if the coordination body with a strong legal background (such as ‘REDD+ Agency’) is not backed up by a strong legal framework—at least in the form of Undang-Undang (Law) and more solid than a Presidential Regulation, this nightmare might become a reality.

IV. Conclusion

This research reveals that external pressure—in the forms of donor projects—do exist in Indonesia’s REDD+ regulatory process. This is clearly written in the basic agreements of case studies. The terms of agreements show clearly that the donors have the final say on the projects, including the conditionality of funding, monitoring and evaluation activities as well as organizing activities for REDD+ preparations. It is, however, interesting to see how this external pressure plays out in the case studies. Many think that since Indonesia is one of the world’s main players in REDD+, the donors will have to ‘follow’ Indonesia’s terms on REDD+ projects. Instead, the GoI is very flexible in understanding the donor’s perspectives in the donor projects. The multilateral agreement of UN-REDD and LoI Indonesia-Norway are clear examples of how the GoI shows its flexibility and leniency in carrying out REDD+ projects. However, the donors in the case studies do give full trust to the GoI in running the projects. In terms of the REDD+ Task Force, the GoN emphasizes this many times: as long as the project goes according to the LoI and the President agrees with the REDD+ Task Force, the GoN will always support the project.

There were many REDD+ regulations and policies enacted in the past five years. Most of them were made directly after international agreements, UNFCCC Conference of Parties, or within donor projects’ activities. The research shows that there is definitely an influence of donor projects as external pressure on Indonesia’s regulatory process in terms of involvement and ownership in Indonesia’s REDD+ agencies. The donors are involved in the decision making of the projects, as they are sitting as Project Executive Board members or as a member in the

project's working group; they contribute to the projects in the form of time and human resources. In return, the projects' activities are setting the stage for the regulatory process for these agencies. The UN-REDD case, for example, engaged in REDD+ preparation meetings, such as collaboration meetings, coordination meetings, REDD+ dissemination activities, pilot projects preparations and FPIC (free, prior informed consent) guideline compilations.

This case study was focused on working outside of the regulatory process to set the 'stage' for governmental agencies. The hopes are, after UN-REDD winds down and all of the preparatory process is done, REDD+ agencies will then be ready to start the REDD+ regulatory process and implementation.

In REDD+ Task Force's case, the project itself is a governmental agency that is involved in the regulatory making. Currently there is a working group in the REDD+ Task Force whose sole focus is on legal review and enforcement. This working group is reviewing and pushing regulation amendment and/or regulation annulment in relation to deforestation and forest degradation, moratorium, licensing, conflict resolution and tenurial problems. The REDD+ Task Force is designed as the core of REDD+ networking as well as the 'engine' for REDD+ legal enforcement in Indonesia. It is working with the police (POLRI), prosecutors' office (*Kejaksaan*), Anti-corruption Commission (KPK), MoF, Tax Office and MoE. This Task Force, which will become REDD+ Agency in Indonesia, is considered as a very strong body under the president. Not only will it have the power of regulatory making and coordination among line ministries, it will also have the power of law enforcement for REDD+ related cases. The involvement of donors in the REDD+ Task Force is considered temporary, until the task force becomes a REDD+ Agency.³⁵ Once the Agency is established, it will be supported by Indonesia's country budget, just like the rest of the other agencies in Indonesia.

The institutions/agencies in REDD+ Indonesia clearly think that REDD+ is an important issue. The fact that the donors endorsed REDD+ and are willing to support REDD+ projects in Indonesia is also a sign that there is an international momentum going on in the environmental world. This is in fact taken very seriously by the GoI, which was shown by adopting donor projects in REDD+, including the two case studies in this research. Setting aside the 'agenda' behind all of these actions, it is clear that external pressures in the forms of donor projects

35. Interview with State Ministry of National Development Planning (BAPPENAS), in Jakarta (June 12, 2012).

in REDD+ Indonesia is a good effort in pushing REDD+ regulatory process in Indonesia. The research has shown commitments from the GoI, REDD+ related agencies in Indonesia and donor governments in regards to REDD+ issues. Lessons learned and best practices from other sectors can also enhance the learning curves in REDD+ Indonesia.

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