REDD+

A case study of the challenges weak land rights in Indonesia pose for equitable distribution of benefits from activities to mitigate climate change.

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List of Abbreviations

AMAN – Indigenous Peoples Alliance of the Archipelago
CIFOR – Centre for International Forestry Research
CO₂ – Carbon Dioxide
COP – Conference of the Parties
FAO – Food and Agriculture Organisation
FPIC – Free, Prior and Informed Consent
GHG – Green House Gas
IAFCP – Indonesia Australia Forest Carbon Partnership
ILO – International Labour Organisation
IPCC – Intergovernmental Panel on Climate Change
IWGIA – International Working Group for Indigenous Affairs
LDCs – Least Developed Countries
LoI – Letter of Intent
MRV – Measuring, Reporting and Verification
PES – Payments for Ecosystem Services
PPMHA - National Program for the Protection and Recognition of Indigenous Peoples
REDD – Reduced Emissions from Deforestation and forest Degradation
UN – United Nations
UNDP – United Nations Development Program
UNDRIP – United Nations Declaration on the Rights of Indigenous People
UNEP – United Nations Environment Program
UNFCCC – United Nations Framework Convention on Climate Change
1. Introduction

“Degradation and deforestation of the world’s tropical forests are cumulatively responsible for about 10% of net global carbon emissions. Therefore, tackling the destruction of tropical forests is core to any concerted effort to combat climate change” (Theredddesk-b 2015).

Tropical forests work as a sink to conserve carbon dioxide thus hindering it from being released into the atmosphere. REDD+ (Reduced Emissions from Deforestation and forest Degradation) schemes are designed by the United Nations with the aim of reducing emissions from forest destructive activities. Under REDD+, actors working to protect forests by managing them in a sustainable way are financially rewarded by developed nations (Stoett 2012:67). Consequently forests are made more profitable standing than felled.

This study will deal with the issues of benefit sharing in terms of the REDD+ programs in Indonesia. It will not be designated to describe the trends or tendencies in forest and land-use changes, nor will it deal with the causes of deforestation and forest degradation to any large extent. The study will rather attempt to answer the question; how are Indonesia’s weak land right laws challenging equitable benefit sharing from REDD+ projects when reimbursements are measured in economic terms? The question is relevant for the purpose of highlighting the challenges international policies may encounter in national contexts. Such challenges are of great importance to uncover especially for the purpose of rising awareness of the issue. Although research points to the fact that the UN is aware of the problem of neglect of customary rules and lack of involvement of indigenous peoples in Indonesia, this study will attempt to further analyse how the commodification of the environment, making carbon into a tradable resource, poses a risk of inequitable distribution of reimbursements. The promotion of financial payments for ecosystem services provides a risk of benefitting stakeholders unequally based on weak constitutional land rights.

Indonesia’s weak land rights and law enforcement of constitutional rules challenge determination of legal rights to economic benefits from REDD+. Indigenous people face high possibilities of discrimination of adequate reimbursement from activities to avoid deforestation because the laws stating their right to customary land is frequently overlooked by the State. Basing benefit distribution on constitutional right to land should provide indigenous communities with economic benefits in theory but in practice they are most likely to be left out due to rent-seeking behaviour of government officials. Therefore, the discrepancy between stated constitutional regulations and implementation of such laws in
reality will be argued to pose a real threat to the fair and equitable sharing of benefit from the programs intended to reduce greenhouse gas (GHG) emissions.

This study begins with a theoretical discussion of previous research and definitions of some of the key concepts used throughout the paper, such as ‘REDD+’, ‘incentives’, ‘opportunity costs’ and ‘indigeneity’. After this, the methodology and theoretical argument is presented before briefly describing the relationship between forest destruction and climate change. Following, there will be a presentation of the case for this analysis before conducting the case study. The case study is arranged in the following way; the REDD+ framework and the incorporation of indigenous people in the international structure of such will be described. There will be a brief discussion about the Indonesian customary law and indigeneity before analysing the benefit sharing and funding structure of national programs. Thereafter a study of the Indonesian legal system dealing with ownership of land and forests will be performed since such ownership, for the purpose of this study will be defined as the foundation on which REDD+ economic benefits are distributed. National law enforcement, in regard to the forest sector and land rights, will be reviewed before concluding with a discussion concerning the findings in the case study.

2. Theoretical Framework

This section deals with the previous research on the challenges of REDD+ programs, before proceeding to a discussion of the theoretical definitions of the economic incentives and opportunity costs of such activities. As a final part the methodology and theoretical argument of this study will be explained.

2.1 Previous research

There are numerous previous studies on topics important for this study, upon which I have drawn. Climate change, REDD+ and UN-REDD programs are all well researched issues with plenty of research recognising the hurdles the programs need to overcome in order to tackle the issue of deforestation and forest degradation successfully (McGregor et al. 2014:279, USAID 2012, Angelsen et al. 2012). Much literature has focused on policy design aspects (Funder 2009, Corbera & Schroeder 2011) and the ways in which the REDD+ scheme could potentially be developed and improved (e.g. McGregor 2014). Mexico (USAID 2012), Brazil (Costenbader 2011, Luttrell et al. 2013), Tanzania (ibid) and Nepal (Poudel et al. 2014) are only a few of the countries apart from Indonesia in which REDD+ pilot projects have been
implemented. In-depth studies of such projects planning and implementation have been performed and evaluated by numerous researchers and organisations. Thus, there has been a keen interest among scholars to assess these projects as an attempt to analyse flaws in the country specific policy designs in order to highlight possible ways to improve activities aiming to avoid forest destruction and deforestation. This study will mainly attempt to stress the divide between the legal rights and economic benefits from REDD+ activities. However, there are also studies acknowledging the non-economic benefits that could derive from the programs (see for example Luttrell et al. 2013).

Indigenous populations have been a topic of increasing popularity in both social science research and international law. In terms of REDD+ activities, studies note the importance of adequate land governance structures as a prerequisite for implementing REDD+ in order to achieve favourable environmental management outcomes and mitigation of climate change (Poudel et al. 2014). As Lemaitre (2011) notes; although indigenous peoples’ rights are recognised in international instruments and laws there is a clear gap between the laws on the subject and how such protection of rights is implemented in practice. Thus, the challenges and disconnect of stakeholders legal rights to land on which they depend, and their rights to carbon offsets from these lands have been previously recognised (USAID 2012).

2.2 Definitions

2.2.1 REDD+, Incentives, Payment for Ecosystem Services and Opportunity Costs

REDD+ has been defined as a mechanism to reward developing countries for avoiding deforestation and forest degradation and hence reduce GHG emissions. There are not one explicit structure or policy design of the environmental activities but the overarching intentions are that “it will create an incentive for developing countries to protect, better manage and wisely use their forest resources, and in so doing contribute to conserving biodiversity and to the global fight against climate change” (UN-REDD-b 2015).

Using forests as carbon stocks so to gain positive environmental outcomes is generally one of the incentives for sustainable forest management along with social and economic benefits (ibid). The incentives to protect forests through REDD+ are in this study referring to the economic allowances actors are able to derive from avoided deforestation. The study will confine the policy approach of benefit sharing to refer to the payment for ecosystem services (PES) approach. “PES is by some used synonymously with ‘conservation
finance’ and indicates a way of financing efforts to conserve ecosystems. It is defined as a voluntary, conditional transaction between at least one seller or provider, and at least one buyer over a well-defined ecosystem service” (Costenbader 2011:7). Some perceives the REDD+ framework as comparable to the PES structure funded either by public funding or carbon markets. Incentives potentially created by REDD+ in the form of positive social development, increased biodiversity or other non-monetary imbursements will therefore not be brought up to any large extent in this study. Opportunity costs refer to the costs arising from the changes in land use occurring under REDD+ implementation. Following from Streck and Parkers’ (2012:113) definition opportunity costs will be outlined as “foregone revenue from the best alternative land use” succeeding from actors engagement in REDD+ activities.

2.2.2 Indigeneity and Adat Communities

For the purpose of this study Adat, meaning ‘custom’ or ‘tradition’ will be defined as customary law. “Adat lay at the core of indigeneity” (Klenke 2013:150) and the Indonesian translation for ‘indigenous community’ is masyarakat adat. Therefore the two concepts will in this study be used as equivalent. “Indigeneity generally describes the relationship between a marginalised, culturally distinctive group and a somehow culturally hegemonic other” (ibid 2013:151). Following from this, ‘indigenous communities’ is defined not based on fixed qualities of a group but rather on the processes of difference compared to what is perceived as not indigenous in historical and social structures. Adat communities in Indonesia distinguish themselves as separate from other societal groups using culture as the discriminating factor. However, the term is not merely constrained to indigenous peoples but rather to customary rules referring to the inherited traditional and institutional systems of local communities and their values (Henley & Davidson 2008). The notion ties history, land and law together creating a system of customary rules in which law is not merely enforced by the state but rather inherited by local communities. Accordingly, ‘Adat’ cannot be regarded as a clearly stated discourse of national legal constitutions; it is rather referred to as “a set of loosely related ideas” (ibid 2008:818).

2.3 Methodology

In order to undertake this study a review of secondary literature has been performed. National and international policy documents have been analysed as well as reports and news articles regarding the performance of the Indonesian government in terms of outcomes of REDD+ activities. Statements from both governmental organisations and non-governmental
associations have thoroughly been scrutinised so to untangle the complex relationship between legal rights to land and activities of avoided deforestation and forest degradation. Since the non-monetary benefits of REDD+ activities are not the objective of this study such reimbursements have rather been used for a comparative purpose in order to strengthen the argument of challenging equity of monetary gains.

2.4 Theoretical Argument

Financial benefits from REDD+ are intended to incentivise actors to manage forests sustainably. However, weak national land tenure legislation in Indonesia pose challenges for distributing benefits from REDD+ equitable. The dual ownership claims of land and the process in which the State often fail to legally recognise Adat communities, provides legitimacy for authorities to neglect the indigenous peoples rights to customary forests. Weak law enforcement in the country where constitutional rights are not fully implemented allows for corrupt behaviour among the powerful elites who are incentivised by the financial payments from REDD+. The inadequate implementation of constitutional laws regarding indigenous peoples creates ambiguous grounds on which to base fair distribution of economic reimbursements. Allocating REDD+ benefits based on actors legal right to land and actors legitimate right to benefit from forest products on such land result in discrimination against indigenous people due to their customary rights being systematically overlooked by the Indonesian State.

Figure 1. Summary of Theoretical Argument

<table>
<thead>
<tr>
<th>Weak legal land rights</th>
<th>Non-equitable benefit sharing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak law enforcement</td>
<td>Neglect of customary forests</td>
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</table>

Rent-seeking behavior of government officials → ‘legitimate’ disregard of Indigenous communities rights to land
3. Context

The focus in this section will lie on explaining the relationship between forest destruction and climate change as well as the reasons for performing a case study focused on Indonesia.

3.1 Deforestation and climate change

Approximately 31 per cent of the world’s total land area is covered by forest. However, these forests are rapidly disappearing as a consequence of numerous factors such as (ill-) legal logging and mining as well as forest fires and agricultural expansion. During the first decade of the 21st century the net loss of world forest was as high as 6.2 million hectares per year and this was a lower number than the net loss of forests the decade before that (theredddesk-b 2015).

Apart from the destructive effects forest loss has on biodiversity and the livelihoods of forest-dependent communities, a decline of forests additionally means a loss of carbon sinks in which carbon dioxide (CO₂)\(^1\) is stored. The global forest sector is a fundamental source of sequestering CO₂ through storing it in biomass within trees, dead wood and soil (USAID 2012:4f). The majority of the forest-loss in the world is occurring in tropical forests (theredddesk-b 2015) and destruction of such forests is accelerating climate change because when forests are felled CO₂ is released into the atmosphere. Hence, deforestation and forest degradation are major causes of GHG emissions (Wibisana 2013:151). Since the mid-20th century there has been a great increase in GHGs, especially CO₂, emissions with vast negative effects for the global climate. According to the United Nations Intergovernmental Panel on Climate Change (IPCC) assessment report in 2007, deforestation and forest degradation contribute to about 17 per cent of the GHGs emissions in the world (UN-REDD-b 2015).

Even though the least developed countries (LDCs) are only accountable (as of research from 2009) for five per cent of the total global GHG emissions, one cannot disregard the emissions from such countries since this is where much of the world’s tropical forests are situated. Deforestation within the LDCs is responsible for 74 per cent of their total emissions and therefore clearly the major source of emissions within these countries (Funder 2009:7). The increased scientific evidence of the threat that deforestation poses for the global climate

\(^1\) ‘Carbon dioxide’ will be used interchangeably with CO₂ and ‘carbon’ throughout this study.
has gradually changed the picture of the importance of forests in climate change negotiations. Tropical deforestation has gained significant emphasis in climate talks and is viewed as an important issue in mitigating GHG emissions (Wibisana 2013:125). Much of current debate over forestry and its role in mitigating climate change centres around, and has its core in the global scheme developed by different UN bodies (FAO, UNDP & UNEP) for Reducing Deforestation and forest Degradation (REDD) (UN-REDD-a 2015).

3.2 The case of Indonesia

The focus of this study is the UN environmental policy REDD+, attempting to create incentives to avoid deforestation and forest degradation in Indonesia. Indonesia is one of the countries with the largest rainforest as well as the highest deforestation rates. Together with Brazil, Indonesia has been reported as responsible for most of the world’s forest carbon emissions (Hatcher & Bailey 2011:316). Between 1990 and 2000 approximately 1.3million hectares of tropical forest was deforested in Indonesia alone, stating a deforestation rate of 1.2 per cent per annum (Wibisana 2013:151).

In 2010 Indonesia submitted commitments to support the global efforts to reduce carbon emissions from deforestation and forest degradation and declared to cut emissions by 26 per cent below a predicted ‘business-as-usual’ scenario unilaterally and with international support by 41 per cent by 2020 (theredddesk-a 2013). 87 per cent of these reductions are envisaged to come from avoided deforestation and different carbon sequestration projects – thus REDD+ is absolutely central to Indonesia’s emission reduction strategy (Neilson 2010). In 2012 there were over sixty REDD+ projects in Indonesia at different phases of implementation, varying from developing national level policies to capacity building endeavours (theredddesk-a 2013) indicating the dedication, at least on paper, to participate in the global effort to mitigate climate change. The vague and poorly defined arrangements of legal land rights in the country have been predicted to pose real challenges for the successful implementation of REDD+ programs, hence adding relevance to perform an in-depth study of such activities in Indonesia.
4. Case Study

4.1 REDD+ Framework - Goals and Intentions

Approximately 1.6 billion people in the world are dependent on forests and forest products for shelter, fuel, food, and as an economic resource. Simultaneously, deforestation accounts for a great share of the global CO$_2$ emissions. REDD+ aims to bring these two priorities together “[…] - reducing carbon emissions from forests and increasing the livelihoods of those that depend on them […]” (Boccucci 2015) hence bringing both environmental benefits as well as economic and social benefits.

REDD (Reduced Emission from Deforestation and forest Degradation) is an international mechanism to aid a break from the trends of deforestation and increasing amounts of GHG emissions, thus a mechanism to help mitigate climate change. UN-REDD was first launched in 2008 (UN-REDD-a 2015) as part of the Bali Action plan adopted at the 13$^{th}$ Conference of the Parties (COP13) to the United Nations Framework Convention on Climate Change (UNFCCC) in 2007 (UN-REDD programme 2015). During this Conference it was stated that enhanced national and international actions to mitigate climate change should include consideration of:

“Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries” (UNFCCC 2008:3)

The year after, the role of conservation and sustainable management of forests was upgraded so to receive the same significance as avoided deforestation and forest degradation (UNFCCC 2011). In 2010 the REDD-program was extended to REDD+ at the COP16 in the so-called ‘Cancun Agreements’ where the scope of REDD+ was defined through the following five activities listed in decision 1 in COP16. Paragraph 70;

“Encourages developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances:

1. Reducing emissions from deforestation;

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2 This study will hereafter refer to the programs only as REDD+, thus treating them as having proceeded from the early stages of implementation, disregarding the UN-REDD framework in which significance was not put on conservation and sustainable forest management to the same extent.
2. Reducing emissions from forest degradation;
3. Conservation of forest carbon stocks;
4. Sustainable management of forests;
5. Enhancement of forest carbon stocks;”

(UNFCCC 2011:12)

The ‘plus’ indicates inclusion and priority to preservation and conservation of forest carbon stocks through sustainable forest management practices as well as rehabilitation of damaged forest areas (REDD+ National Strategy 2012:5f). Even though there is no clear and finalised framework of the character of REDD+ mechanisms and the program is based on diverse national circumstances, there is agreement around REDD+ as activities linking climate change and deforestation in ambitious programs (Stephan 2012:622). The aim of REDD+ is to support capacity building through an incentive-based approach providing financial benefits to developing countries preserving forests and thereby decreasing the carbon released into the atmosphere (Poudel et.al 2014:40).

Accordingly, the forests do not only have an economic value when cut down for the wood or cleared for agricultural expansion and land-use changes. An economic value is placed on the forest through the carbon stored in biomass (Stoett 2012:67) thus; forest protection is made economically desirable (ibid 2012:126). Carbon stored in biomass and forests, reflecting emissions reduction, is approximated and counted in tons of CO₂, which is converted into (one) carbon credit(s) (USAID 2012:3). […] "Environmental outcomes are delivered, measured, reported, verified and registered as carbon credits” (McGregor et al. 2014:279) and "the ability to generate, own and sell carbon credits from REDD+ programs or projects is one of the sources of benefits for REDD+” (USAID 2012:3). The intention of REDD+ activities is therefore to compensate actors for the income they would have gained from cultivating the forest into agricultural land or other land/forest use and through such reimbursements incentivise sustainable environmental actions.

4.1.1 Incorporation of indigenous people in REDD+

REDD+ activities have inevitable effects on indigenous peoples and forest dependent communities lives and livelihood. Activities should follow a human rights-based approach referring to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Development Programme (UNDP) Guideline on Indigenous Peoples' Issues and the International Labour Organisation (ILO) Convention No 169 (Forest Peoples Programme 2011). Although the declarations and guidelines do not impose any legal obligations on States
they do however work as a moral compass for nations. In the COP13 report (UNFCCC 2008:8) indigenous peoples are highlighted and it is stated that:

“[…] the needs of local and indigenous communities should be addressed when action is taken to reduce emissions from deforestation and forest degradation in developing countries.”

Additionally, guidance and safeguards for REDD+ are declared in the Cancun Agreement. Safeguards in this matter refers to, among other principles, the recognition and appreciation in REDD+ programs of the rights to land, territories and resources as well as equitable benefit-sharing and livelihood security among all relevant stakeholders and rights holders (USAID 2012:6). Accordingly the relationship between tenure rights, indigenous communities as included in the concept of “relevant stakeholders” and equitable benefit sharing is brought up as a focal point. There is thus recognition among policy planners and implementers of REDD+ of the importance to incorporate local people and indigenous communities in the programs in order to achieve positive environmental incomes. As Sandbrook et al. (2010) argues; it is vital to aid participation of forest-dependent communities in all levels of the activities so to incentivise sustainable forest management among the main forest users and therewith protection of forests.

Although rights of indigenous populations are incorporated in the international level rhetoric, policy instructions on how to allocate rights to benefits from REDD+ are not mentioned in agreements. This is, due to the ‘country specific’ architecture of the programs, thus, up to each country to discuss in national strategies and action plans (USAID 2012:7). Another crucial factor that must be recognised is that it is consequently up to each national government to decide whether to fully respect indigenous peoples rights to economic benefits from REDD+ (Wibisana 2013:133).

Following from this, one can conclude that there seems to be a clear agreement among international bodies engaged in the development and implementation of REDD+ activities of the importance of establishing mechanisms so to incorporate and increase participation of local communities in the process (e.g. ILO-b 2015, UN-REDD-c 2015). However, the incorporation may be challenging and hence not adequately performed in practice.

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3 Benefits, as will be argued further on in this study, is one of the factors incentivising actors to comply with the forest conservation measures of REDD+. 
4.2 Indonesian customary law (Adat)

The concept of ‘indigeneity’ or ‘indigenous’ is complex and contentious. International instruments, such as UN- and ILO bodies, dealing with the rights of indigenous peoples use various definitions. One of the definitions commonly used is:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”.

(Martínez Cobo 1983:50:para. 379)

Such definition relies partially on the relational understanding described previously regarding the process of differentiation between indigenous and non-indigenous communities. One of the challenges of a universal definition of indigenous people is the risk of overlooking the wide diversity of indigenous groups as well as their relational differences. An emphasis on a group’s self-definition of being indigenous (Göcke 2013) is of major importance and an essential condition for a group to be classified as indigenous is the “special and spiritual connection to ancestral land” (ibid 2013:18). Therefore the definition of ‘Adat’ used in this study is:

“a group of people who have been living in a certain geographical area for generations in the territory of the Republic of Indonesia because of the ancestral connection and a special relationship with the land, territory and natural resources, who own a customary governance system and a adat law order on their territory”.

(Arizona & Cahyadi 2013:54)

According to the national indigenous peoples’ lobby- and rights advocacy group (Henley & Davidson 2008:817), the ‘Indigenous Peoples (or ‘Adat’ communities) Alliance of the Archipelago’s (Aliansi Masyarakat Adat Nusantara, AMAN)’ estimations there are approximately 50 to 70 million indigenous individuals in Indonesia (IWGIA 2015). These groups distinguish themselves as separate from other societal groups depending on cultural factors. As seen in the definition of ‘Adat’ and following Henley and Davidsons’ (2008:818) statement: “historical control of land is […] the most important source of land rights” in the Indonesian customary law.

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4 I am aware of the discussion of the potential risks of using a singular definition of indigenous people but it is beyond the scope of this study to further elaborate on such challenges. Therefore this definition will, in accordance with multiple international organisations regulations be used to describe the concept.
As identified previously, REDD+ activities should be implemented in accordance with, among other declarations, the UNDRIP (Forest Peoples Programme 2011). Indonesia has signed the Declaration, however, according to the International Working Group for Indigenous Affairs (IWGIA)

“[Indonesian] government officials argue that the concept of indigenous peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs by groups identifying themselves as indigenous.”

(IWGIA 2015)

The discrepancies between the governments view on ‘indigeneity’ and a groups ‘self-definition of being indigenous’ could potentially be seen as evidence for the Indonesian governments reluctance of properly recognising Adat communities’ legal right to benefit from the land on which they depend 5. Hence, as will be discussed more in depth in the land rights section in this study, there is a gap between constitutional land rights and the real implementation of such.

4.3 Indigenous peoples in Indonesia’s REDD+ programs

As previously indicated, indigenous peoples’ rights have been incorporated in the international level framework of REDD+. It is therefore up to the respective governments whether or not to respect such rights when implementing the programs (Wibisana 2013:133). Even though Indonesia has not yet ratified the ILO Convention 169 (ILO-a 2015) AMAN declares Indonesia, from a constitutional perspective as “one of the most developed countries in terms of recognising and respecting the rights of indigenous people” (AMAN-b 2015). However, there are clear doubts both from the organisation itself and from different scholars regarding the actual implementation of increased participation of, and respect for indigenous peoples.

When analysing the Indonesian REDD+ National Strategy indigenous communities are evidently taken into consideration in the rhetoric. The REDD+ National Strategy (2012) declares the aim to reduce emissions and establish long-term activities resulting in financial, ecological and social benefits. REDD+ should be implemented on the basis of equality and protection of human rights in forest management “including women and

5 One cold potentially also argue for the existence of inconsistencies between the governments definition of ‘Indigenous’ and ‘Customary’ since Decision 35 (see section about ‘land rights’ in this study) intends to give back forest to indigenous communities hence indicating the governments recognition of certain groups identifying as indigenous. Further discussion about such definitions are however beyond the scope of this study.
communities vulnerable to socio-economic and environmental change” (ibid 2012:5). Additionally, the national programs should be undertaken with consideration to transparency and able all relevant stakeholders to participate with full understanding and opportunity. The implementation of REDD+ must also be accountable to the Indonesian people and the international community “in terms of relevance, process, funding and results obtained” (ibid). The implementation of REDD+ requires the mainstreaming of such activities into the Indonesian national and sub-national development programs so to establish necessary political and legal conditions for the framework such as ”good governance, inclusiveness by ensuring the participation of all stakeholders, cost efficiency in achieving goals, and accountability in all REDD+ implementation activities” (ibid).

There are three national level institutions attempting to coordinate, fund and measure these principles. The REDD+ Agency is responsible for the communication and involvement of all stakeholders – nationally and internationally – by developing and implementing effective systems of communication and work relationships (ibid 2012:9ff). The Agency is responsible for the preparation of instruments for the safeguard framework and the implementation of the principles of Free, Prior, and Informed Consent (FPIC) (ibid 2012:27) in which the words ‘indigenous people(s)’ and ‘local communities’ are used repeatedly (ibid 2012). The Funding Instrument of REDD+ intends, among other ambitions, to promote efficient and fair distribution of funds as well as benefits from REDD+ activities (ibid 2012:11f). The third and last institution developed on the national level to promote effective implementation of REDD+ activities is the REDD+ Measurement, Reporting and Verification (MRV) Institution which serves the purpose of measuring and reporting the programs in line with UNFCCC’s development of methodologies (ibid 2012:13ff).

The above-mentioned acknowledgement of indigenous people in the REDD+ National Strategy indicates the recognition of importance of incorporating and increasing participation of such groups as relevant stakeholders in the national framework for REDD+ implementation.

4.4 Funding of REDD+ activities

The funding mechanism and structure of REDD+ are by many scholars perceived as a framework of Payment for Ecosystem Services (PES) (see e.g. McGregor 2014, Sandbrook et al. 2010) in which carbon sequestration becomes a source of income for developing nations undertakings to avoid deforestation. There are currently multiple sources of REDD+ finance –
public and private as well as national and international. Additionally there are several different mechanisms for financing REDD+ - through for example “taxes, carbon markets and auctioning of allowances” (Streck & Parker 2012:116). The majority of REDD+ activities are funded through bilateral country programs, in which Norway is the foremost donor (ibid). An example of this is the partnership between Norway and Indonesia known as the Letter of Intent (LoI) signed in May 2010 in which Norway provided financial support of US$1 billion for Indonesian REDD+ initiatives (Wibisana 2013:137).

When attempting to analyse which funding structure is favoured in Indonesia it is rather unclear. The creation of carbon markets in Indonesia through sequestration of carbon in biomass converted into carbon credits transforms carbon into being perceived as a tradable commodity based on an economic value. Drawing from the commodification of carbon, certain laws, as well as from the partnership between Indonesia and Australia (IAFCP) in which carbon markets are advocated as a financial mechanism for REDD+ activities (Neilson 2010), this study will, in line with Wibisana (2013:138) interpret carbon markets as the preferred way of financing REDD+ projects. Therefore, funding will be dealt with as part of, and defined as structured according to, the larger umbrella structure of PES framework. However, not specifying the preferred source of funding. PES is according to the UN-REDD program “one of the most important developments for financing ecosystem conservation efforts in recent decades” (Costenbader 2011:7). This also indicates a preference for economic benefits in return from forest protection arrangements. Consequently benefits will be viewed as financial payments for ecosystem services although still recognising the importance of the non-economic outcomes of the programs and their potential to incentivise sustainable forest management and forest protection.

4.5 REDD+ benefit sharing in Indonesia

Benefit sharing mechanisms must be considered of major importance to the environmental outcomes of REDD+ activities. In order for reforestation and forest protection to occur, landowners need to be reimbursed enough to counterbalance not only the costs of avoided deforestation but also the "lost” agricultural income. Hence the opportunity costs need to be adequately met. Otherwise there will not be enough incentive for actors to engage in REDD+ activities and the much-needed change of behaviour will not take place (Costenbader 2011:8). Therefore “benefits should be interpreted as net benefits […] from implementation of a REDD+ project, program or policy” (Luttrell et al. 2013:2) - the financial gains acquired by implementers from different sources and mechanisms of funding minus the costs of pursuing
REDD+ activities (ibid 2013:3). Thus, the focus of carbon sequestration as a source of economic income from ecosystem conservation as well as the expectancy of REDD+ to deliver financial gains and incentives (Howson & Kindon 2015:98) consequently result in monetary net reimbursements being equalised to benefits on top of stakeholders’ opportunity costs.

Researchers have in numerous cases provided evidence of the importance of REDD+ to effectively meet local communities opportunity costs in order to achieve positive and equitable environmental and economic outcomes (Streck & Parker 2012, Costenbader 2011, McGregor 2014). Opportunity costs for, and benefits from REDD+ activities are not easily calculated. They cannot be estimated in the same financial terms as other market activities since they can be understood in both monetary and non-monetary terms. The speculative nature of “income foregone because of REDD+ actions” (Luttrell et al. 2013:2) as well as the fact that non-monetary benefits may signify improved ecosystem protection as well as better-quality governance (ibid) makes the costs hard to estimate.

Another factor complicating the estimation of opportunity costs are the complex ownership arrangements for the land on which REDD+ projects are implemented. Dual claims of ownership of land may construct opportunity costs both for the actor insisting on legal property rights and the local communities depending on the forest products for their livelihoods (Nawir et al. 2015:7). The construction of opportunity costs are not the focus of this study but it is however worth mentioning that costs of REDD+ may depend on the forests carbon content (amount of carbon stored in biomass) (Streck & Parker 2012:114) and/or on the costs of guarding forests from actors driving deforestation on the local level through illegal forest activities (Luttrell et al. 2013:2). Implementers of REDD+ will need to estimate the foregone revenue brought upon communities or local actors and compare this with the value of the second best option for usage of the land (Streck & Parker 2012:114).

Secure tenure rights and adequate allowances for local communities from managing the forests are acknowledged to incentivise forest users, and provide higher motivations for sustainable forest management. Additionally, the importance of the benefits being fairly distributed among relevant stakeholders is recognised as key for stakeholders’ and actors’ support of the programs (Luttrell et al. 2013:1). Enhanced enforcement in terms of prevailing regulations of forest management and improved tenure rights are suggested to be one way to lower the opportunity costs driven by illegal forest behaviours as well as a prerequisite for REDD+ initiatives (Lemaitre 2011). Land ownership is suggested to increase forest protection, therefore in order to incentivise sustainable behaviours it must be
determined who has the legal right to receive benefits from REDD+ programs. Accordingly, one has to establish who has the right to receive benefits from forest products or services. This implicitly means that a nation's constitutional framework has to establish forest- and tenure rights explicitly in order to determine who should have right to derive shares of the benefits from REDD+ (USAID 2012:8) and therewith develop incentives for forest protection. The complex resource ownership arrangements in Indonesia are complicating the recognition of legitimate resource users to be compensated from REDD+ imbursements thus posing challenges for climate change mitigation.

The expectation of REDD+ has been to deliver monetary gains and incentives for reducing carbon emissions through the expansion of markets in environmental services (Howson & Kindon 2015:98). In line with this, the legitimate receivers of benefits from REDD+ could be conceived as actors who have economic opportunity costs. Actors would according to Costenbader (2011:45) only have legal opportunity costs if they have legal rights to carbon sequestrated in forests that REDD+ aims to protect. Since explicit carbon rights are not clearly defined in Indonesia (USAID 2012:34) legitimate right to carbon is in this study simplified into the legal right to benefit from forest products since carbon stored in biomass can be regarded a “non-extractive forest resource or a forest service (carbon sequestration)” (ibid 2012:14). Accordingly actors holding constitutional rights to forest products should have the right to receive benefits from REDD+ programs. Therefore legitimate rights to receive allowances from REDD+ are for the purpose of this study and in accordance with the “libertarian” principle that states that distribution should be according to property rights (Luttrell et al. 2013:6) referred to as legitimate land rights holders.

Figure 2. Connection between land rights and REDD+ benefits

<table>
<thead>
<tr>
<th>Land rights</th>
<th>Carbon rights</th>
<th>Legal right to economic benefits from REDD+</th>
</tr>
</thead>
</table>

Nevertheless it is worth noting that there seems to be somewhat of a paradoxical relationship between land rights and REDD+ programs. Scholars (e.g. Howson & Kindon 2015, Sandbrook et al. 2010) as well as the REDD+ National Strategy (2012) acknowledge tenure rights as a prerequisite for successful implementation of REDD+ however, strengthening of tenure rights are by many current REDD+ projects in Indonesia also recognised as non-economic improvement occurring from REDD+ (Nawir et al. 2015) and therefore an indirect
non-monetary benefit along with other indirect benefits such as e.g. biodiversity protection (Luttrell et al. 2013:2).

4.6 Constitutional framework of land tenure and forest management

Indonesia has enacted several laws and ‘Action Plans’ in order to create a clearer legal ground for regulations on the environment and enhance the efforts to tackle global warming. Hence one can see an increasing identification of the urgency of the issue (Wibisana 2013:102ff). This study will not go deeper into the extent or legitimacy of each specific law and regulation regarding the national efforts to mitigate climate change. Neither will it specify more than one regulation in regard to constitutional right to land. Nonetheless it is acknowledged that, due to the complex legal arrangements in the land tenure sector and the fact that “the laws that are being enacted for the recognition and protection of the indigenous peoples […] are being developed within an ambiguous legal development paradigm” (Arizona & Cahyadi 2013:51) there is a possibility of other regulations impacting on the outcome of actors’ legal rights to land and forests.

The following section will provide information about the relationship between the poor recognition of land tenure rights in Indonesia, the weak law enforcement and the rent-seeking behaviour of government officials.

4.6.1 Land rights

The 2012 Indonesian National strategy recognises land tenure reform as a prerequisite for implementing REDD+ with positive outcomes (REDD+ National Strategy 2012:18). This study will, following from Resosudarmo et al. (2014:69) define land tenure rights as;

“the right, whether defined in customary or statutory terms, that determines who can hold and use land (including forests and other landscapes) and resources, for how long, and under what conditions.”

Until May 2013 the Indonesian government has relied on numerous laws stating their authority, defining the structural system of Indonesian land rights and asserting the state as the rightful owner of all forest in the country. The heavy reliance on forest resources as a national income has resulted in contestation over the right to control them (Resosudarmo et al. 2014:69). Although many of the national laws admit the government’s obligation to respect customary rules there have been a clear lack of measures for recognising and managing
customary forests in practice (thereddddsk-a 2013). Almost all forestland in Indonesia has had concession on it - contracts for a set period of time between the State and an individual or other actor (USAID 2012:17) stating the actor’s right to use the land. Concessions have been granted to companies by the State over territories considered by Adat communities to be customary land. Such State forest management have supported short-term forest exploitative contracts in which a small amount of actors have benefitted at the expense of the global climate as well as thousands of villages relying on forest products (JakartaGlobe 2013). The issuance of permits over land, which, according to constitutional laws do not belong to the State, has resulted in a large number of conflicts between the authorities and local communities regarding the legitimacy of land use.

The REDD+ National Strategy (2012:19), in addition to the importance of land tenure reform, stresses the weight of strong law enforcement to stop unauthorised issuance of concession permits exploiting forest resources. It also promises to formulate improved models of solving conflicts in relation to natural resources by to a larger extent involving local communities (ibid 2012:20). These statements show the governments and REDD+ implementers and planners awareness of the problems and prerequisites for successful attempts to mitigate climate change. However there are clear challenges of realizing the utopia of the REDD+ National Strategy. The Indonesian government has for instance received heavy critique due to numerous continued violations of laws by the Forest Department permitting logging and plantation without respecting customary law and ownership claims over forests (thereddddsk-a 2013).

In May 2013 the constitutional court issued a judicial review so to follow the promises declared in the REDD+ National Strategy. The review also came as a response to critique delivered by AMAN against the unsatisfactory tenure rights arrangements and the neglect of Adat communities’ claims as rightful owners of land due to their inherited special relationship to the forest (Arizona & Cahyadi 2013:54 and Göcke 2013). The state and indigenous communities claim their legal land rights on different understandings. The Indonesian government consider Adat communities’ rights to land as entitlements approved by the State. Adat communities themselves however, argue that due to the fact that their communities have been living on the land for generations, their ancestral ties and thus, their claim to the land “is older than the Indonesian State itself” (Arizona & Cahyadi 2013:50). The judicial review proceeded into Decision No. 35/PUU-X/2012 (hereafter referred to as Decision 35) (AMAN-a 2015). The main contribution of Decision 35 was the removal of the word ‘State’ from the first article of the 1999 Forestry Law “which previously declared that
customary forests are State forests located in the areas of custom-based communities” (Pasandaran 2013). Another article previously affirming State forests to include customary forests were also revised so to instead acknowledge customary forests as forests located in indigenous territories therefore emphasising that customary forests “should no longer be considered as State forests” (ibid). Consequently, Decision 35 was effectively aiming to give the customary forest areas back to the traditional owners – the indigenous communities and thus, deny the government the ability to grant concessions over the land. Through the Decision, community forests should effectively be stewarded by indigenous communities who for generations have managed the forests in which they have lived (JakartaGlobe 2013). Therefore Decision 35 attempts to follow Adat communities ideas of basing right to land on historical and traditional control of such (Henley & Davidson 2008:818).

However, the Indonesian legal system is rather vague and there are suggestions of the stated laws not being followed up properly in reality. This will be discussed more in depth in the next section of this paper. One factor aiding the government to remain in control of customary land and therefore reinforce the weak land rights in the country is the complicated process indigenous communities need to go through in order to claim their rights to the land on which they depend for their livelihood and have traditional ties to. This process results in the fact that indigenous people often fail to be in possession of written evidence or approval of their entitlements to land (Wibisana 2013:139). In Decision 35 it is stated that five features are necessary for an Adat community to be officially recognised as a customary law community (See ‘five criteria’ in figure 3). Although the first stage of recognition of Adat communities is the groups self-identification of such (Arizona & Cahyadi 2013:56) it is suggested in the draft of the National Program for the Protection and Recognition of Indigenous Peoples (PPMHA), that such self-definition must, as a final step, be translated into a policy framework through ratification by State officials (ibid 2013:57). Therefore, the State have the power to choose whether to respect and recognise Adat communities since laws regarding their entitlements only refer to ‘recognised’ communities. Consequently, the process of recognition of indigeneity ultimately works as a way of providing legitimacy to ignoring indigenous peoples rights (e.g. land tenure rights).

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6 As a last step in the recognition process, the decision is ratified. “If the existence of the indigenous peoples is to be decided within one regency the regent has the authority of ratification; if several regencies are involved, it is the governor; if several provinces are concerned, it is the president who ratifies the final decision” (Arizona & Cahyadi 2013:56f).
4.6.2 Law enforcement

When analysing the Indonesian legal system in regard to national resources there are strong indications that even though the rhetoric of laws such as Decision 35 is very promising, the promises are not effectively followed up in reality. Even after the passing of the Decision, concession arrangements still potentially pose challenges for effective forest protection. Attempts, through REDD+ projects, to revive land rights arrangements only applies to new concessions, hence existing concessions on land are disregarded which could theoretically perpetuate land conflicts. Indications of the Indonesian governments unwillingness of complying with the Constitutional Courts Decision 35 could be tied with the lack of recognition and reluctance to sign the ILO Convention 169. An Indonesian news article report that six months after Decision 35 was announced it had still not been effectively implemented (JakartaGlobe 2013). In 2014 the government, as a step of the REDD+ National Strategy to translate Decision 35 into reality, enacted the PPMHA (Jakarta Post –b 2015). However, the management of customary land had seen little improvement even after two years since the declaration of Decision 35, illustrating the lack of government commitment to properly realize the regulation. The Jakarta Post (-a 2015) reports that there are still “indeterminate entitlements to land, lack of comprehensive land registry [...] lack of formal methods to
protect and recognize customary rights to land [and] unclear state forest boundaries”. Therefore, indigenous peoples legal right to land is recognised and protected through the rhetoric of Decision 35 in the national legislation. But, the poor implementation and realization of the Decision indicates the weakness and fragility of land rights in Indonesia. Recognition of Adat communities right to land as only stated in the rhetoric of national legislation, not in reality, provide opportunities to overlook Adat communities’ legal rights to customary forests.

The weak law enforcement in Indonesia could be argued to breed corrupt behaviour among powerful actors and the influx of finances from implementation of REDD+ projects may provide incentives for an increase of unlawful management of forest finances. In accordance with Robbins (2000) corruption in the environmental sector cannot be treated as an exception to the rule. It is rather “a system of normalized rules, transformed from legal authority, patterned around existing inequalities and cemented through cooperation and trust” (ibid 2000:424). Corruption in Indonesia will be defined as abuse of “public power for private benefit through bribery, extortion, influence peddling, nepotism, fraud, or embezzlement” (quote in Arwida et al. 2015:2). Although it is beyond the scope of this analysis to go deeper into the exact ways in which corruption is played out, it will be demonstrated that it is an occurring phenomenon.

There are high levels of corruption within the forest sector in Indonesia, both among government officials and local elites reaping the benefits from forest resources through extractive activities (Resosudarmo et al. 2014:69). This has resulted in conflicts over land. An example is the REDD+ pilot projects in Central Sulawesi province where local communities in the province disagree with companies who have been granted forest-logging concessions by the government (Forest Peoples Programme 2011:2). The concessions have been granted ‘unlawfully’ due to the monetary means the companies may bring to the government officials. Thus conflicts over land often stems from the government granting concessions to companies pursuing forest extractive activities in forests to which they “in fact have only ambiguous legal status” to (Arizona & Cahyadi 2013:45). This is an example of a process in which concessions are granted with little regard to the fact that the contractual land is situated in territories perceived as customary forests. REDD+ is vulnerable to corruption since rent seeking implicitly results in deforestation (Stoett 2012:140) and therewith threatens the outcomes of the programs. Although REDD+, as stated in the National Strategy (REDD+ National Strategy 2012) have been perceived as having the potential to lessen corruption
through improved implementation of multiple regulations for monitoring and transparency, evidence still point to the contrary. Research, as well as evidence such as in the case of the Central Sulawesi province, also point to the fact that REDD+ can induce corrupt behaviour among actors due to the financial value added to forests through the programs. Hence, REDD+ may encourage rent-seeking behaviours in environments where transparency is low (Costenbader 2011).

Even though the challenges corruption poses for benefit sharing are widely recognised and there are significant efforts to improve the political situation (Arwida et al. 2015), the high levels of corruption remain. According to the World Banks ‘Governance indicators’ Indonesia scores -0.3 (minus 0.3) in ‘government effectiveness’ on a scale -2.5 to 2.5, where 2.5 measures best governance. In the ‘Control of corruption’ category the score -0.6 indicates high levels of inequality in distributing financial funding among stakeholders in the forest sector (Hatcher & Bailey 2011:319).

5. Discussion

The foundation of REDD+ policies is to add financial value to forests so to slow forest degradation simultaneously as enhancing carbon stocks. Benefits from REDD+ should be distributed to actors holding legal land rights since they are the actors with constitutional right to receive benefits from forest products (sequestered CO₂). Adat communities in Indonesia do, in the national constitution, have legal rights to customary land and the forest products found thereon through laws such as Decision 35. Just like in the international framework of REDD+, indigenous peoples participation and acknowledgement as vital stakeholders is recognised in the National REDD+ strategy as well as in the national constitutional land tenure laws. The domestic laws referring to indigenous peoples rights to traditional land indicate the approval of customary laws. Thus, on paper and in the rhetoric of national legislation indigenous people are recognised as the rightful owners of customary land and therewith also the rightful stewards of the forests found on that land. Therefore they also have the legal right to receive financial benefits from REDD+ projects following the statements in the REDD+ National strategy (2012) of increased inclusion of indigenous people in the full process of the programs.

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7 “The World Bank’s ‘Governance indicators’ compile survey results from businesses, researchers, citizens and non-governmental organisation’s (NGOs) on the ‘rule of law’ (the perceived degree of confidence that actors have in the laws of society, including property rights regimes, policing, judiciary and prevalence of crime)” (Notes in table 6.2 Hatcher & Bailey 2011:319)
8 “‘Control of corruption’ illustrates the perceived extent of patronage, bribery, elite capture and other forms of corruption” (ibid)
To refer back to the question for this study; *how are Indonesia’s weak land right laws challenging equitable benefit sharing from REDD+ projects when imbursements are measured in economic terms*, one can see that apart from the weak and complex land right laws in Indonesia, the weak law enforcement and high corruption index are aspects intertwined with, albeit somewhat separate to, the land tenure arrangements. The weak law enforcement is visible through the failed implementation of laws and the unsuccessful translation of tenure rules from rhetoric to reality. The neglect and failure of implementing laws is arguably made possible due to the ambiguity and weakness in the legal land tenure arrangements and is therefore affecting the legislation regarding indigenous peoples rights to land and thus, benefits from REDD+ activities. Scholars argue that “[...] clear rules and better enforcement of existing forest management regulations may work to remove opportunity costs associated with illegal activities, thereby encouraging forest users to comply with aims of REDD+ programs and making REDD+ benefits more attractive” (Costenbader 2011:9).

Improving these weaknesses may therefore also work to distribute imbursements in a more equitable manner according to the declarations in the REDD+ National Strategy. The following discussion will firstly debate the challenges of weak land rights and then continue with stating the issues of weak law enforcement and its impact on inequitable distribution of REDD+ financial imbursements.

The complex legal arrangement in the forest and land sector in Indonesia, in which multiple laws overlap each other, creates a situation where the framework of protection of indigenous communities may be seen as highly insecure (Arizona & Cahyadi 2013:51). The possibility of numerous, in this study - non-specified, rules affecting the obedience of official rights to land and the outcome of REDD+ activities must be regarded as important. The overlapping claims
to forest and forest resources (claims both from the State and indigenous communities) produces issues in regard to the distribution of benefits according to land tenure rights.

The weakness in statutory land rights is shown for example by the government granting concessions that give companies legal right to extract forest in territories legally ruled by customary law (Forest Peoples Programme 2011). The granting of ‘unlawful’ permits is made possible due to the government official’s ability to not officially acknowledge indigenous communities, referring to the challenges indigenous communities face in defining themselves legally (Luttrell et al. 2013:6 and Arizona & Cahyadi 2013). If the officials do not formally recognise Adat communities, they create a situation in which the State is potentially still the ‘legal’ owner of indigenous territories. The process in which state officials ultimately determine the legal recognition of Adat communities must be regarded as a major hurdle for indigenous people to overcome (Arizona & Cahyadi 2013:56). By neglecting Adat communities traditional ties to the forests the State proclaim itself as the rightful owner of land and therewith the correct receiver of REDD+ imbursements. The government’s statements of ‘indigeneity’ as not applicable to the Indonesian population since all people are indigenous and thus ought to be entitled to the same rights, is further complicating the already complex determination of legal rights (IWGIA 2015). The disregard of indigenous rights must be viewed as producing inequitable benefit sharing in the form that Adat communities do not receive their fair share of imbursements to cover their opportunity costs. It may additionally be seen as a violation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesia is a signatory of. Therefore, Indonesia’s weak land rights may stipulate major challenges to the fair distribution of benefits to the rightful receivers of such when the benefits sharing structure is grounded on distribution among actors with opportunity costs and legal right to land. As shown above, indigenous peoples have both opportunity costs, due to land use changes resulting from REDD+ implementation, and ownership right over customary land stated in the national constitution through for example Decision 35. Thus, they should be regarded as the legitimate beneficiaries.

The ambiguity regarding land rights in Indonesia has been shown to pose challenges of distributing benefits to the rightful receivers of such. However it has also been shown that there are indeed laws in the national legislation intended to protect Adat communities. Therefore the weak law enforcement – that stipulated laws are not enacted and implemented, could arguably be said to be the main issue. The failure of adequately enforcing stated laws creates challenges to distribute economic benefits due to the possibility of neglecting
indigenous peoples' rights to customary forests. As shown in the study, Decision 35 was announced in 2013 (JakartaGlobe 2013) but has to date not been fully implemented which provides the opportunity for State officials to disregard customary land rights (Jakarta Post-a 2015). Weak land rights and weak law enforcement are therefore intertwined so to the extent that the failure of properly enforcing laws is deeply impacting the security of actor's legal right to territories. Consequently both factors are impacting on the potential to distribute financial benefits from REDD+ activities.

The influx of finances through REDD+ according to the PES structure may provide disincentives for government officials to respect traditional claims of land ownership (Costenbader 2011). The available financial imbursements may induce the government to neglect and not fully implement the laws that state that customary forest “should no longer be considered as State forests” (Pasandaran 2013) so to remain in control of such territories. The neglect of indigenous peoples' right to customary forests follows Costenbaders (2011:25) argument that “State control on commercial use of forest products from communal forests might produce opportunities for rent seeking behaviour of government officials”. The argument would, in relation to REDD+ activities in Indonesia, mean that carbon sequestration – interpreted as a forest product in accordance with USAID (2012:14f) - in customary forests, may induce the State to overlook laws, such as Decision 35, regarding Adat communities' ownership of land.

Due to the high levels of corruption in Indonesia the national governance is weak, therefore further decreasing the security of land tenure and law enforcement. The concession arrangements regarding land and forest areas create a possibility for government officials to overlook legislature regarding Adat land, actively undermining indigenous communities right to benefit from ‘their’ land, in order to reap the monetary benefits from REDD+ implementation. The failure of enforcing and implementing laws in regard to indigenous people in the land and forest sector result in failure to distribute imbursements from REDD+ properly. The flawed land rights arrangements and law enforcement may result in perceptions of the State being the rightful owner of customary land although it is stipulated differently in the national legislation. Actors with economic opportunity costs - actors holding legal ownership over land - should be entitled to benefit from the programs. Since indigenous peoples face challenges of legal recognition and their rights to land are not adequately enforced they will not be reimbursed since the state holds legal right to the forests in which carbon is sequestered. The law enforcement in Indonesia, its weaknesses reflected in the high levels of corruption as well as in the evidence of failure of adequately implementing.
constitutional laws may serve as a system that sustain injustice towards indigenous peoples in the country. The attempts of developing a new legal framework in order to mainstream the REDD+ policy into national legislation have evidently met challenges that the State has had difficulties with overcoming. The obstacles are further heightened due to the monetary gains available to rent seeking individuals who, by disregarding Adat law and recognition, are provided with legitimacy of ignoring customary land rights since such only need to be acknowledged to ‘recognised Adat communities’.

Although tenure rights can be seen as prerequisites for equitable benefit sharing (e.g. Howson & Kindon 2015) REDD+ must also be seen as having the potential to strengthen legitimacy of such rights (Luttrell 2013). Land rights may be perceived both as a requirement for, and a consequential non-economic allowance from REDD+ projects. Thus, it is important to highlight the potential shortcomings of only considering the economic benefits, which have been the priority of this study. Some significant risks of such simplification must consequently be acknowledged. Non-monetary factors that improve the situation for different actors are also important for incentivising mitigation of climate change. Emphasising benefits in only financial terms runs the risk of omitting non-monetary benefits, such as biodiversity protection, which in turn might make “local costs appear higher than they are” (ibid 2013:3). Accordingly this could potentially make the flaws of the programs seem greater than they are in reality. Further important aspects so to not perceive the shortcomings of the programs larger than they are may be found in Wunders’ (2010) arguments. Decentralization of forest protection – ‘giving’ the indigenous communities the legal right to own and look after land and hence benefit from REDD+ - may accelerate forest extraction due to local level rent seeking. The problem of corruption does not end by enhancing local communities participation in REDD+ projects. There is a risk of local inequalities being enforced and thus this study runs a risk of neglecting such potential challenges by not highlighting this to any large extent. The possibility of local rent-seeking therefore also makes it important to note that increased participation of indigenous communities with traditional ties to the environment do not inevitably mean better climate change mitigation following from better forest protection. Hence, it is critical to recognise the existence of claims in the literature arguing that the State may be the superior guardian of tropical forests (Wunder 2010). However, in regard to this study such claims are considered as minor due to the main focus on challenging land rights in regard to REDD+ benefit distribution rather than the potential outcomes and effects of such programs.
While the potential effects of inequitable distribution of benefits are not the focus of this study it is nonetheless important to briefly discuss such prospective impacts. The financial benefits from REDD+ are envisaged to create incentives for actors to better manage tropical forests (UN-REDD-b 2015). Therefore, the failure of distributing benefits to indigenous communities perceived as the rightful receivers of such may have negative effect on the global efforts to mitigate climate change due to the failure of incentivising sustainable forest management among communities depending on the forests for their livelihoods.

6. Conclusions
This study was set out with the intention to explore the ways in which the weak legislation in regard to land tenure rights in Indonesia challenge equitable distribution of financial benefits from REDD+ activities. Basing benefit distribution on legal right to land is found to complicate the benefit sharing arrangements in Indonesia due to three main factors. Firstly, the generally muddled legal framework regarding the land and forestry sector in the country forced this study, due to limited space, to focus on Decision 35 in regard to indigenous peoples’ legal right to land. Dual claims of legal ownership of land as well as the challenging process indigenous communities must go through in order to become recognised as ‘Adat’ presents the weakness of laws concerning land and forests in Indonesia. By not acknowledging indigenous communities the State becomes the ‘legal’ landowner. Secondly, apart from weak land rights, the study emphasise the weak law enforcement as an additional, yet interlinked, factor hindering Adat communities from receiving monetary benefits from REDD+ activities. Adat communities’ right to customary land is protected in the national legislation declaring customary land as belonging to the indigenous Adat communities. The failure of the Indonesian State to effectively enforce laws in regard to indigenous communities customary land leaves such laws as not implemented in practice. The study fulfilled its purpose of presenting the complexity of national land rights by highlighting the existence of customary land rights as found primarily in the rhetoric of legislation. The third factor is closely connected to the weak law enforcement and hence tightly intertwined with the weak land right-factor in the form of aiding the continuance of a weak and ambiguous national legal system. The high level of corruption in Indonesia, and especially in the forest sector has been shown to pose a real threat to equitable distribution of benefits from REDD+ projects and thus the outcome of such activities. The rent-seeking behaviour among government officials induced by the monetary imbursements available through the forest
protective activities discriminate Adat communities from receiving their fair amount of financial compensation. However, stating the possibility of government officials reaping the benefits from REDD+, the State may also protect the forest. Therefore there is a possibility of State protection creating positive climate change mitigation (Wunder 2010).

This study suggests that the weak land rights and legal framework in the Indonesian forest sector as well as the flawed law enforcement and high levels of corruption create a possibility of indigenous peoples not receiving the financial imbursements to which they are entitled. This is due to the fact that the weak laws and enforcement of such rules creates a potential for rent-seeking behaviours and thus, incentives to disregard indigenous peoples legal rights to land which is the foundation on which distribution of financial benefits is based on. The findings in the study indicate the necessity of improving both the aspects in order to increase the success of REDD+. Equitable distributions of imbursements are suggested to incentivise sustainable forest management and subsequently enhance the efforts of global climate change mitigation. Although the suggestions in this analysis are based on a narrow study of the legal framework in regard to tenure legislation it is however interesting and relevant for future studies to build on.

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