

Indonesia's First REDD+ Project Not a Done Deal, Despite Promoter's Claims

- *Rimba Raya Conservation Project yet to receive legal approval or Ecosystem Restoration License for implementation of REDD+ Project in Indonesia*
- *Rimba Raya Conservation Project yet to secure legal approval for forest area of almost 80,000 hectares in Central Kalimantan, Borneo Island*
- *Rimba Raya Conservation Project Must Not Encroach of Tanjung Puting National Park for REDD+ Project in Indonesia*

Why is this report necessary?

Naturally, a lot of interest was generated by the news that Indonesia had approved the country's first REDD+ Project, especially given that the news broke at the UN climate talks in Doha, Qatar.

Reuters, for example, carried a report titled "Indonesia approves landmark forest protection project," which was posted on 5 December 2012, while Mongabay.com had a story titled "Indonesia approves first REDD+ project in Borneo," which was also posted on 5 December 2012.

The use of the word "approves" in both of these news reports spurred Greenomics Indonesia to investigate the legal aspect of such "approval", bearing in mind that what was stated to have been approved was "Indonesia's first REDD+ project".

Therefore, this report discusses the legal aspects of such "approval" based on observations and analysis of the legal documents related to the process gone through by PT Rimba Raya Conservation (PT RRC) to obtain its license – known as an Ecosystem Restoration License – from Indonesia's Ministry of Forestry.

What is revealed by this report?

On 4 December 2012, Infinite-Earth and PT Rimba Raya Conservation issued an international press release titled **"Indonesia Approves Landmark Forest Conservation Project"**.

The first paragraph of the press release reads as follows: *"The Indonesian government on November 30, 2012, formally approved the world's largest and the country's first VCS/CCBA validated REDD project that protects carbon-rich peat forests and rewards investors with tradable carbon offsets."*

What needs to be underlined here is the use of the phrase "formally approved" in the above quotation. In this report, we will reveal the real legal position as regards what has and what has not been approved.

Subsequently, in paragraph 3 of the press release, the following statement appears: *"Four years in the making, the Rimba Raya Biodiversity Reserve (roughly the size of Singapore) will protect nearly 80,000 hectares (≈200,000 acres) or 800 km² (≈300 square miles) that had been gazetted for conversion to palm oil plantations."*

The issue that needs to be questioned in respect of this claim is whether or not 80,000 hectares have in fact been "formally approved."

We also clarify the statement contained in paragraph 6 of the press release, to the effect that, *"Rimba Raya forms a critical buffer zone between the front lines of palm oil expansion and the Tanjung Puting National Park."* This point is important as it is directly related to the area covered by the Ecosystem Restoration License and the area of the Tanjung Puting National Park.

Legal Facts

Legal Fact #1 The claim in the first paragraph of the press release that *"The Indonesian government on November 30, 2012 formally approved..."* is not in accordance with the legal facts.

In rejecting the claim that “formal approval” was obtained, we would refer to Minister of Forestry Letter Number: S.546/MENHUT-VII/2012 dated 29 November 2012, regarding the Application for an Ecosystem Restoration License on the part of PT Rimba Raya Conservation (PT RRC) in Seruyan Regency, Central Kalimantan Province, which letter was addressed to the President Director of PT Rimba Raya Conservation.

The said Letter of the Minister of Forestry makes no mention whatsoever of “formal approval” for anything related to a license or the implementation of a REDD project. In fact, it only states that “the PT RRC application complies with the advocate and technical requirements, and is currently being processed.”

Why did the words “formal approval” not appear in the letter? Because the letter did not constitute a formal approval from the Minister of Forestry.

Thus, so long as a “formal approval” has yet to be issued, PT RRC is prohibited from undertaking any operations in a forest area, including operations for the purpose of implementing a REDD project.

It needs to be underlined here that the said Minister of Forestry Letter also contained following sentence:
“consideration of the letter of the Governor of Central Kalimantan No. 552/1069/EK, dated 26 November 2012, on a recommendation in respect of an application to change the key functions of a forest area from convertible production forest (HPK) to permanent production forest (HP), and a change in conservation areas (KPA-KSA) to permanent production forest (HP) in the area subject to the application for an Ecosystem Restoration License on the part of PT Rimba Raya Conservation.”

In other words, PT RRC's application for an Ecosystem Restoration License still requires the completion of the legal process to change the functions of a forest area. This process will need some time, thereby demonstrating that no "formal approval" has been issued in respect of a license for PT RRC's operations.

Thus, the claim that "*The Indonesian government on November 30, 2012 formally approved...*," is clearly misleading as it purports to suggest that the Indonesian government has already granted legal approval for PT RRC's REDD project through the issuance of an Ecosystem Restoration License.

Legal Fact #2 Paragraph 3 of the press release contains the following statement:
"Four years in the making, the Rimba Raya Biodiversity Reserve (roughly the size of Singapore) will protect nearly 80,000 hectares..."

This statement purports to show that PT RRC has secured a definitive license from the Minister of Forestry. In fact, no such definitive license has been granted by the Minister to PT RRC. Thus, this paragraph is clearly misleading.

The claim in the press release to the effect that the total area involved extends to nearly 80,000 hectares is also baseless. There is no legal fact that proves the granting of a license by the Minister of Forestry to PT RRC for the protection of nearly 80,000 hectares.

However, the legal fact obtained by Greenomics Indonesia is the Director General of Forestry Planology's letter dated 13 November 2012, which states that the area to be considered for Ecosystem Restoration operations on the part of PT RRC covers an area of 56,925 hectares, consisting of:

- *Conservation areas covering an area of 17,256 hectares*
- *Permanent Production Forest covering an area of 21,963 hectares*
- *Convertible Production Forest covering an area of 11,741 hectares*
- *Non-forest areas covering an area of 5,965 hectares*

The said letter from the Director General also stated that having regard the provisions of the laws and regulations in effect:

- *Conservation areas are to be managed jointly by the PT RRC and the Tanjung Puting National Park management*
- *Permanent Production Forest is to be managed based on the Ecosystem Restoration License*
- *Convertible Production Forest is to be managed based on the Ecosystem Restoration License, after having been converted to permanent production forest*
- *Non-forest areas are to be managed based on the Ecosystem Restoration License, subject to the prior recommendation of the Governor of Central Kalimantan for their designation as permanent forest production forest.*

Based on this legal fact, only an area of 21,963 hectares could straight away be considered for inclusion in an Ecosystem Restoration License for PT RRC without having to first undergo a change in status and functions.

As for the other land, changes are first needed to forest functions (in the case of forest land) or the land needs to be converted into forest land (in the case of non-forest land).

This legal fact by itself refutes the claims that “formal approval” had been granted for nearly 80,000 hectares. So, clearly it can be concluded that the claims contained in the press release are totally unfounded from the legal perspective.

Legal Fact #3

Paragraph 6 of the press release states that *"Rimba Raya forms a critical buffer zone between the front lines of palm oil expansion and the Tanjung Puting National Park."*

In this respect, we need to once again refer to the Minister of Forestry's letter of 29 November 2012 and the Director General of Forestry Planology's letter dated 13 November 2012, as already discussed in "Legal Fact #1" and "Legal Fact #2".

In the Director General of Forestry Planology's letter of 13 November 2012, it is stated clearly that the total area of Tanjung Puting National Park related to the PT RRC's proposed ecosystem restoration operations amount to 17,256 hectares.

It should be noted that in his letter, the Director General of Forestry Planology does not recommend that these 17,256 hectares of Tanjung Puting National Park be converted into as permanent production forest, as one of the proposed areas to be covered by PT RRC's Ecosystem Restoration License.

In the letter it is also stated by the Director General of Forestry Planology in respect of the national park that according to the prevailing regulations, the relevant area in the Tanjung Puting National Park can be managed jointly by PT RRC and the National Park's management without having to convert part of the park area into permanent forest production.

These two letters (from the Minister of Forestry and the Director General of Forestry Planology) by themselves refute the claim made in the press release to the effect that *"Rimba Raya forms a critical buffer zone between the front lines of palm oil expansion and the Tanjung Puting National Park"*.

The legal facts clearly show that PT RRC wants to see part of the Tanjung Puting National Park being relinquished and designated as permanent forest production, to be subsequently incorporated in the area covered by PT RRC's Ecosystem Restoration License.

Legal Fact #4

The Minister of Forestry's letter of 29 November 2012 may not be construed by anyone as being an assurance that the Minister would issue an Ecosystem Restoration License to PT RRC. If any other conclusion were to be reached, then the Minister of Forestry's letter would be in violation of forestry licensing procedures in Indonesia.

It should be noted that there is no procedure under Indonesian forestry law that permits the issuance of such an "assurance" by the Minister of Forestry to the effect that an application for a license will be acceded to. Thus, the claim that the said Minister of Forestry's letter constitutes "legal approval" is clearly exaggerated and lacking in legal basis. It also clearly demonstrates an inadequate understanding of the forestry licensing system in Indonesia.

What is the view of the Ministry of Forestry's Director General of Forestry Planology?

This report can also reveal the view of the Ministry of Forestry's Director General of the Forestry Planology, Mr. Bambang Soepijanto, as regards the Minister of Forestry's Letter Number: S.546/MENHUT-VII/2012 dated 29 November 2012, which is claimed by the PT RRC to constitute "legal approval".

The Director General's view was elicited by Greenomics Indonesia through direct clarification with the Director General, who gave his consent for his view to be revealed to the public.

Greenomics Indonesia asked Mr. Soepijanto for his opinion on the substantive legal status of Minister of Forestry Letter Number: S.546/MENHUT-VII/2012 dated 29 November 2012 regarding the Application for an Ecosystem Restoration License on the part of PT RRC in Seruyan Regency, Central Kalimantan Province, which letter was addressed to the President Director of PT RRC.

According to Mr. Soepijanto, the letter clearly states that it does not constitute a license. Neither is an assurance or guarantee that a license will be issued. It is nothing more than a confirmation that the matter "is currently in the process of completion."

As regards what constitutes "currently in the process of completion", Mr. Soepijanto explained that the use of the phrase "process of completion" signifies that while the process is underway, there are still legal processes that need to be gone through to change the forest functions in the proposed licensing area, particularly as regards the conversion of convertible production forest into permanent production forest, and the designation of non-forest areas as permanent production forest.

In respect of the PT RRC's claim that the Indonesian Government has given "legal approval" to PT RRC for a REDD+ project covering an area of nearly 80,000 hectares, Mr. Soepijanto said that this claim was clearly legally unfounded as nothing was certain as yet as regards the zoning or designation of the land in question.

Recommendations for Infinite-Earth and Rimba Raya Conservation

- Infinite-Earth and Rimba Raya Conservation should withdraw their "international press release" of 4 December 2012 as the statements it contains related to the question of "legal approval" are not in accordance with the prevailing legal facts.
- Infinite-Earth and Rimba Raya Conservation must publicly declare that they will not take part of the Tanjung Puting National Park for the purpose of converting it into permanent forest production, which would then be proposed for incorporation into the area covered by the PT RRC's Ecosystem Restoration License for its REDD+ project in Indonesia.

In the Director General of Forestry Planology's letter of 13 November 2012, it is stated clearly that the total area of Tanjung Puting National Park related to the Rimba Raya Conservation's proposed ecosystem restoration operations amount to 17,256 hectares.

It should be noted that in his letter, the Director General of Forestry Planology does not recommend that these 17,256 hectares of Tanjung Puting National Park be converted into as permanent production forest, as one of the proposed areas to be covered by Rimba Raya Conservation's Ecosystem Restoration License.

For further information please contact:

Elfian Effendi, Executive Director of Greenomics Indonesia
elfian@greenomics.org