

Imperfect Governance: A Civil Society Assessment Of 16 District Government's Land And Forest Governance



Photo: Forest cover conditions in West Kalimantan, taken from the air 31 May 2014

A. Introduction

With over 120 million ha of forest zone (kawasan hutan), constituting around 60 percent of Indonesia's total land area, land, forest and mining forest governance in Indonesia is a serious priority. This 'Land and Forest Governance Index' (LFGI) is intended as a tool to measure land and forest governance at the district level. This study will identify areas of weakness that require priority improvement in each sector, and compares these between districts. This index also measures land and forest governance developments in each district between 2012 – 2014. This research aims to measure the extent to which district level land and forest governance has been implemented based on the four components of good governance, these being transparency, participation, accountability and coordination.

Land and forest governance in Indonesia is linked to several laws that provide the legal basis for governments to carry out their tasks and responsibilities. One of the indicators of good forest, land and mining governance is effective public participation in planning, implementation and oversight processes. Access to information is a foundational to achieving transparency and public participation, key components of good governance. This study plays an important part in civil society involvement in governance, specifically at the district level.

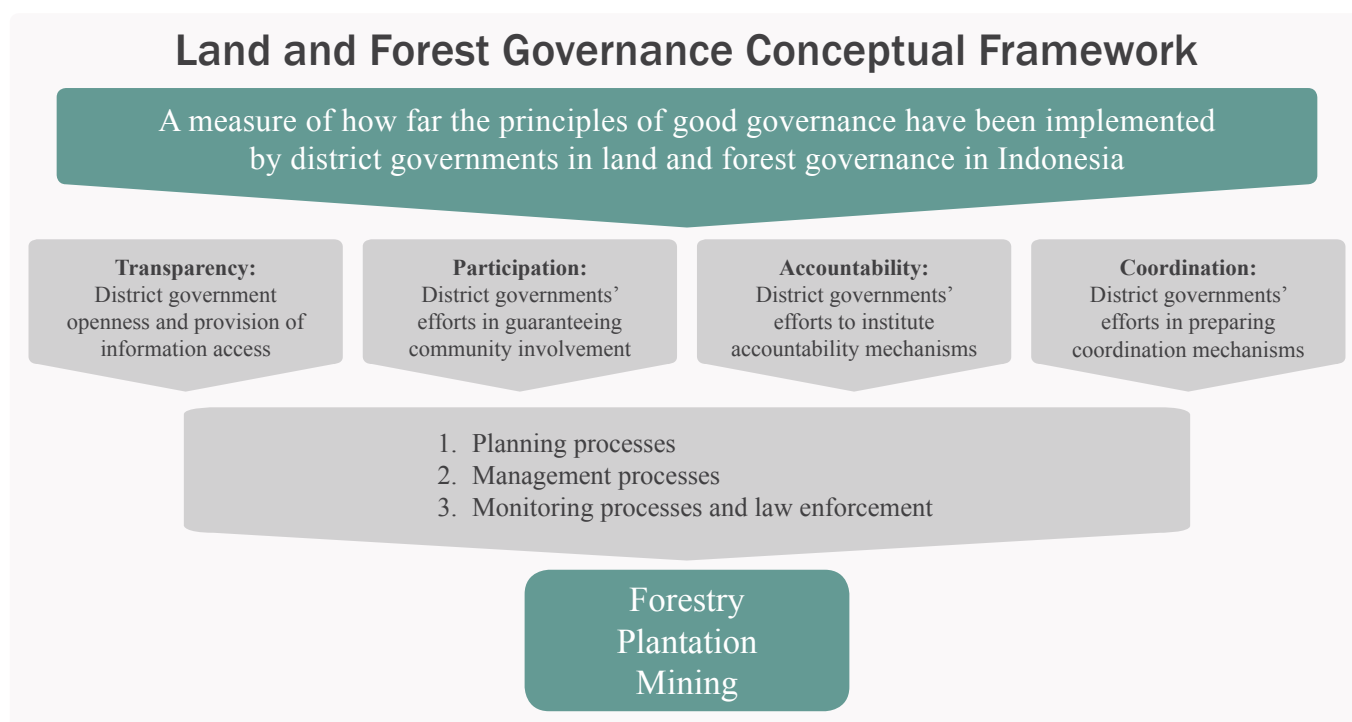
Public participation alone does not however guarantee citizen access to information and an active role in governance. This study looked at how district governments are responding to the requirements of the freedom of information regulation. Where transparency is understood as government efforts to provide information related to forest and land management, the study investigated whether governments are more proactive and responsive or is accessing information in fact more difficult. Has freedom of information already been applied in terms of institution building or only in terms of complying with procedures? This study will provide an overview of access to information in terms of governance and government bodies, participation and community requests, the type of information requested and the targets of information recipients.

B. Research Methodologies

This research is focused on land and forest governance at the district level. District governments hold a number of authorities for land and forest governance, for example issuing permits for plantation, mining and small scale forestry. Land and forest governance in this study is defined as planning, policy development and implementation, monitoring as well as law enforcement in the forestry, mining and plantation sector based on the principles of transparency, participation, coordination and accountability.

This LFGI Index is an instrument developed by civil society working in the land and forest governance sector to measure district level governance. There are a number of studies that measure land and forest governance with a different focus and methodologies, but what distinguishes this land and forest governance index from other studies is that this study tests the public's ability to access to information through a formal mechanism for requesting information from district governments – a key component for measuring the governance principle of transparency.

This instrument for measuring land and forest governance still has many limitations and shortcomings. A major shortcoming is that this study is limited to transparency, participation, coordination and accountability. Other aspects of governance including capacity, effectivity, and efficiency were not counted due to limitations of time, human resources and funding. The transparency index measures access to information by measuring time taken by governments to provide requested documentation in a way that is as accurate as possible, while other principles were measured by proxy and are as true as possible a measure of the field.



The research instrument consists of 175 questions. The study is administered through a guideline for collecting evidence through information requests, interviews, desk research, and focus group discussions (FGD). The quantitative data collected was then analyzed and given a score on a scale of 0-100 using the following index of categorization:

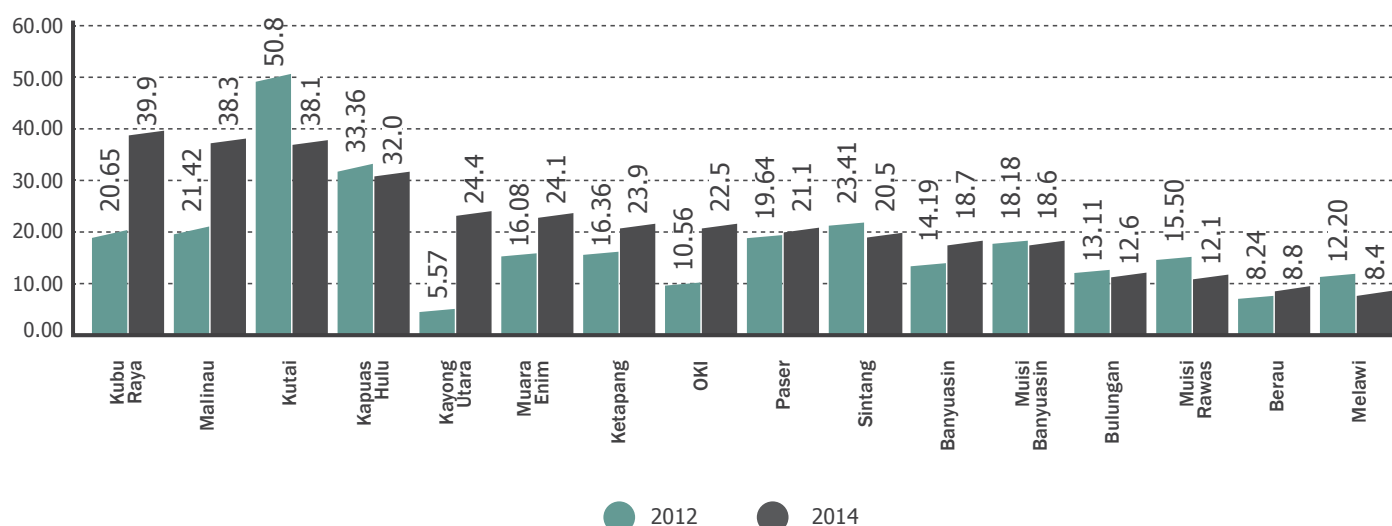
Categorization Index

Category	Transparency	Participation	Accountability	Coordination	LFGI
Very good	71.7-100	75.8-100	73.9-100	76.0-100	73.4-100
Good	46.7-71.6	51.0-75.7	53.3-73.87	51.0-75.9	49.8-73.3
Moderate	23.4-46.6	25.1-50.9	25.3-53.2	25.6-50.9	24.6-49.8
Poor	0-23.3	0-25.0	0-25.2	0-25.5	0-24.5

This scoring method was developed using expert judgement. Experts in the field of land and forest governance drew on their knowledge and experience to maintain the validity and reliability of instruments, to ensure that each question was an accurate measure of each governance category. As an example, transparency was measured by the time taken to provide information. Where documentation/information was provided within a period of ten working days the district's transparency is categorized as 'very good'; if data is provided between 11 – 17 working days transparency is categorized as 'good'; if data is provided after 17 working days transparency is categorized as 'moderate'; and where requests were not fulfilled at all this is classified as 'poor'. The indicator of the number of working days taken to fulfil an information request is based on the minimal service regulations as set out in the Freedom of Information (FoI) Act. Using an expert judgement method, researchers can apply their knowledge of the field and combine this with their understandings of the provisions set out in the FoI regulation. A weakness of applying this method is that it is difficult to find experts or suitable people to administer this research instrument as it was designed.

C. An Overview Of The Aggregated LFGI Index 2012 – 2014

LFGI Aggregated Index 2012-2014



This is the second LFGI study – the first was conducted in 2012. This second phase of study has found that since 2012, district governments are still performing poorly in forest and land management. In 2012 the average governance score was 18.7 (poor) and in 2014 the average score had improved only a small extent, reaching 22.7 (poor). In 2012, only one district government made the category good and one district made the category moderate, while in 2014 not a single district studied met the requirements for good. This indicates the weaknesses in implementing transparency, participation, accountability, and coordination in district level forest and land management.

Examined further however, the transparency index indicates an upward trend, as does the participation and accountability index. These increases are slight however, and still considered to be poor. The following table outlines these findings:

LFGI Index By Good Governance Component 2012 – 2014

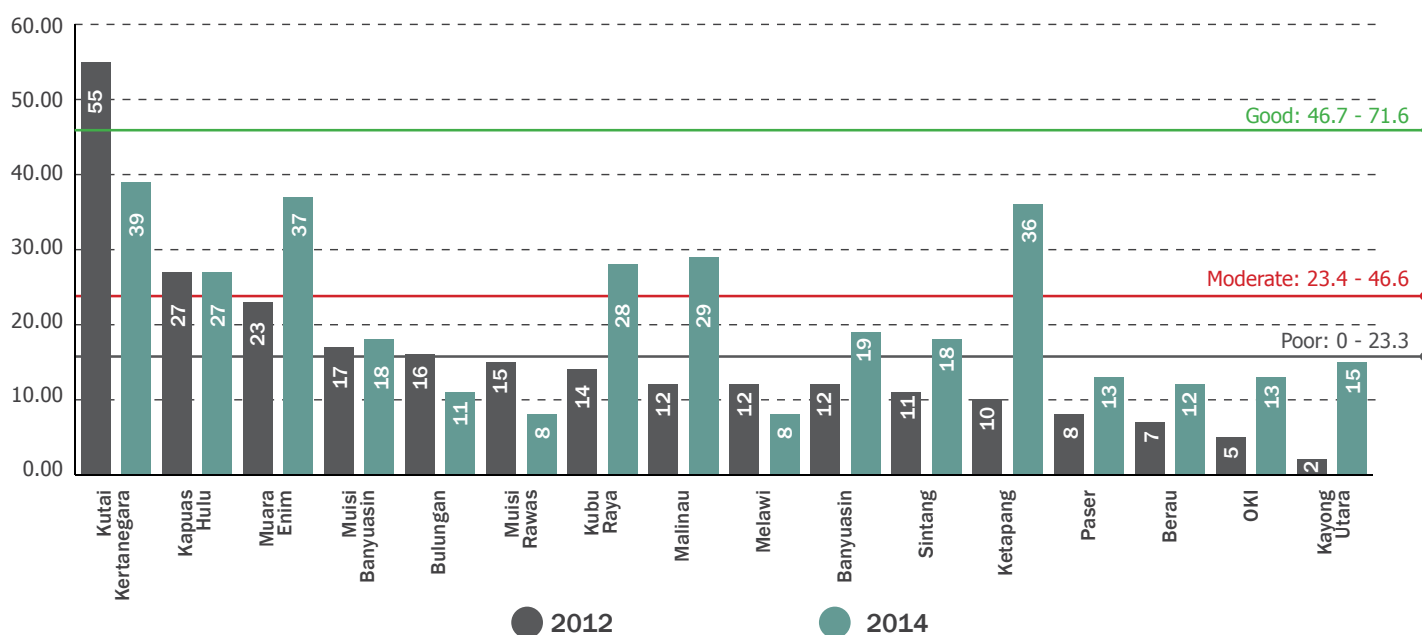
Good Governance Principles	2012 Index	2014 Index
Transparency	15.4	20.9
Participation	19.7	21.5
Coordination	28.0	27.6
Accountability	21.2	26.3

Although the LFGI Index has increased, none of the district areas studies made the category ‘good’ for the following reasons:

1. Land and forest governance lacks transparency, participation and accountability. Low transparency is evident in terms of a very low level of data accessibility. Where data was provided, this was not made accessibility and institutions for the provision of information were not established. Participation in district level governance is still yet to effectively involve affected and potentially affected communities. Accountability is also still low, with district governments yet to establish complaints mechanisms and procedures for communities to report issues with permits issued for forestry, plantation and mining operations. District governments tend to only minimally fulfil procedural obligations rather than actually improving the quality of their public services responsibilities.
2. District governments do not demonstrate political will power to improve forest and land governance, such as Malinau and Musi Rawas district governments who have not yet appointed Public Information Officers (PPID) despite this being mandated five years ago in the Freedom of Information Law no. 14 of 2008.
3. District governments’ bureaucracies display a low capacity in terms of forest and land governance, both in terms of staffing and staff capacity, a minimal level of innovation and funding. District governments don’t have any clear agenda for improving governance, so that land and forest governance remains limited to business as usual. In Kapuas Hulu for example, which has been declared a conservation district, there is no concrete policy or intervention to implement the conservation commitment.
4. There is no consolidated civil society movement to act as an effective pressure group to improve land and forest governance.

D. The Land And Forest Sector Lacks Transparency

LFGI Transparency Index 2012 – 2014



The transparency score for the land and forest sector has increased slightly, but remains poor. The results of measuring transparency in 16 districts indicated that transparency increased by 5.5 points, out of a total possible 100 points, the average score in 2012 was 15.4 which increased to 20.9 in 2014. While an improvement, this score is still categorized as poor. In 2014, 12 districts increased, and four other districts reduced. In the 12 districts that experienced an increase, only four districts improved from a category of poor to moderate, such as Kubu Raya, Malinau, Ketapang and Muara Enim. To improve transparency, local governments need to provide public access to key land and forest governance documents, such as permits, companies’ internal reports, environmental impact assessments, and other documents.

Public document access through information requests are very poor, and five districts did not deliver information at all. Accessibility indicators became one of the main indicators to measure transparency. From 559 documents requested, only 17 percent or 95 documents were provided. For the additional documents not provided, 95 were provided after an initial letter of objection was submitted by the information applicant. Ten documents were published without requiring an information request.

These accessibility scores indicate that key documents are 1/8 times lower than the transparency scores. From 35 documents in this LFGI study, two documents were not obtained: internal company monitoring reports from 2012, of both the forestry and mining sectors. Five of the 16 regions studied did not receive documents requested from 35 documents, these five regions being Berau, Kubu Raya, Musi Rawas, Melawai and Malinau. Local governments need to open access to forest and land governance to communities. The public has the right to this information, and by providing access to information participation and public monitoring can help to improve governance.

Public information officers (PPID) and standard operation procedures (SOP) for the provision of information are not yet in place. PPID and SOP for handling information have not yet been established effectively. 13 regions have established an PPID, and 10 have a SOP for the handling of information, however the implementation of information requests in certain areas remains low.

Comparison Of The Effectiveness Of Information Institutions And Information SOP

Daerah	PPID	SOP	Document Status		
			Published Via Website	Request Fulfilled	Not Fulfilled / No Response
Banyuasin	In Place	In Place	0	7	28
Musi Banyuasin	In Place	In Place	0	5	30
Musi Rawas	Not In Place	Not In Place	0	0	35
OKI	In Place	In Place	0	11	24
Muara Enim	In Place	In Place	0	15	20
Kayong Utara	In Place	In Place	0	19	16
Kubu Raya	In Place	In Place	0	0	35
Sintang	In Place	In Place	1	0	34
Ketapang	In Place	Not In Place	0	16	19
Melawi	In Place	Not In Place	0	0	35
Kapuas Hulu	Not In Place	Not In Place	1	6	28
Berau	In Place	Not In Place	0	0	35
Bulungan	In Place	In Place	1	0	34
Paser	In Place	In Place	0	6	29
Kutai Kartanegara	In Place	In Place	7	0	28
Malinau	Not In Place	Not In Place	0	0	34
Jumlah	13/16	10/16	10	85	464

The table above indicates that there are still districts that have implemented the requirements of the Freedom of Information Law but where information is not being made available. There are also areas that have not made any effort to implement the requirements of the Freedom of Information Law. The development of institutions and SOPs for the provision of information are important tools for managing and fulfilling information requests, to serve policy makers as well as the wider community.

E. Phantom Participation

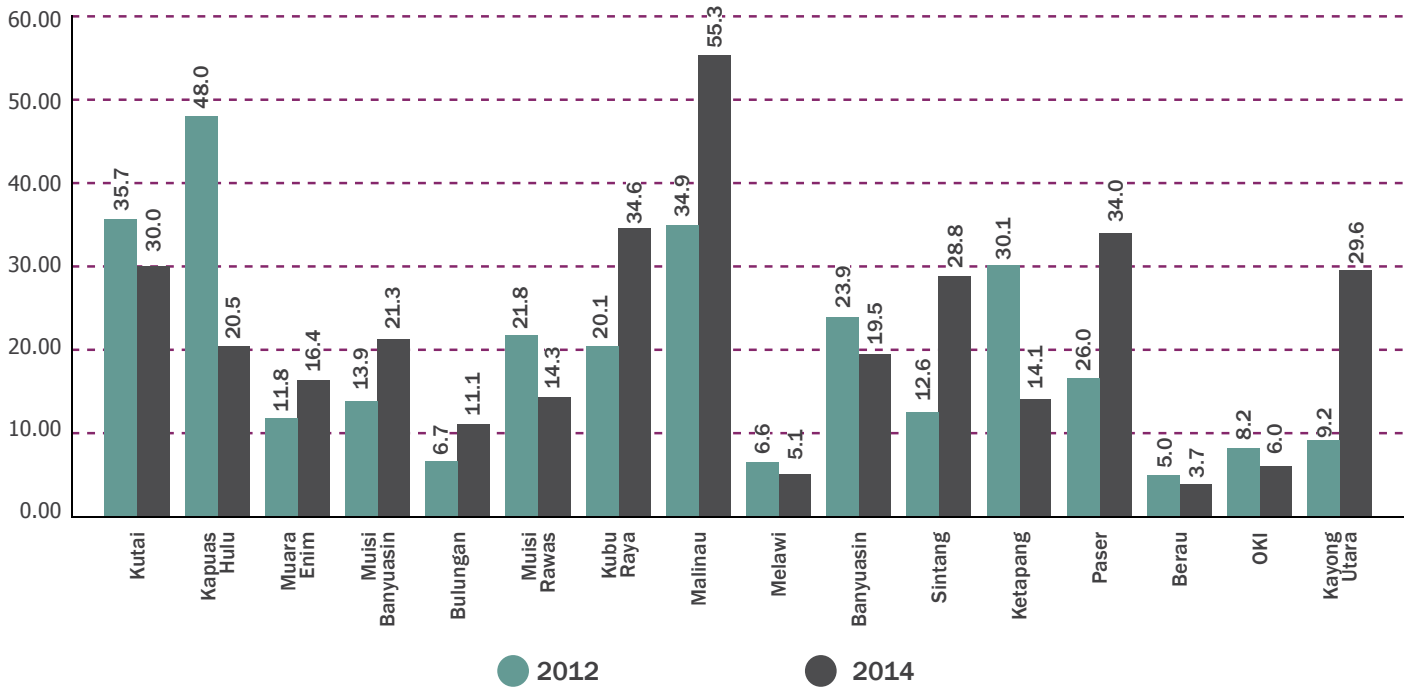
Public participation in the land and forest sector (forestry, plantations and mining) has increased since 2012, but remains at low levels. In 2012, public participation across the 16 districts reached an average of 19.7 out of a total score of 100, while in 2014, the score increased slightly to 21.5, but remained in the classification of poor.

The participation index increased in eight districts. The highest increase was in Malinau and Kayong Utara. Low levels of participation are due to: (i) minimal space provided for public participation, (ii) public participation has not been conducted at each stage of decision making, (iii) where participation does occur, it involves a low diversity of stakeholders, and those most impacted by decisions are not well represented, and (iv) a lack of regulations or policies that guarantee regular and routine participation.

The most impacted members of the community – who are the most affected by forest and land use decisions – are not prioritized in policy decision making. In terms of participation, impacted communities receive a minimum portion (14%), compared with community representatives (36%), businesses (21%) and NGOs (16%). Involving impacted communities' needs to be prioritized and allocated more consultation space as compared to other stakeholders.

Public participation is conducted half-heartedly. From three levels of public participation – from most participatory (requests for approval) to least participatory (information sessions or *sosialiasi*) – generally district governments still largely hold information sessions (*sosialiasi*) (48%) rather than public consultation (43%), and even fewer conduct requests for approval (37%). The way in which participation is conducted influences the way in which communities are accommodated in decision making.

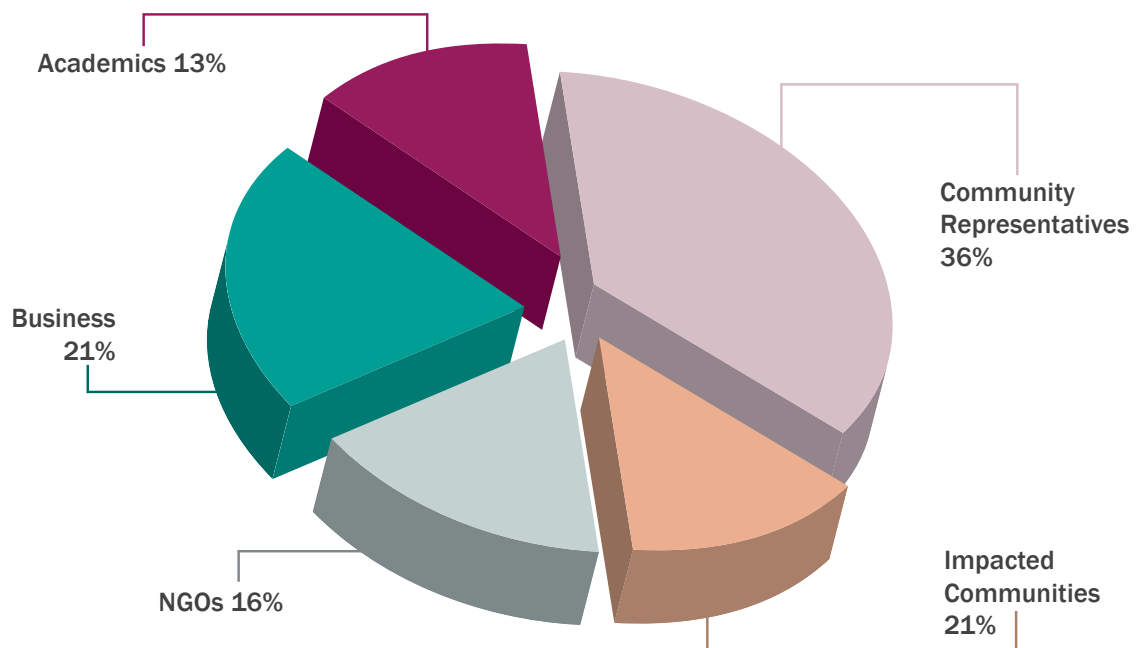
LFGI Participation Index 2012 – 2014



There is not yet any legal basis or guidelines for district governments' in facilitating participation. Local government agencies (*Satuan Kerja Perangkat Daerah/SKPD*) are basically only guided by national policies for ensuring participation. This is resulting in weak standards (NSPK) for public participation so that there is no uniform way for ensuring participation. Out of 16 districts, seven demonstrated a decline in participation since they were measured in 2012. Other studies found similarly that while there is a local regulation requiring participation, there is no evidence to indicate that participation is increasing locally. This is because the quality of local regulations mandating participation is still broad and general and is yet to set any specific measures for good participation.

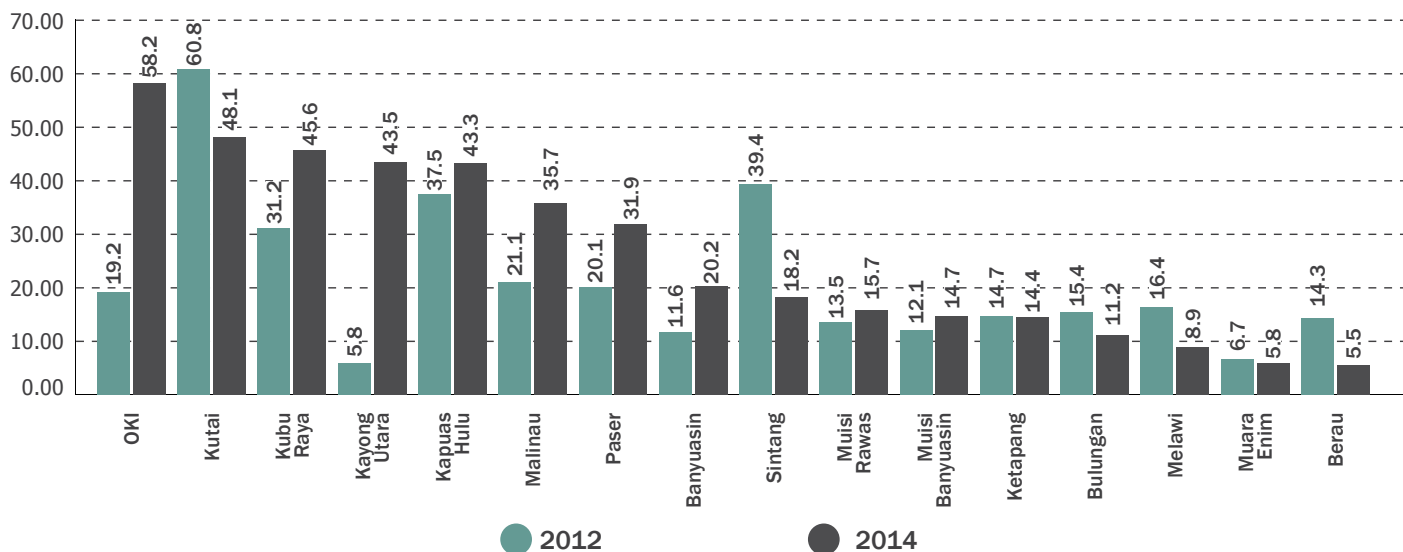
Public participation in the license issuing process is still low. This differs from participation processes in decision making related to policies for revegetation and conservation, for example regional spatial planning and planning for forest and land rehabilitation. The process of decision making related to issuing permits, implementing participation is initiated because of demand or pressure from communities, most commonly because they do not agree or reject plans to issue permit licenses that they are concerned could present harm.

Participants in Governance



F. Stuck on Procedural Accountability

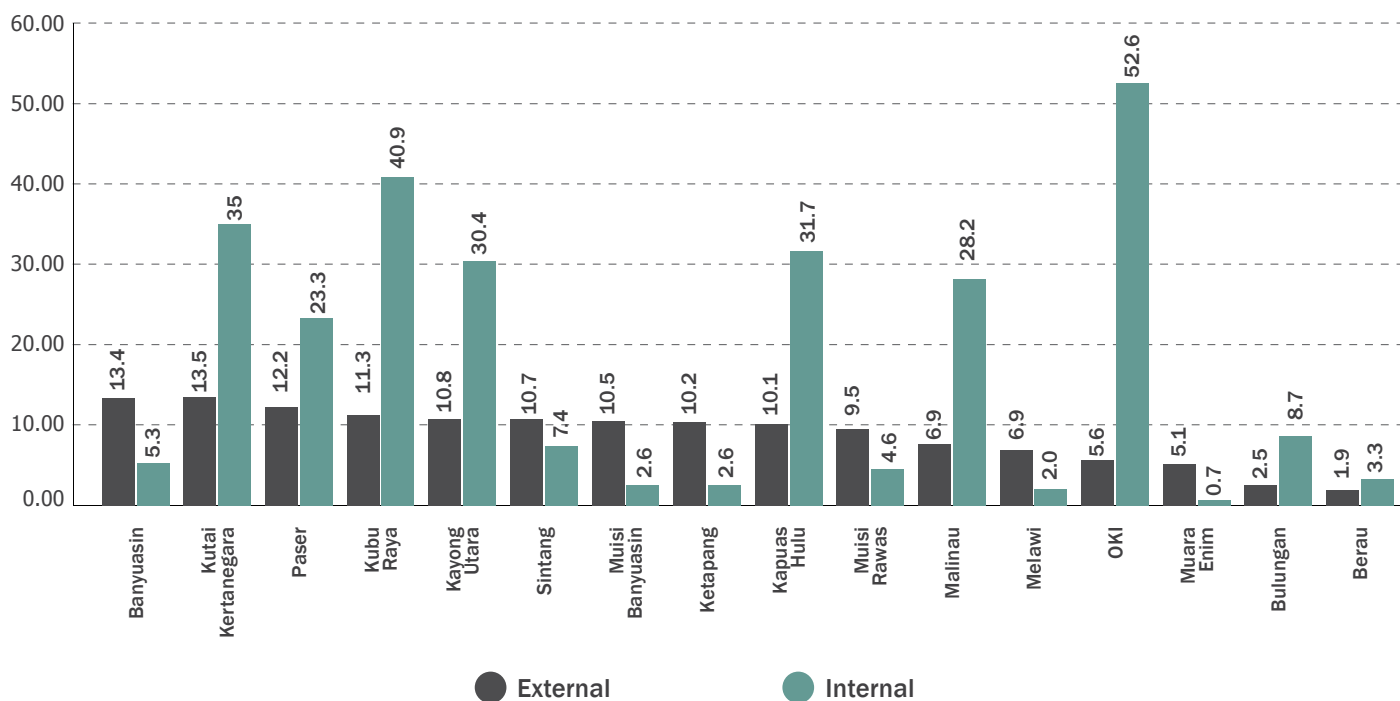
LFGI Accountability Index 2012 – 2014



The average accountability index increased somewhat between 2012 and 2014, from a score of 21.2 (poor) to a score of 26.3 (moderate). Accountability improved from poor to good in the land and forest governance sector in the Ogan Komering Ilir district, however in the Kayong Utara district the accountability index improved from poor to moderate. The Kubu Raya district remained the same. In Sintang the accountability index reached moderate in 2012, but lowered in 2014, as was the case for Kutai Kartanegara, which reduced from good to moderate.

The accountability index is constituted from a total score produced from an internal and external accountability score. Internal accountability is measured by how far the district government is accountable for the management of land and forests, both vertically and horizontally. External accountability measures how far district governments are responsible to the public for managing land and forests.

Accountability Index



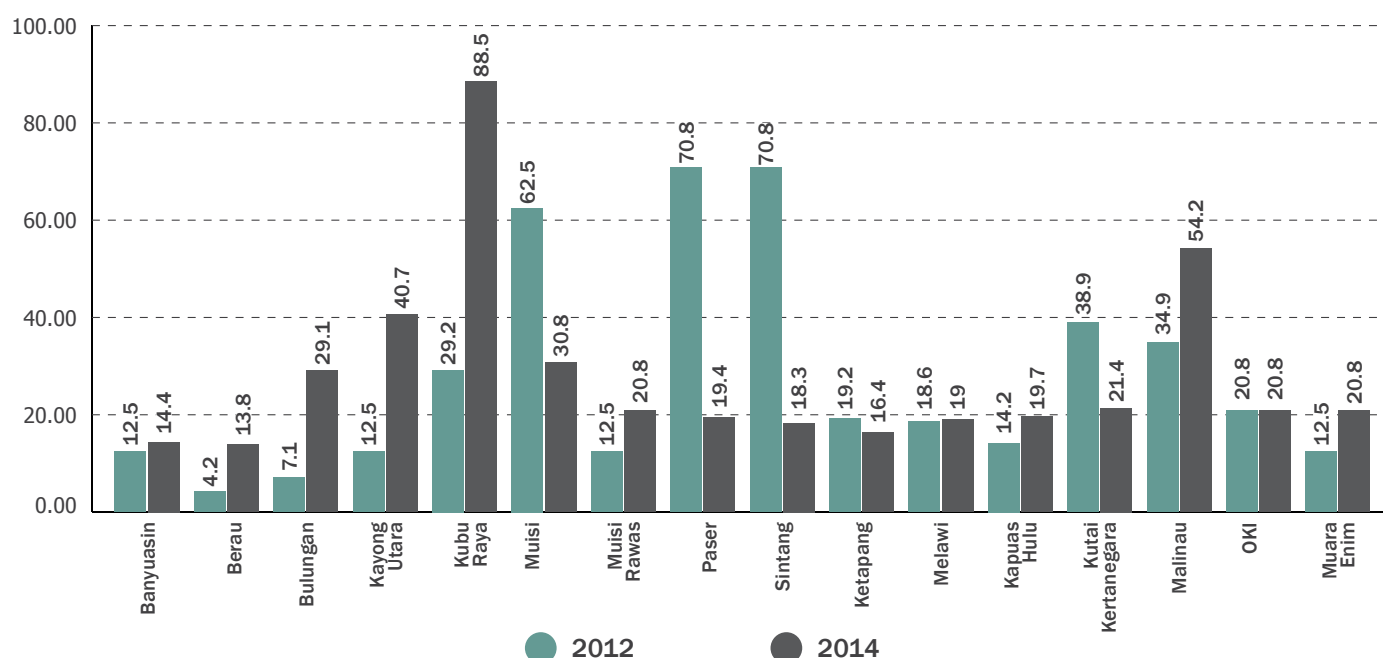
District governments tend to only meet procedural obligations for improving the quality of their public service obligations. This can be seen from the internal accountability score which is much higher than the external accountability score. Related to spatial planning for example, Law no. 26 of 2007 about Spatial Planning mandates that each provincial, district and municipal and city government must review their jurisdictions' spatial planning regulations. The LFGI study identified that in 2015 nine districts had already reviewed spatial planning regulations, while the other six districts were still discussing their regulations in parliament, waiting approval from the national government, or had not yet been revised as they were waiting for the provincial government to revise spatial planning regulations.

Mechanisms developed by the national government create incentives or disincentives for district governments to become more responsible. Several district governments have already revised district spatial plan bylaws, but provincial governments are lagging. Kutai Kartanegara, a district in East Kalimantan, is one example of a district government that revised their spatial plan before the East Kalimantan provincial government passed a spatial planning bylaw.

District government accountability to the public is beginning to rise, but many policies were found to be lacking in accountability. This can be seen from the majority of areas studied that still do not have institutions responsible for handling complaints and resolving disputes from communities, for example related to issuing permits for mining, plantations, and timber in areas for other uses, and for providing recommendations necessary for granting permits to use state forests for mining. From 16 districts studied, only the district governments of Oki Komering Ilir (OKI), Kapuas Hulu and Bulungan formed a special team to handle community complaints related to land and forest governance policies. The Oki Komering Ilir district government for example, issued District Head decree no. 29/KEP/III/2014 to establish an integrated team to resolve land disputes, and the Bulungan district government issued a District Head decree no. 98/II/540/2015 about establishing a plantation supervisory team. Monitoring and evaluation is necessary to ensure that this team is established effectively, and to check that community complaints are followed up, to ensure that this team is not simply a formality.

G. Formulaic Coordination

LFGI Coordination Index 2012 – 2014



There has been no demonstrated improvement in district government coordination over forest and land management. Since the LFGI study in 2012, coordination has stayed at the moderate level. The LFGI index for coordination reduced from a score of 28 in 2012 to 27.6 in 2014. The Kubu Raya district scored the highest, while the lowest was the district of Berau. There are around five districts including Bulungan,¹ Kayong Utara, Muisi Rawas, Muisi Banyuasin, and Kubu Raya where there was allocation in the regional budget (APBD) to establish cross-sectoral coordination, but most of the time this is limited to the plantation sector². Eleven other districts have not yet established coordination bodies related to forest and land use licensing.

The LFGI 2012 and 2014 display different index scores. Different districts experienced different increases and reductions. Significant increases were experienced by Kubu Raya and Malinau. In terms of coordination, the Kubu Raya district scored 88.5 or very good while in the earlier study it reached 29.2. Malinau achieved a score of 54.2 with a score of good which had previously scored moderate. In 2015, the primary factor that contributed to an increase in the Kubu Raya district's coordination score was because the District Head issued a decree to establish a Regional Spatial Planning Coordination Board (BKPRD) (District Head decree no. 310 year 2014) that has the primary task and function of coordinating across agencies responsible for forest and land governance, such as issuing permits for plantations and mining, coordinating spatial data in spatial planning, and permits for use of timber (IPK), forest wood industry (IPHHK), and for timber plantations (IUPHHK). Land and forest governance activities that are not coordinated through this body are only those related to the rehabilitation of land and forests and the process of reclaiming land and forests. In Malinau, a spatial planning agency was formed, based on the authority attributed to article 13 paragraph 2, Minister of Home Affairs no. 50 year 2009. This agency is considered ad hoc, formed by the District Head but has not yet been allocated funding through the regional budget. The district that received the lowest score is Berau with a score of 13.8, categorized as poor. This is only some improvement from 2012, when Berau scored 4.2 due to the district not having any form of coordinating agency, including for the spatial planning sector. The Banyuasin district had the second lowest score of 14.4, categorized as poor, followed by Ketapang with a score of 19.2.

In summary, across all districts average coordination scores, the only scores to reach moderate were obtained because national regulations mandate the district governments establish a BKPRD. Different from planning, including in the process of rehabilitating forests. This low level of coordination indicates that provincial governments have not fully committed to land and forest governance because coordination is still mandatory from central regulations and not from provincial government initiatives to create regulations.

¹ *The coordination team in the Bulungan plantation sector was formulated with the Bulungan District Head decision, number 98/K-II/540/2015.*

² *Four districts created plantation coordination bodies: Bulungan, Musi Rawas, Musi Banyuasin, and Kayong Utara, while in Kubu Raya there is a coordinating body that takes in various sectors.*

H. Recommendation

1. Recommendations for district governments:

- a. Open access to land and forest sector information to the broader community, including impacted communities.
 - b. Establish information instruments (PPID and SOP for the provision of information) in regions that have not yet implemented the mandate from Law no. 14 of 2008 about Freedom of Information.
 - c. Evaluate the performance of instruments (PPID and SOP for the provision of information) to effectively implement the mandate from Law no. 14 of 2008 about Freedom of Information.
 - d. Proactively publish of data/information related to forest and land management.
 - e. Develop integrated information systems for natural environment and forestry to promote preparedness and data/information sharing between agencies.
 - f. Prioritise involvement of impacted groups (local and adat communities) in decision making over forests and land.
 - g. Provide space for participation that allows communities to have a role in the decision making process.
 - h. Develop a system in internal oversight and to administer sanctions for violations by officers.
 - i. Review the policy and procedures for publishing permits in order to minimise abuses in the issuing of permits and strengthening community supervision.
 - j. Establish an agency and a low cost, efficient and simple complaints reporting mechanism to resolve community conflicts.
 - k. Develop institutional and coordination mechanisms that are reflected in operation procedures with the support of structures, human resources, infrastructure, adequate funding and licensing in sectors related to forest and land governance.
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2. Recommendations for the central government:

- a. Assist, monitor, and evaluate regional government's performance in implementing the Freedom of Information Act.
- b. Develop a system for providing information about the natural environment and forestry that is integrated at the national and regional government level and promote preparedness and information sharing between agencies.
- c. Create indicators for forest and land management a mechanism for incentivising good regional governance.

3. Recommendations for civil society:

- a. Use the Freedom of Information Act as an instrument to access data/information related to forest and land management, including information about spatial planning, forest sector licensing, plantations, and mining.
 - b. Assist district governments to implement the Freedom of Information Act, including to institute a public information officer (PPID), standard operating procedure for the issuing of information, and a list of public information.
 - c. Develop best practice or success stories through supporting impacted communities and those potentially impacted through public participation.
 - d. Monitor the performance of district governments in the management of forest and land, for example by reviewing forest and land licenses.
 - e. Establish a civil society community complaints post.
 - f. Conduct advocacy in relation to forest and land violations and crimes, both litigation and non-litigation.
 - g. Consolidate the civil society movement as an effective pressure group in promoting improvements to regional forest and land use.
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