Hot Spots of Confusion: Contested Policies and Competing Claims in the Peatlands of Central Kalimantan (Indonesia)

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ABSTRACT
In the peatlands of Central Kalimantan, expectations of payments for carbon emission reduction currently shape the discourse over natural resource management as a means of influencing policy and exercising power. Discourses on 'what is correct and what is not' are embedded in a struggle over property rights and influence. This article examines the discursive strategies in the struggle over property rights in a failed development project ('ex-Mega Rice Area') in Central Kalimantan and traces their changes and development in justification for policy influence in the face of REDD implementation. Different types of actors have their own choice of argument and interpretation of facts, rules and norms over the disputed issue. Shifting national policies affect the distribution of power that shape the practice and use of forest peatland. This case study can help to provide directions and outline the key issues that need to be addressed in targeting climate change mitigation efforts.
Keywords: discourse, decentralization, REDD, land tenure, carbon rights

INTRODUCTION

Indonesia is known as the country with the highest greenhouse gas emissions from land use and land cover change, with the third highest overall emissions and per capita emissions at par with Europe. In September 2009, the President of Indonesia announced that Indonesia is committed to reduce net emissions by 26% with its own means. Indonesia also welcomes international co-investment to increase reductions by up to 41%. This implies accepting a '2020 baseline' of minus 41% relative to current trend and effectively stabilizing the 2005 emission levels. Consequently, Indonesia has become the prime target for international efforts to reduce emissions from deforestation and forest degradation (REDD) in developing countries. The expectation of financial incentives for emission reduction has led to the debate on 'carbon rights' (Peskett *et al* 2008, Wemaere *et al* 2009). The concept of carbon rights has instantly turned into a new arena of both contest and cooperation.

Key issues in the REDD debate on carbon rights are: (1) who has, or can claim, the right to cause carbon emissions; (2) who has, or can claim, the right to ask for co-investment in emission reduction efforts or to 'sell carbon emission rights'; (3) who has, or can claim, the right to receive payments for avoided damage to local or global environmental values; (4) who has the right to agree on or set a baseline of 'emission rights'; (5) who has the right to measure and verify carbon stocks and determine 'additionality' and 'leakage'? The contest of these rights leads to a power contest of authority among the government layers in many

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countries (Phelps *et al* 2010). The interaction of 'carbon rights', with existing or emerging rights, authorities and power over land use decisions is not easily understood. Land 'ownership' is only one of several elements influencing the level of emission reduction. Emission reduction is measured as a change over time in carbon stocks, relative to agreed baseline or expected change, and after correction for leakage or displacement of emissions to other locations. These alone, demand clarity and procedural justice if the 'legal basis' of property rights and governance over forested land and resources is to be resolved (Cotula and Mayer 2009, Unruh 2008). However, this clarity does not yet exist in many landscapes in Indonesia (Tomich 2002, Fay and Michon 2005, Kusters 2007, Wunder 2008). Hence, 'carbon rights' come as an addition to the already complex layers of unresolved property rights. The complexity extends from the relationship between individuals and local communities, between both of these and local government, between sub-national entities and Indonesia as a state, and in Indonesia's relation with global negotiation platforms on mitigating climate change.

In the case study presented here of one of the recognized hotspots of carbon emissions in Indonesia, we found that the 'legal' basis of contesting claims were found to use current contradictions and inconsistencies of laws and multi-sector policies, interacting with differences of interpretation, shifting power relationship of disputants and articulation of local property rights and rights of customary people. The article examines the discursive strategies in the struggle over property rights in Central Kalimantan ex-Mega Rice Area and traces changes and development in justification for this influence in the face of REDD implementation. Much attention has been given to 'rights to land' after the 1999 decentralization policies in the case study of Central Kalimantan (Ex) Mega Rice Area, with contests between the national government, local government, state-sanctioned concessionaires and local communities with historical claims preceding the state.

Discourse analysis on property rights was used to analyze the situation in Central Kalimantan (ex) Mega Rice area as a potential REDD pilot site. It helps to examine the role of discourses as a means of exercising power and influencing the governance of natural resources. The study analyzes the link between the way land use access history is portrayed and the dynamics of property rights and policies on forest access and use, the question of legality in areas designated functionally as forests, and the social and political implication to resource users.

PROPERTY RIGHTS AND THEORY OF DISCOURSE

Property relationship can take many different forms. Schlager and Ostrom (1992) distinguished five types of property rights operating at two decision-making levels: operational and collective-choice. The complete bundle of rights includes the ability to access, withdraw, manage, exclude and alienate a resource. Policies attribute them into use rights, disposal rights and access rights (Gerber *et al* 2009). However, in many cases, rights specified in property laws and regulations as *de jure* or legal are not always match actual, *de facto,* property rights. Actors can be said to hold actual powers if legal rights and actual rights mutually reinforce each other (Thanh and Sikor 2006, Yandle 2007). Nevertheless, it leads also to the question who invokes de facto rights or actual rights. Ribot and Peluso (2003) developed a 'Theory of Access' defining access as the ability to benefit from resources and interpreting it as a bundle of actual power over property rights based on various mechanisms, processes and social relations, not confined to 'legality' of the claims. Part of the factors

influence the 'costs' of making an acclaim and enforcing it, others influence the expected benefits from using the resource (Figure 1).

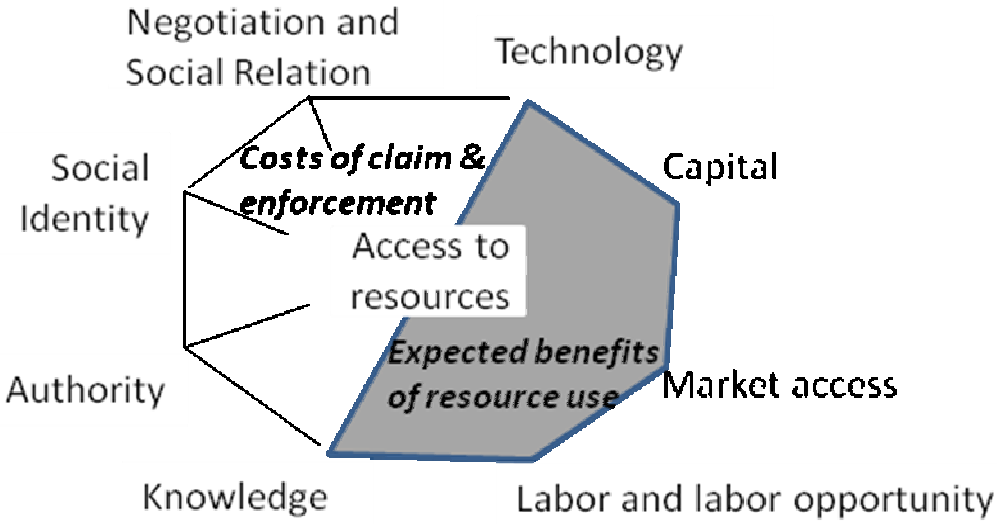

Figure 1. Theory of Access, with factors influencing costs of making a claim and enforcing it and factors influencing expected benefits from resource use (modified from Ribot and Peluso, 2003)

Depending on the discourse strategies of the actors, discourses play an important role in the ability to influence and determine socially constructed power relations. Foucault (1978) highlighted the proliferation of discourse used as a means of exercising power. Medina *et al* (2009) analyzed how discourses were used by competing actors as a mechanism to promote their own claims and objectives and restrict others to use forests. According to Hajer (1995), a discourse can be defined as a specific assemblage of ideas, concepts, and categorization that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities. It contributes to a construction of certain values and goals as more worthy than others, identifies particular institutions as primary actors in a policy issue and attributes authority to certain bodies of knowledge over others (MacDonald 2003). Three key elements are found in this definition: first, a specific set of ideas, concepts and categorization, second the fact that these are being produced, reproduced and transformed in a set of practices, and third that we make sense of what we see and experience through them (Tennekes 2005).

Arts and Buizer (2009) distinguished and summarized four types of discourse approaches. Discourse as *communication* is often associated with discussion, debate or exchange of views with regard to a certain societal or political topic. Discourse as *text* influences how a certain language or conversation is written and interpreted. Discourse as *frame* is informed by present knowledge, beliefs and values. Finally, discourse as *social practice* disciplines human agencies to think, speak and act in a certain way and not in others. Policy studies on discursive strategies in the struggle over property rights have focused on 'stories' (Fortmann 1995, Bridgman and Barry 2002), historical context (Biezeveld 2004), scientific assessments (Galudra and Sirait 2009), legal arguments (Turk 1978, van Langenberg 1990), language expression (Swaffield 1998) or combinations of several of them. Biezeveld (2004), for example, described how historical context and legal concepts were reinterpreted and defined by different groups involved in land dispute in West Sumatra by

framing their arguments in the vocabulary of the other party. Groups used their knowledge of different interpretations of historical events to negotiate current access. Such discursive strategies can change rapidly as a result of political and economic situation (Doolittle 2001). Nevertheless, discourse can constitute indispensable resources with the potential to both enhance individual actor's negotiating power and to create opportunities for compromise (Arevalo and Ros-Tonen 2009).

OVERVIEW OF THE STUDY SITE

Located in three regencies namely, Pulang Pisau, Kapuas and South Barito, the peat domes of Central Kalimantan Ex-Mega Rice Area, cover around 1.5 million ha on the interfluves of a number of rivers (Figure 2). Around 80% or 1 270 000 ha of this area are classified as peatland. Most of them have been affected by human use in recent decades. These rivers have a long history of human use, with a string of settlements and a tradition of upstream-downstream mobility of various ethnic groups, practicing 'swiddens' along with shifting village locations. Ownership claims on some part of the riverbanks and hinterland depend on the details of the settlement history. During the colonial era, *de facto* use of the riverbanks was sanctioned by the government, but after independence the Republic of Indonesia claimed ownership of, and control over all land and resources for the benefit of the People of Indonesia. But when the State started granting permits for logging concessions in designated forest areas, *de jure* concessions clashed with *de facto* use rights of local people.

The construction of drainage canals for the Mega Rice Project and establishment of transmigration settlements has not only brought a new influx of migrants with land ownership claims, but also altered the institutional arrangements and property rights of existing local communities. The Mega Rice Project was based on deep drainage, 'salvage logging', land clearing, transmigration of villages involving farmers from outside the area and irrigated rice. The few independent experts who had advised against the project were correct; it provided economic benefits through logging and for the suppliers of the heavy equipment needed, but not for rice farmers, many of whom started looking for other employment. The consequence of Mega Rice Project shifted the existing property rights in the area into what was considered to be an open access regime. Each villager began to compete to gain access to natural resources.

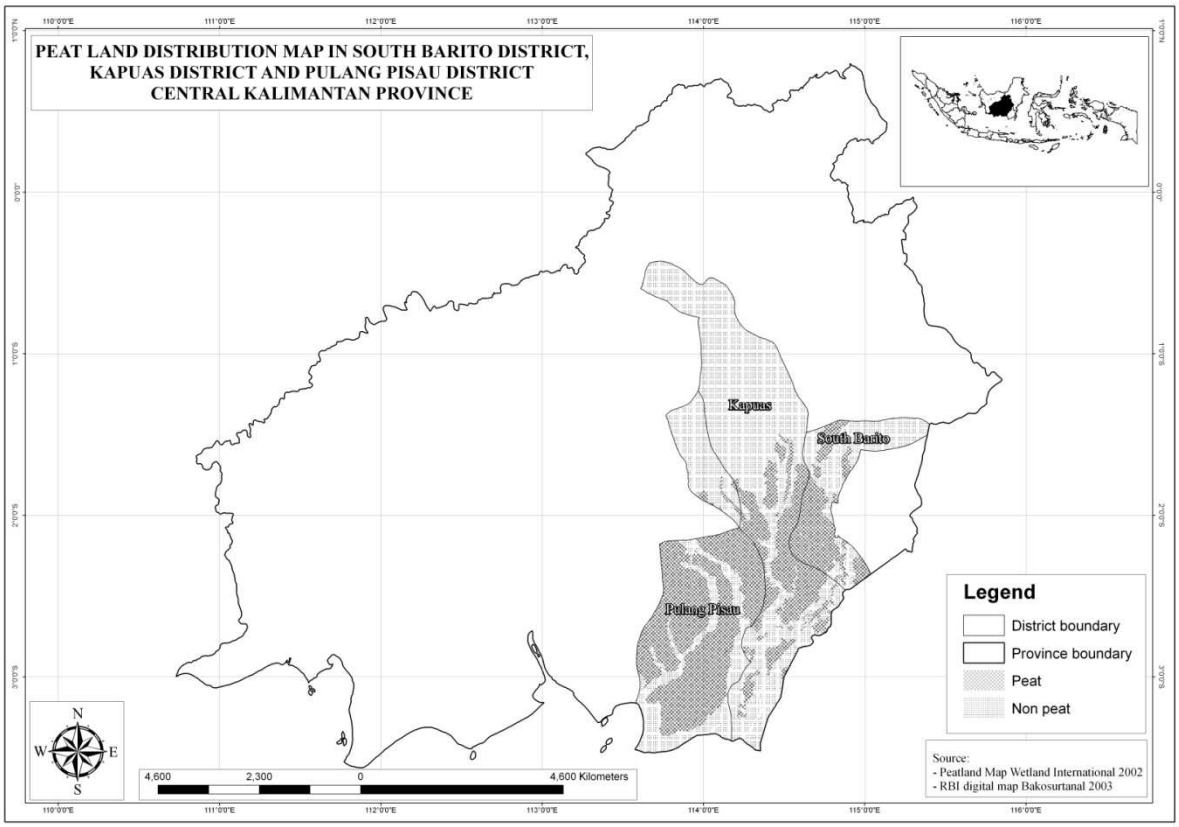

Figure 2 The Peat Domes of Central Kalimantan around Ex-Mega Rice Area

Confusion and rights contestation worsened in the 1997/1998 'forest fire' episode that hit the area. The event drew wider attention on government policies on land use. The forest fire was interpreted as a result of a combination of El Nino conditions causing prolonged dry season, and the increased vulnerability of peatland by drainage and logging. Before the fall of the Soeharto regime, the Ministry of Environment publicly displayed pictures of the canals in the Mega Rice Project area as source of smoke and haze - this exposed Indonesia to its neighbors, causing embarrassment in terms of the extent of health hazard the fire has caused. The extent of carbon release in the Indonesia atmosphere was estimated to be between 0.81 and 2.57 Gt - this is equivalent to 13–40% of the mean annual global carbon emissions from fossil fuels, which contributed greatly to the largest annual increase in atmospheric CO_2 concentration detected (Page *et al.* 2002). These episodes of fire events pushed the government to close the Mega Rice Project (thus becoming known as 'ex-Mega Rice Project') and to consider it a "mega disaster"; since then, efforts were focused on rehabilitating the area. However, this effort was challenged by the local government that pursues local economic development with oil palm rather than rice production as an attractive option. Adding to this contestation, the local communities began to protect their ancestral claim as both government layers' efforts were perceived as threat to their 'rights'. The restriction of long-term land use options by each actor has created conflicts for those who assert claims to the land.

While the international rules on REDD+ are not yet clear and emissions from peatlands may or may not be covered, there is increasing consensus that this type of emission reduction is technically feasible, urgent (high emissions) and probably cost effective. It is explicitly mentioned as part of the Indonesian-Norway Letter of Intent signed in 2010.

Several donors and international organizations are exploring and seeking effective ways of reducing emission in this area as part to bring peatland emissions into the emerging REDD schemes.

METHOD

Data collection was undertaken from 2009 to 2010. Key informant interviews were conducted with policy makers in Jakarta, Palangkaraya (Central Kalimantan Province) and Kuala Kapuas (Kapuas District). Researchers also immersed in 14 settlements within the ex-Mega Rice Project Area to observe the daily life of local communities. Detailed analyses of property rights in each settlement, with reference to different actors, forest resources, types of rights, and layers of social organization were undertaken. The relevant rights include the rights to withdraw timber, withdraw non-timber forest products (NTFPs), convert forest into agricultural fields, open drains and access to rivers, and exclude others from using the forest and drainage. For convenience, the study design was patterned after Adger and Lutrell (2000) study on peatlands. Three specific sets of issues were explored:

1. The nature and history of property rights and forest use claims
2. The discursive strategies of disputants to exert their rights claims
3. Factors causing the dynamic and multiple claims on property rights.

Focus group discussions and semi-structured interviews were conducted with informal leaders, heads of local customary institutions, former village heads and other villagers, and local governments, forestry agencies, and local NGO workers. Each focus group discussions and interviews consists of 8-10 persons of community leaders and elders in each settlement. They were interviewed to understand how different actors use discourses and how these discourses shape their rights claims and forest use practices. The interviews explored the potential of negotiations on how to use the peatland forests, the arguments used by the different actors, the final agreements, and their implementation. In addition, the study searched for examples where the communities managed to get their own rights acknowledged and identified the circumstances under which this occurred. In meetings with local government and central government officers, special attention was paid to how those actors harnessed their own discourses to put forward claims, and the outcomes of these efforts. These were supplemented with a range of other sources, including newspaper stories, government, and reports from conservation agencies, NGOs and individual consultant, as well as Dutch Colonial texts in the area. By using policy content analysis, formal and informal land tenure was better understood from the collection of policies and laws. Direct observation also helped to deepen the understanding of policy implementation and local land tenure.

Five stages in the historical development of the discourse are used to present the findings of the study: (i) pre-independence or colonial (before 1945); (ii) after independence (1945-1965); (iii) new order (1966-1998); (iv) decentralization (post 1999); and (v) recentralization (post 2006).

RESULTS AND DISCUSSION

The Resurgence and Demise of Customary Law and Land Rights

From pre-colonial to colonial days

The interface with global trade and local resource use in Kalimantan during the last 2 millennia followed a pattern of coastal kingdoms with limited control over the upstream area where local institutions and ethnic identities could develop. In Central Kalimantan, the

emerging village structure level recognized the *Damang* (a customary council) as a Customary Judicial Institution. After the war negotiation in 1894 and 1928, the Dutch colonial rule legalized and expanded this role to issuing land use rights to the local communities and households. Following recognition, the customary institution issues rights to local communities and household. Several customary land-use rights are still recognized as follows:

1. *Eka Malan Manan Satiar* - right for a local community to hunt animals, open the forest for swidden rice cultivation system, and collect non-timber forest product. The area, designated as land used by the community, typically covered five kilometers around the community settlement.
2. *Kaleka* - an ancient customary community settlement that had been abandoned and returned to secondary forest. The area was considered a sacred area and determined as having communal customary land rights status.
3. *Petak Bahu* - an ex-swidden that has been returned to (agro)forest. Only the previous cultivator, based on former rights (*hak terdahulu*), could use and collect the forest products.
4. *Pahewan/ tajahan* and *sepan* are sacred forest areas, where the local community had rights and obligations to protect the areas from any land use activity.
5. *Beje* is a fish pond made by the local community to trap and store fish during the dry season. The pond may be owned either privately or communally.
6. *Handil/tatas* is the right of a local community to construct small drains to open up land for shifting cultivation or to collect timber and non-timber forest products in forested land and for fishing.

From independence to 'new order'

In the initial period following independence of the Republik Indonesia in 1945, the *de facto* status of local rights was still recognized. However, the 1965 emergence of 'New Order' shifted power to the central government, leading to the demise of de facto rights.

During Soeharto's reign in 1965-1998, the government granted permits to international and national companies to exploit vast areas of forested land, even with concerning issues and unsettled questions about as how the State law takes account customary land-use rights. The Agrarian Affairs Office in the early 1970s investigated the status of customary land-use rights in Central Kalimantan and concluded that customary institutions had already diminished, leaving local people with vague or without land use rights.

However, several scholars remain convinced that despite the decreasing legitimacy of customary institutions and pervasive conversion from communal to private lands, local communities have remained faithful in their practice of customary laws (Abdurahman, 1996; Mahadi, 1978; Yanmarto, 1997). The government, however, adhered to the Basic Agrarian Law of 1960, which states that customary land-use rights could only be recognized if there was an existing customary institution governing the community; the absence of a recognized customary institution was used to justify the issuance of 'concessionary permits' by the central government.

In 1982, the Government enacted the 1982 Forest Allotment Consensus (*Tata Guna Hutan Kesepakatan*) that classified 15 300 000 has of forested lands in Central Kalimantan as state forest land, under administration of the Ministry of Forestry (MoF). The enforcement of this forest classification remains disputed up to today (Contreras-Hermosilla and Fay 2005).

Several notes[2] issued by different ministries instructed the governor and local land administration to support this new so-called consensus. These policies, consequently, abolished all local rules and regulations that related to local land rights recognition, and laid a strong basis for logging companies to operate on the forested lands in Central Kalimantan. Logging companies were invoked by a Government Regulation to exercise power to terminate local land-use rights[3], in pursuit of a timber-centric policy that can generate economic benefits for the central government. Correspondingly, the customary communities are obligated to secure clearance from logging companies to use their land[4]. During this period, power was almost solely held in the hands of the State, which has vested economic interests on logging concessions, allowing them to finally gain full control over the lives of customary communities, and pushing them to gradually withdraw their land-use rights.

In 1995, the government allocated 715 945 has of forest lands in the study area to 12 forest concessions. This period marked the demise of customary sovereignty and the rise of power-holding forest concessions. But the concessions in this area was only short-lived – the Government eventually decided to allocate the area for the Mega Rice Project (MRP).

The project aimed to convert dogged-over peat forest into paddy rice fields, through a network of canals, and to transfer the Javanese production systems, through transmigration of people from outside the area. One of the major reasons for the implementation of this project was because the area was considered State land and thus to be free of land claims and rights held by the local communities. The Government believed that converting the land use and changing the land status of the area will not create any problems, but certainly, this was not the reality on the ground.

Vast areas of forest trees were cut to implement the project, causing periodic forest fires. Areas that were used by many communities for rattan forest, sacred forest, *beje*, and shifting cultivation were destroyed during the process. However, community protests and demonstrations had started to escalate in 1997 and 1999. More open and brave expressions of the peoples' sentiments heightened during period of '*Reformasi*' that marked the end of the 'New Order' in 1998, and the return to democracy. In 2001, the Kapuas Government Regency ordered the National Land Agency at the regent level and other regency government offices to inventory all community land uses that had been exploited by the MRP, and authorized them to give communities a fair compensation for the loss of their land. However, the government only inventoried and compensated those that were within 90 to 150 meters from the bank of the MRP drainage canals. This was a big disappointment to local communities, who had been using the land well beyond these distances, and especially that the Provincial National Land Agency in 2003 has acknowledged community land use and occupation beyond the compensated area.

The inventory process was difficult as many of the natural boundaries that were used to delineate areas under community land use have been destroyed by the construction of the MRP canals. Conflict surrounding this issue remains unsettled and communities are still demanding the Government to provide just compensation for the damage inflicted by the loss

[2] Ministry of Home Affairs No. 26/1982 dated on 13 May 1982 and Ministry of Agrarian Affairs No. 586/1982 dated 17 July 1982
[3] Government Regulation No 21/1970 and No 28/1985
[4] Ministry of Agriculture Decree No. 749/ 1974, Ministry of Forestry Decree No. 194/ 1986 and No. 251/ 1993

of their land use rights. For local communities, the MRP has not resulted to loss of their livelihood, but also insecurity of resource access and use rights.

Decentralization and Its Aftermath

After the end of Soeharto's reign, the central government decided to stop the MRP permanently and devolved management responsibilities to provincial governments. This heralded the commencement of a period of 'decentralization'. Central government handed down certain power and authority over forestry affairs to Regency heads (*bupati*). Law 22/1999, on regional administration, and Law 25/1999, on fiscal balancing between central government and the regions, were issued to support greater autonomy of regency government to formulate policies and obtain a larger share of forest revenues. When these policies came into effect in January 2001, the Kapuas Regency Government was quick to issue as many small-scale concession permits as possible, and started to impose charges on existing companies.

During this period, the *bupati* and the governor were allowed to grant annual timber harvesting permits of 100 has and small forest concessions of 10 000 has to private land owners, communities and customary forest owners. The area of the ex-MRP at that time was then subjected to further loss of forest cover and degradation of forest quality, as around 70 small forest concessions operated and logged around 12 million m^3 of forest trees in the area – in other words, the unintended ill-effect of decentralizing forest management was accelerated deforestation.

Under massive and fierce criticism of 'deforestation' and 'illegal logging' that was taking place, the Ministry of Forestry (MoF), in June 2002, withdrew the authority of the regency head to issue small scale concession permits and effectively reaffirmed its perceived authority over forest matters through a number of decrees and regulations[5]. These regulations restored the authority of the MoF to issue new forestry concessions – a role that was previously given to, and apparently misconstrued and ill-performed by local governments. However, none of the regulations that emerged swiftly during this period included the ex-MRP management issues, especially regarding allocation of rights – as if the MRP issues and the damaged it created have been completely forgotten and the excision from forest areas and transfer to local government authority was considered to have been illegal in the first place.

However, the cancellation of power did not stop the local government to use the area for their interest. After the return of power to allocate small forest concessions from the regency to central government, the local government resorted to different regulations, to exploit the remaining with good forest cover. In 2003, a provincial regulation[6] was issued on provincial spatial planning, which legally supported the Regency to use and allocate forest lands for oil palm plantations and mining explorations. After the failure of rice, oil palm production in 'already' deforested lands was seen as the best way to fuel the local economy and raise local government revenue. Around 369 000 has of the (ex) Mega Rice Area were assigned to 37 oil palm concessions, while about 41 536 has were allocated for 60 coal mining concessions. Interestingly, both permits overlapped causing confusion to concessionaires.

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[5] Government Regulation No 34/2002, MoF Decree No 541/2002, No 6886/2002, No P 03/2005, and No P 07/2005

[6] Provincial Government Regulation No 8/2003

The post-MRP era also marked the beginning of the 'recognition' of customary institutions. The Regency government enacted several regulations[7] that recognize the existence of customary institutions (*kadamangan*), assigned them with e governance roles, and recognized their basic rights, including customary land use rights. However, the Governor's Decree was not clear on the territorial issue of customary land-use rights. In 1998, the Governor of Central Kalimantan province released a statement that a distance of five kilometers from the river banks should be given back to communities under customary land-use rights; however, this statement offered no legal guarantee of protection on customary land-use rights. In such period of policy confusion, land use rights became an arena of contestation over multiple claims, as everyone had their own interpretation of who should rule and use the land in the ex-MRP area.

In 2007, the Central government passed Presidential Decree No. 2/2007, stipulating the management and allocation of the ex-MRP areas for conservation, rehabilitation and plantation. To support this initiative, the MoF in 2008 passed Decree No 55/2008 that contained a master plan for conservation and rehabilitation of peatlands for 10 years (2007-2017). The two Decrees manifest full control of the Central government over the area by placing it under its own conservation and rehabilitation program. However, these efforts certainly overlapped with the interest of the local government. Under these new Decrees, only a small amount of the area could be allocated for crop-estate plantation, with 10 000 has for oil palm and 7 500 has for rubber plantations, compared with the 2003 Central Kalimantan Spatial Developments Plans Regulation, which allocated around 369 000 has for oil palm and 41 536 has for mining. On the other hand, around 897 000 has of peatlands are being targeted by the Central government for rehabilitation and restoration.

Due to this national policy, the Regency government revoked several oil palm concession permits through Decree No 89/2009, an action supported by the provincial government note No 525/05/EK dated 20 January 2009. Concessionaires who acquired land permits from the Regency and local land administration, before the statement of the provincial government were allowed to continue their operations[8]. Meanwhile, some cancelled concessionaires claimed that they had already been legalized by the MoF.

The local communities, after the MRP cessation, began to use the abandoned land for cultivation through *handel* and *tatah* rights dating back to the forest concession era. When they heard that their cultivation areas had been allocated to oil palm concessions by the Regency government, members of the local communities raced to strengthen their claims over land by receiving land ownership notification from the head of their village. Unfortunately, many of them cause conflicts between the villagers because they were issued without considering village boundaries.

Resistance of the Provincial Government and its Discourse after Recentralization

The aftermath of decentralization was not an easy task for the central government to control as the Provincial and Regency governments as well as local communities have claims over the forest peatland. The policy adopted by the provincial government to exploit the ex-MRP

[7] Provincial Government Regulation No 14/1998, No 16/2008 and Central Kalimantan Governor Decree No 13/2009

[8] Law No. 18/2004; Ministry of Agriculture Regulation No. 26/2007; Central Kalimantan Provincial Regulation No. 3/2003; Central Kalimantan Provincial Regulation No. 154/2004; Kapuas Regency Government Regulation No. 10/2003

area was in contrast with the recent Central government policy. The provincial government claimed scientific support for its position with reference to a study by the Agricultural Research and Development Office in 1998, showing that around 327 853 has and 345 340 has of the ex-Mega Rice Project are considered suitable for oil palm cultivation and rubber plantations, respectively. This study certainly influenced the provincial government policy, and was clearly in line with its interests.

Besides scientific support, the Provincial Government uses the MoF's Note No 778/VIII-KP/2000 to argue their 'legal claim' over the exploitation of the ex-MRP for oil palm and mining concessions. The Note provides legal basis for the Provincial Government to convert state forest lands into other land use system, as long as conversion is accompanied with spatial developments plans. However in 2006, the Central government issued MoF Note[9], which superseded the previous Note, and demanded seizure of all concessions permits issued by the Provincial Government since year 2000. The Note also deemed the 2003 spatial planning regulation of the Provincial Government illegal.

The Provincial Government defended its decision, since many oil palm concessions were already in operation. The Provincial Government issued a Note[10], explicating that the spatial development plan, which was rendered illegal by the MoF has been harmoniously processed with consent, and in conjunction with the forest land use map (TGHK) of the MoF—this too was supported and approved by the Ministry of Home Affairs[11]. After presenting these facts, the Provincial Government accused the MoF for unreasonably and irresponsibly rendering the 2003 spatial planning regulation illegal.

The MoF reacted that the Provincial Government's management claim over the ex-MRP area could not be treated 'final' since there has not been a forest designation Decree. Once again, the MoF ruled-out the legality of the 2003 spatial planning regulation, in that, it couldn't be used as a legal basis for converting the forest status and exploit the ex-MRP for oil palm and mining concessions[12]. The conflict of authority between the Central Kalimantan Provincial Government and the MoF created so much confusion at the Regency government level--- the Provincial Government insisted on the Regency government, to continue applying the 2003 spatial planning regulation, as a basis for exploiting the forest, including the project area, and to ignore the MoF's demands[13].

The MoF was challenged by the aggressive actions of the Provincial Government, and exacted the termination of forest exploitation or it will bring the Provincial Government to court[14]. As a rebuttal, the Provincial Government held its claim and criticized the MoF for inconsistent policies, citing rampant conversions of many forest areas for other purposes based on the MoF's Decree[15]. However, in the end, the Provincial Government conceded to the MoF and instructed the Regency government to discontinue the issuance of permits until

[9] Ministry of Forestry Note No S.575/Menhut-II/2006 dated 11 September 2006
[10] Governor of Central Kalimantan Note No 126/1809/Ek dated 2 November 2006
[11] See Ministry of Home Affair Decree No 68/1994, Ministry of Forestry Decree No 1189/Menhut-VII/1995 and No 1212/Menhut-VII/1995, Ministry of Home Affair Note `No 050/2301/Bangda dated 25 September 1996, and Governor of Central Kalimantan Decree No 008/054/IV/BAPP
[12] Ministry of Forestry Note No S-776/Menhut-II/2006 dated 22 December 2006
[13] See Governor of Central Kalimantan Note No 522/010/Ek dated 3 January 2007
[14] Ministry of Forestry Note No S.225/Menhut-II/2007 dated 13 April 2007
[15] Governor of Central Kalimantan Note No 522.11/1084/Ek dated 3 July 2007

the policy conflict is settled[16]. Up to this study, the negotiation between the Provincial Government and MoF is still ongoing-- this experience has shown that opposing agencies have vested interests, which they use to justify their interpretations and actions—the legal discourse on forest management needs maximum clarity, if were to succeed.

Changes in Property Rights and Carbon Rights Insecurity

The dynamics of forest allocation and land use change in the ex-MRP area not only changed the existing property rights, but also placed customary institutions in disarray, and created higher-level conflict among multiple stakeholders. The introduction of political and administrative decentralization in 1999 significantly increased the authority of district and provincial governments over natural resources (Palmer and Engel, 2007; Wollenberg *et al*, 2004). However, in Central Kalimantan, forest decentralization was short-lived, with Central government taking back power from the Provincial government after realizing how vast forest resources can be used to exact political and economic power. But one indicator of success within this short period was the fervor of the Provincial government in asserting the legitimacy of its decision—a condition that extended the on-going legal 'tug-of-war' between the Central and Provincial government. Furthermore, decentralization influenced the changes in distribution of actual rights and practices around forests, and the discourse that it is today.

The ambivalence of forest definition and property rights institutions is an artifact of the historical change of government laws and public administration—as government regulations change, so as the actual rights and practices of local communities and state bodies; and with growing attention to carbon markets, the issue of 'carbon rights' has added another layer of confusion on property rights. This situation is not however, unique to Indonesia—Ali and Hoque (2009) found how shifting policies instigated ownership disputes and altered property rights and governance of forest resources in Bangladesh.

Carbon rights in this case study is at least complex as the set of actors and agents that interact during the process that starts with a natural forest and ends with a landscape with few trees but high carbon stock. Along this process many actors and agents have *de jure* and *de facto* rights, power and authority – and all are stakeholders based on the benefits currently derived from 'business as usual'. Landscape dynamics determine the dynamics and changes of actors and claims to use the area. Here, the carbon rights under the context of REDD are interpreted by the central government as 'economic use' of 'rights to not-use' the physical research. Access to this new property rights enhances rather than reduces conflict of natural resources.

The local course of history has developed the competing actors' power to claim on carbon rights. Reconstruction of the past recognition by the Dutch Colonial were adopted and used by local communities as part of land rights dispute. However, this reconstruction of communities' land rights will certainly depend on the large extent of power. To exert greater power to claim the land, the local communities sought recognition from the village leaders through land ownership notification.

The local communities also reconstruct their past experience during the forest concession era to claim certain rights in forest peatland. Acquiring rights was linked to labor and investment used for drainage works in this case, but most of their claim also linked to the social identity as customary people. Using such claim as customary people, the land that they use can 'legally' regard as customary rights. The customary rights are recognized through the

[16] Governor of Central Kalimantan Note No 522.11/1089/Ek dated 3 July 2007

governor's statement, decree and regulation and these recognitions are used as their claim to use and access the peatland area. Nevertheless, these decree and regulation do not actually stipulate what customary rights are and which customary rights are being recognized, causing confusion how they can integrate with the forest law. Scientific arguments are also used as part of these discursive strategies, but they are mostly dominated by government institutions.

Legal arguments are not always the decisive arguments in settling a dispute. Legal arguments is only one of the discourses in which arguments can be found to sustain a claim was recognized by all disputants more clearly after the decentralization era in 1999. These arguments are mostly used, however, when government layers lay claim of rights to control on the ex-MRP area. The outcomes of decentralization policies change the nature of power relations between the central and local government. These policies and their legal acts influence on ongoing contestations discourse between the central and local government, and reconfigurations of local property rights. The legal discourse dominates the debate between the provincial and central government not only about ex-MRP management schemes, but also the authority to rule the area. The discourse on what type of natural resources use in the area led both parties to use their authority to rule the area. Both government institutions employ these prevailing discourses to achieve their objectives. This issue is particularly relevant to ex-MRP area where peatland forest management is the subject of intense debate among actors with different understanding about how to use resources and who can use them. The expected benefits from labor and labor opportunity were seen by the local government to claim the area for oil-palm plantation. Changing the local course of history requires changes in the balance of power -- with formal rights only effective where these can be enforced. In this case study, rights, authorities and power are jointly determining carbon rights.

CONCLUSION

The ex-MRP area has become a hotspot not only for CO2 emission, but of 'confusion' as to who holds the right to make decisions over how and who can use it. The confusion stemmed from historical struggles over property rights between customary communities and Central and local government. The discourse over property rights is shaped by the way in which individual actors and agencies use power to defend their own interpretation of changing forest management regimes—this discourse was used as a as means to exact power over the contest for property rights. Local people have used their life histories in their struggle for legal recognition of customary property rights as invoked by their Dutch ancestors; whereas Central and local governments used their positions in society to legalize their legal interpretations of management regimes. But as a less-powerful actor, local people are often predisposed to yielding power to authorities, and tend to resign easily from the action arena, leaving the legal discourse in the hands of Central and local government. Decentralization has played a significant role in empowering local governments to exert their rights and obligations, and to share power with Central government; the Central Kalimantan provincial government was firm in their legal discourse, to rule the ex-MRP area despite being severally overruled by Central government. The discursive means used by state and local actors has been concerning to be subjected to scrutiny by other stakeholders—multiple types of knowledge e.g., scientific knowledge were sought to unravel the messing factors impinging the discourse over property rights. The ongoing dispute over who has the right to use and manage the ex-MRP area is crucial in the face of REDD negotiations. Nevertheless, carbon rights could not only be de-linked to existing or emerging rights, but also to the authorities and power.

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