Hot spots of confusion: contested policies and competing carbon claims in the peatlands of Central Kalimantan, Indonesia

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SUMMARY

In the peatlands of Central Kalimantan, expectations of payments for reducing carbon emissions shape the discourse over natural resource management as a means of influencing policy and exercising power. Different types of actors have their own choice of argument and interpretation of facts, rules and norms over resource use or conservation. This article examines the discursive strategies used by contestants in the struggle over property rights in a failed development project ('ex-Mega Rice Area') in Central Kalimantan and traces their changes and developments in the justification for policy influence in the face of REDD[++] implementation. Shifting national policy priorities have affected the distribution of power that shapes the practice and use of forest peatland. The case study highlights the historical baggage of perceived injustice between state and local communities and the contest between national and provincial government authorities that complicates the debate on current efforts to mitigate climate change by emission reduction.

Keywords: discourse, decentralization, REDD, land tenure, carbon rights

Centres de grande confusion: politiques contestées et revendications disputées du carbone dans les tourbières du Kalimantan Central en Indonésie

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Dans les tourbières du Kalimantan Central, l'attente de paiements pour une réduction des émissions de carbone est en train de former les discussions sur la gestion des ressources naturelles comme moyen d'influencer la politique et d'exercer un pouvoir. Les différents types d'acteurs possèdent leur propre choix d'argument et d'interprétation des faits, des règles et des normes quant à l'utilisation ou la conservation des ressources. Cet articles étudie les stratégies de débat utilisées par les compétiteurs au coeur d'une bataille sur les droits de propriété dans un projet de développement ayant échoué dans le Kalimantan Central (c'était le projet "Méga-Rice -Area") et trace leurs changements et développements dans la justification d'une influence politique face à une mise en pratique de la REDD**. Le déplacement des priorités de la politique nationale a affecté la distribution du pouvoir dirigeant la pratique et l'utilisation des tourbières. L'étude-cas met en valeur le bagage historique d'injustice perçue entre l'état et les communautés locales, et les tiraillements entre l'autorité gouvernementale nationale et provinciale, ce qui complique les débats sur les efforts actuels pour atténuer le changement climatique à l'aide d'une réduction des émissions.

Focos de Confusión: Políticas en Disputa y Declaraciones de Carbono en liza en el bosque de turbera de Kalimantan Central (Indonesia)

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En el bosque de turbera de Kalimantan Central, las expectativas acerca de la obtención de pagos por la reducción de emisiones de carbono moldean el discurso sobre el manejo de recursos naturales, convirtiéndolo en una manera de influir en las políticas y en el ejercicio del poder político. Cada tipo diferente de actor social elige sus argumentos y la manera de interpretar los hechos, reglas y normativa sobre el uso de recursos o la conservación. Este artículo examina las estrategias que las diferentes facciones utilizan en el discurso empleado en la lucha sobre derechos de propiedad en un proyecto de desarrollo fallido ('*ex-Mega Rice Area*') que iba a crear una mega área arrocera en Kalimantan Central y da seguimiento a los cambios y evolución de la justificación de influir en las políticas de cara a la implementación de REDD[++]. El cambio de rumbo en las prioridades políticas nacionales ha afectado a la distribución de poder que conforma la práctica y uso del bosque de turbera. El estudio de caso pone en relieve el bagaje histórico de la percepción de injusticia existente entre el estado y las comunidades locales y el tira y afloja entre las autoridades del gobierno nacional y el provincial, que complica el debate sobre los esfuerzos actuales para mitigar el cambio climático mediante la reducción de emisiones.

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 on a par with Europe (van Noordwijk *et al.* 2010). In September 2009, the President of Indonesia announced that Indonesia was committed to reduce net emissions by 26% by its own means below a '2020 baseline'. Indonesia also welcomed international co-investment to increase reductions by up to 41%, and in doing so effectively stabilize its emissions at 2005 levels. Consequently, Indonesia has become one of the prime targets 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 a debate on 'carbon rights' (Wemaere *et al.* 2009). The concept of carbon rights has instantly turned into a new arena for both contest and cooperation. Akiefnawati *et al*. (2010) described how the central government expectations of qualifying for REDD funding facilitated recognition of local forest management rights in Indonesia.

Land ownership in many forest landscapes in Indonesia remains contested between the state and local communities (Tomich *et al.* 2002, Fay and Michon 2005, Kusters *et al.* 2007, Wunder *et al.* 2008). Emission reduction is measured as a change in carbon stocks over time, relative to an agreed baseline or expected change, after any corrections 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). The interaction of these various '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 feasible levels of emission reduction. Key issues in the REDD debate on carbon rights are: 1) who has, or can claim the right to cause carbon emissions ('emission rights'); 2) who has, or can claim the right to ask for co-investment in emission reduction efforts; 3) who has, or can claim the right to receive payments for avoided damage to local or global environmental values ('sell foregone carbon emission rights'); 4) who has the right to agree on or set a baseline of 'business as usual' or 'emission rights'; and 5) who has the right to measure and verify carbon stocks and determine 'additionality' and 'leakage'? The contest for these rights has led to a power struggle for authority among the government layers in many countries (Phelps *et al.* 2010).

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 relations with global negotiation platforms on mitigating climate change. At the international level, efforts to reduce emissions from peatlands (only part of which are 'forest' by current international definitions) are a step beyond the current REDD^{+} agreement (UNFCCC 2010) and are also beyond the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries. Inclusion of peatland requires a broadening from REDD^{+} to REDD^{++} (van Noordwijk *et al.* 2010), but as long as bilateral support can be obtained and reduction of peatland emissions is part of Indonesia's national appropriate mitigation action, this issue can stay in the background. At the national level, the different interests and point of view within line ministries of the central government (Colchester *et al.* 2006) confuses international stakeholders, questioning the Indonesian government's commitment to reduce land-based emissions.

Just recently, the President of Indonesia appointed the Central Kalimantan province as the REDD^{+} demonstration site. This designation led to the significance of ex-Mega Rice Area, one of the recognized hotspots of carbon emissions in Indonesia as part of a site-level feasibility study for REDD^{++} activities in the Central Kalimantan. Here, we found that the 'legal' basis of contesting claims referred to historical injustice and 'rights', and to the use of current contradictions and inconsistencies of laws and multi-sector policies. These alone are found interacting with differences of interpretation, the shifting power relationship of disputants and articulation of local property rights and the rights of customary people. The area thus provides a case study of the complexity that needs to be dealt with to start with a clean slate in efforts to provide for local livelihoods, while reducing emissions to contribute to global emission reduction goals. This article examines the discursive strategies in the struggle over property rights in the Central Kalimantan ex-Mega Rice Area and traces changes and developments in the justification for political influence in the face of REDD^{++} implementation. After a review of property rights and the theory of discourse analysis, we provide an overview of the study site and the survey methods used. The results are presented in a historical time frame, tracing the entry of various current contestants. The study analyzes the links 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 to remain as forests, and the social and political implication to resource users.

PROPERTY RIGHTS AND THEORY OF DISCOURSE

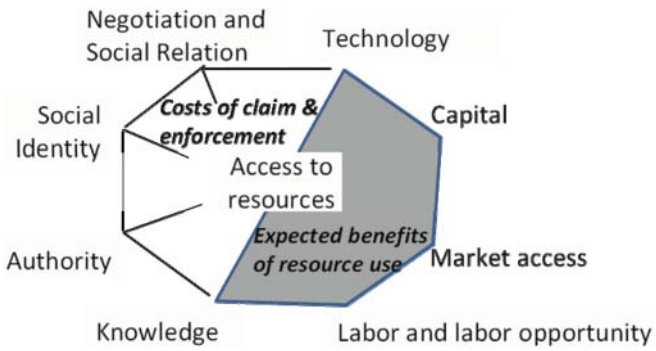
Property relationships can take many different forms. Schlager and Ostrom (1992) distinguished five types of property rights operating at two decision-making levels: operational and collective-choice. The complete bundle of rights includes the ability to access, withdraw, manage, exclude and alienate 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 by legal right do 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 of 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 property rights that provided actual power based on various mechanisms, processes and social relations, not confined to the 'legality' of the claims. Some of the factors influence the 'costs' of making a claim and enforcing it, others influence the expected benefits from using the resource (Figure 1). Expected benefits from resource use as well as costs of enforcement jointly determine whether or not it is worthwhile for an actor to pursue a claim.

Discourse strategies of actors play an important role in the ability to influence and determine socially constructed power relations (Foucault 1978, Medina *et al.* 2009). A discourse can be defined, following Hajer (1995), 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 into 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 an 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 otherwise. 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 these. Biezeveld (2004), for example, described how historical context and legal concepts were reinterpreted and defined by different groups involved in land disputes 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 the political and economic situation (Doolittle 2001). Nevertheless, discourse can constitute indispensable resources with the potential to both enhance an individual actor's negotiating power and to create opportunities for compromise (Arevalo and Ros-Tonen 2009).

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)*



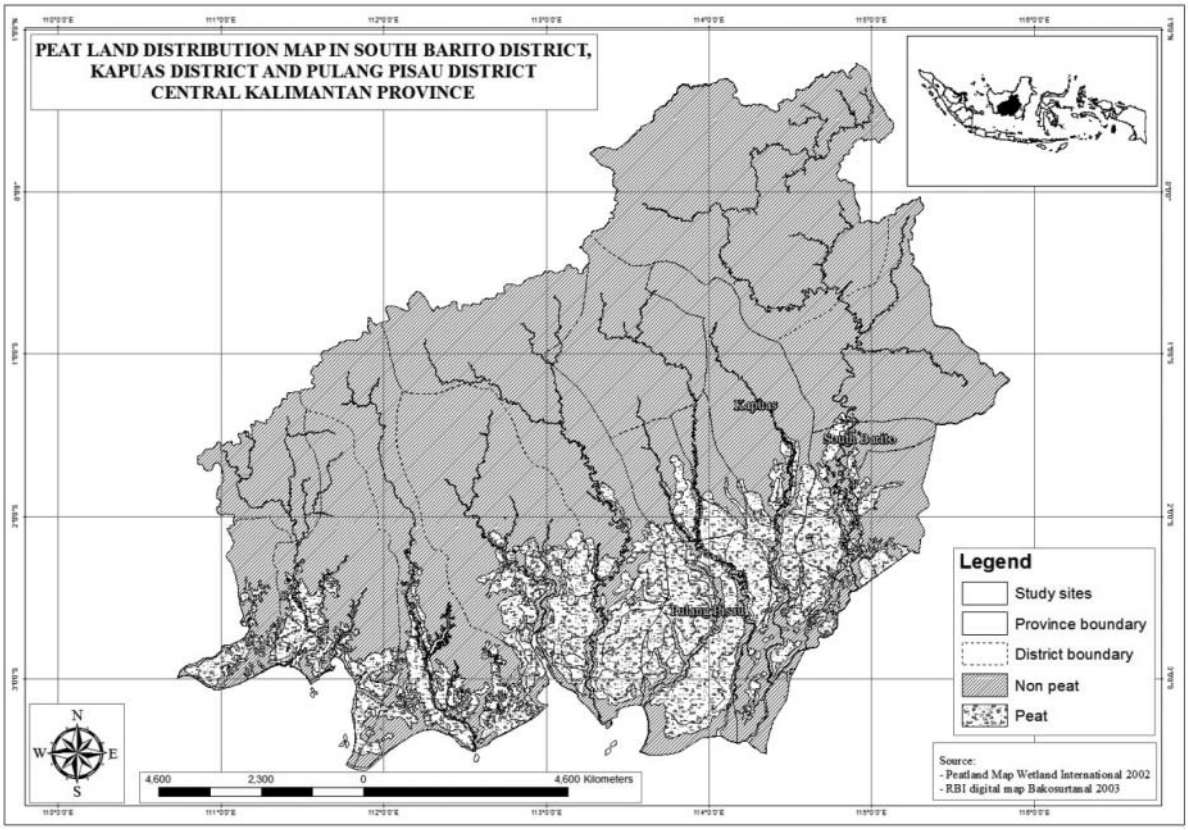
OVERVIEW OF THE STUDY SITE

Located in three regencies—namely, Pulang Pisau, Kapuas and South Barito, the peat domes of the 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 1.27 million ha of this area are classified as peatland, most of which 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 parts 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. However, when the State started granting permits for logging concessions in designated forest areas, *de jure* concessions clashed with the *de facto* use rights of local people.

The construction of drainage canals for the Mega Rice Project and the establishment of transmigration settlements have 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 the rice farmers, many of whom started looking for other employment. The Mega Rice Project shifted the existing property rights in the area into what had been considered to be an open-access regime. As a consequence, villagers began competing amongst themselves to gain access to natural resources.

Confusion and the contest over rights worsened during the 1997/1998 'forest fire' episode that hit the area. The event

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



widened the attention on government policies on land use. The forest fire was interpreted as a result of a combination of El Niño conditions causing a prolonged dry season, and the increased vulnerability of peatland resulting from 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 the source of smoke and haze - this exposed Indonesia to its neighbors, causing embarrassment in terms of the extent of the health hazard the fire caused. The extent of carbon release into the Indonesian 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 forced the government to close the Mega Rice Project (which then became known as the 'ex-Mega Rice Project') and to consider it a "mega disaster". Since then, efforts have focused on rehabilitating the area. However, these efforts were challenged by the local government that was pursuing local economic development through oil palm plantations as an attractive option rather than through rice production. Adding to this contest, the local communities began to protect their ancestral claim as the efforts of both layers of government were perceived as threats to their 'rights'. The restriction of long-term land use options by each actor has created conflicts for those who have asserted 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 Letter of Intent between Indonesia and Norway signed in 2010. Several donors and international organizations are exploring and seeking effective ways of reducing emissions in this area as a part of the goal 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 included the rights to collect timber, collect non-timber forest products (NTFPs), convert forest into agricultural fields, construct drains and access to rivers, and exclude others from using the forest and drainage. For convenience, the study

design was patterned after the study on peatlands by Adger and Lutrell (2000). 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 claims to rights.
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 representatives from local governments, forestry agencies, and local NGO workers. Each focus group discussion and interview consisted of 8–10 community leaders and elders in each settlement. They were interviewed to understand how different actors used discourses and how these discourses shaped their rights claims and forest use practices. The interviews explored the potential of negotiations to reach agreement 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 reports, and reports from conservation agencies, NGOs and individual consultants, as well as the Dutch Colonial texts on 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 were used to present the findings of the study: 1) pre-independence or colonial rule (before 1945); 2) after independence (1945–1965); 3) new order (1966–1998); 4) decentralization (post 1999); and 5) recentralization (post 2006).

RESULTS AND DISCUSSION

The resurgence and demise of Customary Law and land rights

The interface with global trade and local resource use in Kalimantan during the last two 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 negotiations 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 issued rights to local communities and households. Several customary land-use rights are still recognized as follows:

1. *Eka malan manan satiar* – the right of a local community to hunt animals, to open the forest for swidden rice cultivation system, and to collect non-timber forest products. The area, designated as land used by the community typically covered 5 km 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.

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

During Soeharto's reign from 1965 to 1998, the government granted permits to international and national companies to exploit vast areas of forested land, despite concerns over issues and unsettled questions on how the State law should take into account customary land-use rights. In the early 1970s, the Agrarian Affairs Office 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 no land use rights.

However, several scholars remained convinced that despite the decreasing legitimacy of customary institutions and the pervasive conversion from communal to private lands, local communities had 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 11 million ha of forested lands in Central Kalimantan as state forest land under the administration of the Ministry of Forestry (MoF). The enforcement of this forest classification remains disputed even today (Contreras-Hermosilla and Fay 2005). Several notes[1] issued by different ministries instructed the governor and the local land administration to support this new so-called "consensus". These policies, consequently, abolished all local rules and regulations 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[2], in pursuit of a timber-centric policy that was intended to generate economic benefits for the central government. Correspondingly, the customary communities were obligated to secure clearance from logging companies to use their land[3]. During this period, power was almost solely held in the hands of the State, which had vested economic interests in 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 ha 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. However, the concessions in this area were only short-lived as the government eventually decided to allocate the area for the Mega Rice Project (MRP).

The MRP aimed to convert logged-over peat forest into paddy rice fields, through a network of canals and to introduce Javanese production systems through transmigration of people from outside the area. One of the major reasons for the implementation of this project was that 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 would not create any problems, but certainly, this was not the case on the ground.

Vast areas of forest 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 braver expression of the peoples' sentiments heightened during the 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 fair compensation for the loss of their land. However, the government only inventoried and compensated those that were within 90 to 150 m from the banks of the MRP drainage canals. This was a big disappointment to local communities, who had been using the land far beyond these distances, and especially as the Provincial National Land Agency in 2003 had 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 had been destroyed by the construction of the MRP canals. Conflict surrounding this issue remains unsettled and communities are still demanding that the government provide just compensation for the damage inflicted by the loss of their land use rights. For local communities, the MRP resulted not only in the loss of their livelihood, but also in 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 the central government and the regions, were issued to support greater autonomy of regency governments 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 ha and small forest concessions of 10 000 ha 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 harvested around 12 million m^3 of logs in the area accelerated deforestation.

Under massive and fierce criticism of the '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[4]. These regulations restored the authority of the MoF to issue new forestry concessions – a role that was previously given to, and

[1] Ministry of Home Affairs No. 26/1982 dated 13 May 1982 and Ministry of Agrarian Affairs No. 586/1982 dated 17 July 1982.
[2] Government Regulation No 21/1970 and No 28/1985.
[3] Ministry of Agriculture Decree No. 749/ 1974, Ministry of Forestry Decree No. 194/ 1986 and No. 251/ 1993.
[4] Government Regulation No 34/2002, MoF Decree No 541/2002, No 6886/2002, No P 03/2005, and No P 07/2005.

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 the allocation of rights. It was as if the MRP issue and the damage it had created had 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 local governments from using the areas for their own interest. After the return of the power to allocate small forest concessions from the regency to central government, the local government resorted to different regulations to exploit the remaining good forest cover. In 2003, a provincial regulation[5] was issued on provincial spatial planning, which legally supported the Regency to use and allocate forest lands for oil palm plantations and mining exploration. 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 ha of the (ex) Mega Rice Area were assigned to 37 oil palm concessions, while about 41 536 ha were allocated for 60 coal mining concessions. Interestingly, both permits overlapped causing confusion to concessionaires.

The post-MRP era also marked the beginning of the 'recognition' of customary institutions. The regency government enacted several regulations[6] that recognized the existence of customary institutions (*kadamangan*), assigned them with 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 5 km from the river banks should be given back to communities under customary land-use rights. However, this statement offered no legal guarantee of protection for customary land-use rights. In such a period of policy confusion, land use rights became an arena for contesting 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 manifested full control by the central government over the area by placing it under its own conservation and rehabilitation program. However, these efforts certainly overlapped with the interests of local government. Under these new decrees, only a small area could be allocated for crop-estate plantation, with 10 000 ha for oil palm and 7 500 ha for rubber plantations, compared with the 2003 Central Kalimantan Spatial Development Plans Regulation, which allocated around 369 000 ha for oil palm and 41 536 ha for mining. On the other hand, around 897 000 ha of peatland were 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[7]. 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 such actions caused conflict between 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 had claims over the forest peatland. The policy adopted by the provincial government to exploit the ex-MRP 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 ha and 345 340 ha of the ex-Mega Rice Project were 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 used 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 provided a legal basis for the provincial government to convert state forest lands into other land use system, as long as conversion was accompanied with spatial developments plans. However in 2006, the central government issued an MoF Note[8], which superseded the previous Note, and demanded seizure of all concessions

[5] Provincial Government Regulation No 8/2003.
[6] Provincial Government Regulation No 14/1998, No 16/2008 and Central Kalimantan Governor Decree No 13/2009.
[7] 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.
[8] Ministry of Forestry Note No S.575/Menhut-II/2006 dated 11 September 2006.

permits issued by the provincial government since 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[9], explicating that the spatial development plan, which had been rendered illegal by the MoF had 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[10]. After presenting these facts, the provincial government accused the MoF for unreasonably and irresponsibly rendering the 2003 spatial planning regulation illegal.

The MoF reacted to the provincial government's management claim over the ex-MRP area by claiming it could not be treated as 'final' since there had not been a forest designation decree. Once again, the MoF ruled against the legality of the 2003 spatial planning regulation, determining that it couldn't be used as a legal basis for converting the forest status and exploiting the ex-MRP area for oil palm and mining concessions[11]. The conflict of authority between the Central Kalimantan Provincial Government and the MoF created much confusion at the regency government level; the provincial government insisted that the regency government 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[12].

The MoF was challenged by the aggressive actions of the provincial government, and exacted the termination of forest exploitation threatening to bring the provincial government to court[13]. As a rebuttal, the provincial government held to its claim and criticized the MoF for their inconsistent policies, citing rampant conversions of many forest areas for other purposes based on the MoF's Decree[14]. However, in the end, the provincial government conceded to the MoF and instructed the regency government to discontinue the issuance of permits until the policy conflict is settled[15]. At the time of this study, negotiations between the provincial government and MoF are 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 it is 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 put customary institutions into 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 the central government taking back power from the provincial government after realizing how the vast forest resources could be used to exact political and economic power. However, 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 governments. Furthermore, decentralization influenced the changes in the 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 do 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 to property rights. This situation is not however, unique to Indonesia. Ali and Hoque (2009) found shifting policies instigated ownership disputes and altered property rights and governance of forest resources in Bangladesh.

Carbon rights in this case study are as 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 'their 'stake' in the area are based on benefits from 'business as usual' activities/interventions 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 resource. Access to these new property rights enhances rather than reduces the conflict over natural resources.

Here, carbon rights is not only about who own and control the land, but also about who owns and control trees and water access. This overlap of rights complicates on who own and control carbon rights. The Government of Indonesia has bundled carbon rights to land ownership and permit,

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[9] Governor of Central Kalimantan Note No 126/1809/Ek dated 2 November 2006.

[10] 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.

[11] Ministry of Forestry Note No S-776/Menhut-II/2006 dated 22 December 2006.

[12] See Governor of Central Kalimantan Note No 522/010/Ek dated 3 January 2007.

[13] Ministry of Forestry Note No S.225/Menhut-II/2007 dated 13 April 2007.

[14] Governor of Central Kalimantan Note No 522.11/1084/Ek dated 3 July 2007.

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

neglecting the dynamic and complexity of bundle of rights at the local level, especially on peatlands. Nevertheless, the complexity and dynamics of existing rights are not the determinant of carbon rights.

The local course of history has developed the power of competing actors to claim carbon rights. Reconstruction of the past recognition by the Dutch Colonial government has been adopted and used by local communities as part of the land rights dispute. However, this reconstruction of the land rights in communities will certainly depend to a large extent on 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 reconstructed 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 was also linked to social identity as customary people. Using such a claim as customary people, the land that they can use 'legally' could be regarded as being covered by customary rights. The customary rights are recognized through the governor's statement, decree and regulation and such recognition has been used to support their claim to use and access the peatland area. Nevertheless, the decree and regulation do not actually stipulate what the customary rights are and which customary rights are being recognized, causing confusion as to how they can be integrated 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 decisive in settling a dispute. Legal argument is only one of the discourses used to sustain a claim and was recognized by all disputants more clearly after the decentralization era in 1999. These arguments are mostly used, however, when government levels lay claim to rights to control the ex-MRP area. The outcomes of decentralization policies changed the nature of the power relations between the central and local government. These policies and their legal acts influence the ongoing discourse over the contest of rights between the central and local government, and the reconfigurations of local property rights. Legal discourse dominates the debate between the provincial and central government not only with respect to ex-MRP management schemes, but also regarding the authority to rule the area. Discourse on what types of natural resource use were suitable in the area led both parties to use their authority to rule the area. Both government institutions employed these prevailing discourses to achieve their objectives. This issue is particularly relevant to the ex-MRP area where peatland forest management is the subject of intense debate among actors each with a different understanding of how to use the resources and who can use them. The expected benefits from labor and labor opportunity were used by the local government to claim the area for oil-palm plantation (See Table 1). Changing the local course of history requires changes in the balance of power with formal rights only effective where these can be enforced. While it is clear that carbon claims are new and possibly poorly understood by all the actors involved, the existing discourses and claims would affect the emerging carbon claims. 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 CO_2 emissions, but for 'confusion' regarding who holds the right

TABLE 1 *What type of resource use? A Summary*

Resource use	Swidden + fishing and non timber forest product economy	Logging	Rice	Rubber + oil palm plantation	Carbon-stock peatland (REDD)
Proponent	Traditional and local communities	Ministry of Forestry before 1995	Central government before 1998	Migrant population and local government (oil palm component)	Central government + Ministry of Forestry after 2007
Current debate	⇩	X	X	⇩	⇩
Current discourse	"Communities are customary people with traditional rights and ownership to the land, trees and water" "Customary rights are being protected and recognized since the Dutch and now by local government "	X	X	"The area had been reserved for food estate purpose based on MoF No 166/1996" "Oil palm plantation can provide labor opportunities for people, especially for transmigration"	"Peatland must be conserved and protected from any land-use as it historically caused periodic forest fire"

to make decisions over how and who can use the area. The confusion stemmed from historical struggles over property rights between customary communities and the 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 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 the central and local governments have used their positions in society to legalize their legal interpretations of management regimes. However, as a less-powerful actor, local people are often predisposed to yield power to authorities, and tend to resign easily from the action arena, leaving the legal discourse in the hands of the 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 the central government. The Central Kalimantan provincial government was firm in its legal discourse, to rule the ex-MRP area despite being severally overruled by central government. The discursive means used by the state and local actors have been subjected to scrutiny by other stakeholders, with multiple types of knowledge (for example, scientific knowledge) being sought to unravel the mess of 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 be de-linked from existing or emerging rights and from authorities and power.

The international relevance of this case stems in part from the global importance of Indonesia's peatland emissions and the pioneering role of the REDD^{++} implementation in this country. The relevance of a historical perspective that acknowledges the perceived injustice to local stakeholders stemming from the 'resource extraction' phase of governmental development planning, mirrors the claims that industrialized nations have a historical carbon debt towards developing nations and need to act accordingly. Nation states such as Indonesia have to adjust their discourse when addressing local rather than international partners.

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