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Asserting Indigenous Identity to Substantiate Customary Forest Claims: A

Case Study of the Dayaks of West Kalimantan, Indonesia

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Chapter One: Introduction

The fall of the New Order and the rapid decentralization that Indonesia underwent

subsequently greatly changed the landscape of Indonesian politics. For one, communities

suddenly had much more opportunity to participate in local governance. The effects of

this were broad-sweeping, and out of these changes grew a variety of social and political

movements, which, after the fall of Suharto's dictatorship in 1998, became able to

mobilize and advocate more openly. Specifically, ethnic politics then were able to

participate in discourse safely; Suharto's dictatorial regime had for decades denied the

existence of all indigenous groups in Indonesia, and its end thus signaled a promising

new political climate for indigenous communities. This transformation was particularly

meaningful for the Dayaks, an indigenous group of Kalimantan, the Indonesian part of

Borneo, who in recent years have adopted an increased role in political participation.

Subsequently, ethnic politics in Kalimantan in the 21st century have been central to

framing the ways in which local Dayak communities interact with greater Indonesian

institutions.

Alongside this rapid decentralization, since the fall of Suharto, the Indonesian

government has grappled with issues of sustainable development. The government has

had to balance, on one hand, international pressures to reduce carbon emissions and

protect biodiversity, and on the other, the interests of large, natural resource-intensive

industries. One of the foremost of these issues is related to customary land rights. Until

recently, all forests in Indonesia had been under state ownership, which allowed the state

to sell concessions, such as for oil palm plantations, at will (Butt 2014, 59). However, a

2013 Constitutional Court ruling reclassified customary forests as separate from state-

owned forests, and now, with growing Dayak mobilization and activism, conflicts over land tenure have become increasingly common (Warassih and Sulaiman 2017).

Historically, the Dayaks have been particularly reliant on forests for their livelihoods, using, typically, a combination of swidden farming and diversification of forest products. These sorts of livelihoods, however, have been threatened by a changing natural environment, which constricts the livelihood options of Dayak communities. Dayak identity, the topic of Chapter 2, is central to issues of land tenure because the law now requires communities to prove that they have maintained their indigenous institutions in order to substantiate customary land claims. Thus, the maintenance of Dayak forest management systems, including swidden farming, is important. Such Dayak forestry practices will be the focus of Chapter 3. The above threats to Dayak livelihoods often have stemmed from government efforts portrayed as promotions of sustainable practices. Popular perceptions that swidden agriculture is damaging, and portrayals of the Dayak people as backward and uneducated, have legitimized government land-grabbing, regardless of the falsehood of these beliefs (McWilliam 2006). Overlapping regulations and claims to tenure complicate these issues further, and will be discussed in Chapter 4.

On one hand, the 1945 Constitution of Indonesia clarifies in Article 33 (3) that the government holds the absolute rights to control land, water, and resources. Thus, the Indonesian state, and more specifically the Ministry of Environment and Forestry, has the ultimate authority over the management of forest resources. On the other hand, series of recent legal rulings have created opportunities for the Dayaks and other indigenous groups by recognizing customary land rights for the first time. For example, after years of repeated incarcerations of protestors who have attempted to organize against corporate

land grabs, articles of the 2004 Plantation Act were dropped after being ruled unconstitutional for discrimination against indigenous people (Butt 2014). Furthermore, a later ruling from the Indonesian Constitutional Court in 2013 promised to grant ownership of state land to back to indigenous groups holding customary rights with some conditions (Ibid.). Prior to this ruling, communities of indigenous people, including the Dayaks, had been forcibly removed from their traditional lands for economic activities like oil palm plantations or mining, or had little control over the management of such land.

While rulings like these are promising, local activists have claimed that in actuality, little has been done to implement them (Nugroho 2019). As mentioned above, the Indonesian state has added a stipulation that, in order for groups to qualify as indigenous, they must be able to prove that they have maintained their *adat*, or customary laws and institutions (Asien et al. 2017). As a result, the ways in which indigeneity has been defined by the Indonesian state have required that in order to receive customary land rights, they must prove that their own institutions have continued to exist in a more or less static state over decades (Lounela 2017, 133). Thus, one challenge for Dayaks in working around issues of land tenure has been that they must demonstrate that they in fact have maintained these institutions. However, this is a rather vague idea in practice, and there is not yet an established procedure for gaining government recognition.

Regardless, these do signal a shift in discourse; Indonesia's official view on indigeneity historically has been that all Indonesians are 'indigenous', or, in effect, that no one is. Because of this, before the fall of the New Order, it was nearly impossible to bring the issue of customary land claims to the national political agenda. With much

lobbying from activists, however, the state now recognizes the *masyarakat adat*, or indigenous communities (Li 2001). Therefore, much more opportunity exists now for indigenous advocacy, and, as will be discussed later, Dayak identity constructions have been placed at the forefront of many of these efforts. In part, this has been used as a means to demonstrate the maintenance of indigenous institutions.

More recently, however, some legislative barriers have existed. For one, a new law, the Recognition and Protection of the Rights of Indigenous Peoples Act (PPHMHA) was drafted in 2015, but was stalled in Parliament in 2016 (Rogers 2016). The proposed legislation was opposed strongly by the Indonesian Ministry of Forestry, which historically has been quite controversial. At the time, the Ministry had been under investigation by the Corruption Eradication Commission (KPK), in part over a case where high-ranking officials were involved in the illegal distribution of permits with support from the Ministry of Forestry itself (Oesterheld 2016). While the government has indeed made efforts to reduce corruption and increase transparency, mistrust of the government has continued to be a persistent issue for local communities.

Nevertheless, the primary NGO pushing for the passage of the PPHMHA is the Alliance of Indigenous People of the Archipelago (AMAN), which has played a great role in lobbying for the recognition of the rights of indigenous people—including the Dayaks (AMAN n.d.). Regardless, because of how the Indonesian state has defined indigeneity, Dayak identity constructions have become a focal point for activists as a means to encourage a rather diverse set of communities to mobilize as a unified group. This is one reason why the use of Dayak cultural symbols and ethnic pride have risen in recent years (Sillander and Alexander 2016, 99).

This has been a significant turn from a long history of Dayak marginalization, dating back to Dutch colonization. The term "Dayak", even, was originally imposed externally, by Bornean Malays (Tanasaldy 2012) and encompasses quite a large body of people; there are by some estimates around 450 ethnolinguistic Dayak groups who live throughout Borneo (Minority Rights Group International 1997), although many of them share a number of common cultural practices both in language and in customary laws. Borneo itself is shared by three countries: Indonesia, Malaysia, and Brunei. Furthermore, the Indonesian part of Borneo is divided into the provinces of West Kalimantan, Central Kalimantan, East Kalimantan, and South Kalimantan. Because of this diversity, this thesis will focus in particular on the Dayaks of West Kalimantan.

West Kalimantan was chosen, first, because it still has significant forest cover, a large indigenous population, and some community-based forest management programs have already been established there. Second, West Kalimantan's capital, Pontianak, has been the site of much activist activity, and, as the most populous city in Kalimantan generally, it has been a historical center for Dayak politics. It should be noted, however, that the Dayaks are a small minority within the population of Pontianak; the majority of Dayaks live in rural areas outside of the city.

This thesis will examine Dayak identity constructions and how they have been and are currently being used to assert customary land rights in forested areas of West Kalimantan. Involved in this will be a study of how the Dayaks have used these constructions to fit definitions of indigeneity as prescribed by the Indonesian state, as well as how Dayak activists are employing these constructions to demonstrate that their indigenous institutions indeed have been maintained. In addition, current forestry policy

and government programs will be studied, as well as how these may be improved to better fit the needs of indigenous communities. A few questions will be raised: What aspects of identity must be maintained in order to be sufficient to claim customary land rights under Indonesian law? How has recent Dayak mobilization fed into a resurgence in Dayak identity and pride, and vice versa? What opportunities does this hold for conservation and sustainable development?

Chapter Two: Dayak identity

In Indonesia, Dayak identity has suffered from the imposition of a variety of stereotypes strengthened by decades of popular discourse. On one hand, the Dayaks often are seen as traditional and close to nature, which might legitimize their historical knowledge of sustainable practices. One the other, a perception also exists of the Dayaks as violent and primitive, which has justified their past exclusion even further. For the most part, these stereotypes often have been quite damaging, as they have served as a basis for the marginalization of Dayak communities for centuries (Henley and Davidson 2013).

Yet in more recent years, West Kalimantan has witnessed a reconstruction of Dayak identity. Dayak communities have appropriated these once-harmful images as a means for mobilization and as a strategy to address a variety of political, economic, and environmental challenges. This has contributed to the development of a more united Dayak community that has been strengthened through a common struggle (Sillander and Alexander 2016). This chapter will examine Dayak identity constructions and how these have fed into popular perceptions of the Dayaks through history, and further how Dayak activists in more recent years have increasingly employed Dayak identity symbols, and with what effect.

An introduction to Dayak culture

When examining Dayak identity constructions, it is useful to first discuss Dayak culture. As mentioned previously, the term Dayak has been applied to a diverse range of groups across Borneo. There are seven main Dayak groups, classified by their larger respective linguistic groups: Iban (Sea Dayak), Bidayuh (Land Dayak), Melanau,

Kelabit, Kayan, Kenyah, and Penan. Within these larger groups, there are dozens of smaller ones. Each group usually has its own language as well, with varying degrees of mutual intelligibility. In addition to linguistic differences, Dayak groups may also differ in physical appearance. However, common physical traits among the Dayaks tend to be similar among the mountain peoples of Southeast Asia, ranging as far as Thailand, Vietnam, and Laos. Cultural practices from Java China, India, and Malaysia also have had influence (Rubenstein 1985).

Regardless, some common cultural practices exist, which will be a point of focus for this thesis. The idea that these cultural practices are *common* is emphasized because it has been of key significance for Dayak activists and politicians to unite a diverse range of peoples, all of whom have been labeled Dayak. The use of common symbols is then important for encouraging the collective mobilization of these groups as a larger unit. Whether or not this has actually been the case will be an important question for this thesis, and will be explored throughout.

Another key aspect of Dayak culture is that among different Dayak groups varying levels of egalitarianism once existed (Jessup and Vayda 1988). The Iban (Sea Dayaks), for example, were more or less classless. Between Dayak groups, however, there was some social stratification. For example, the nomadic Penans in Sarawak had no social classes, yet were seen as inferior by nearby groups with whom they traded forest products. The Kayans and Kenyahs by contrast were quite hierarchical (Ibid.). These Dayak groups once even owned slaves. Power in Kayan and Kenyah communities was extremely concentrated in the hands of village chiefs (*maren*), who often commanded large groups of slaves, made up of individuals captured in battles with rivals (Rubenstein

1985). The practice of slavery persisted among the Dayaks until 1928, after which the government devised a system whereby Dayaks could be fined for slave ownership. This was then incorporated into Dayak customary law, which was enforced by the government court (Ibid.).

The Dayaks also were formerly headhunters, which is one cultural practice that has very likely contributed to some of the persisting stereotypes of the Dayaks as violent and backward. This will be expanded upon later in the chapter because of its relevance to the ways in which more recent violent conflicts between the Dayaks and the Madurese were framed by the media. However, it is important to note that these practices were, in actuality, deeply ceremonial. For example, rituals like the *kenyalan* in Iban, a celebration of bravery, required fresh human heads. Thus, the more successful Dayak headhunters often received a certain degree of prestige, as they were seen as contributing to prosperity-invoking rituals of the community through the supply of heads (Jessup and Vayda 1988). These heads were usually taken from members of neighboring tribes. Headhunting as a practice declined significantly towards the end of the 19th century (Oesterheld 2016).

Cultural practices among the Dayaks generally share at least one common, fundamental factor: they are governed by *adat*, or customary law. Because the Indonesian government has required that indigenous groups demonstrate that they have maintained their *adat* institutions to claim customary land ownership, the concept of *adat* will be discussed often in this thesis. Larry Kenneth Thomson (2000) describes *adat* as "bodies of social and cultural norms, laws, ceremonies, and rituals… founded on, and intertwined with animistic beliefs" (7). Thus, *adat* plays a fundamental role in

Dayak society, and permeates virtually every aspect of community life. For example, it provides guidance for decisions about when to harvest, when to plant, and for regulations regarding health and relationships among community members (Thomson 2000, 57). It relies on a worldview that contains both visible and invisible (or spiritual) parts. Although most Dayaks by now have converted to Christianity or Islam, many Dayaks still hold expectations that their new religions will guide their lives in the same ways that their older, more animist beliefs had (Ibid.). However, Islam and Christianity often do not provide the same breadth of behavioral guidance (Hohne et al. 2018). So, where their new religions have provided inadequate guidance, *adat* beliefs often still fill in the gaps; in fact, in times of crisis, many Dayaks will fall back upon their animist beliefs (Thomson 2000, 188).

Dayak systems of forest management are also important, as their knowledge of traditional, sustainable practices has the potential to legitimize their claims to forest tenure. And, *adat* law, which governs the extraction of resources from common land, has shaped these systems. Thus, the relationship between *adat* law and conservation is necessarily quite close. There is a clear, farsighted incentive for users to maintain their shared resources over time, as presumably they will continue to rely on those resources for the foreseeable future. This is especially true for Dayak communities, which have lived off of forested land for centuries. A culture surrounding shared resources has developed slowly during that time, and has been so pervasive that the sharing of community resources is now deeply engrained into *adat* law (Mulyoutami, Rismawan, and Joshi 2009).

However, historically, the threat of the "tragedy of the commons" has existed. Some academics feared that individuals, acting in their own self-interest and ignoring the costs imposed upon others, would exploit common resources, until those resources were destroyed from overuse (Hardin 1968). This has fed into a belief that in order to adequately maintain common resources, an authority that governs and restricts them is necessary.

Yet, a shift in thought, and later, in practice, has demonstrated that this is often not the case. More recent research has shown that while the "tragedy of the commons" is a real threat, community-based management programs of common pool resources may be some of the most effective and sustainable (Ostrom et al. 1999). This is probably true in the case of the Dayaks. When Dayak households control resources, these are generally managed with sustainability and conservation in mind (Mulyoutami, Rismawan, and Joshi 2009). Yet, many community-based forest management programs in Indonesia, as they exist now, remain quite weak. They often do not allocate ownership to local communities, they limit local communities' bargaining power, and because the existing judicial system is lacking, it is unable to monitor fair agreements (Liu, Faure, & Mascini 2018, 39). This again emphasizes the importance of establishing fairer land user rights, which would increase the effectiveness of community-based forest management programs.

Nonetheless, traditional Dayak systems of forest management are quite sophisticated. As forest dwellers, the Dayaks employ a diverse variety of land-use systems, including shared plots (*bengkar),* and mixed fruit orchards. The success and management of these rely on a rich understanding of forest systems and how to employ

these in order to extract resources while minimizing negative impact (Mulyoutami,

Rismawan, and Joshi 2009). The two primary Dayak systems of forest management are

community forest reserves and swidden agriculture. Most Dayak villages own

community forest reserves, which are used primarily for hunting and extraction of

timber, herbs, and wild fruits and vegetables. Large-scale logging is generally

disallowed. Swidden agriculture is the main method by which rice is cultivated, although

it is also used for vegetables, banana, and cassava, among other crops. Swidden is often

closely associated with cultural rituals, particularly in times of harvest. Usually, swidden

is used for household consumption, and not for market (Ibid, 2057). Again, these

traditional, sustainable practices, governed by *adat* law, play a crucial role in

substantiating Dayak claims to forest user rights.

The complex process of identity formation

One important element of understanding the historical development of Dayak

identity constructions has been the existence of delineated outgroups. It is difficult to tell

precisely what elements become significant in distinguishing between "us" and "them",

or between an "inside" or an "outside", but it is quite clear, for the Dayaks, that the

process of forming these groups has been deeply impacted by both cultural and social

factors. Contact between the Dayaks and outsiders has helped define what these

outgroups are, and thus they likely include a diverse, evolving range of actors, ranging

from the Malay Sultanate in the early 20th Century, the Dutch colonizers, and eventually

the modern Indonesian state. To elaborate, these outgroups necessarily give the term

'Dayak' meaning, which is shaped through existing Dayak marginality and resistance.

Since the fall of Suharto, Dayak identity has experienced a reconstruction and resurgence,

as opportunity to do so has opened up under decentralization and the establishment of liberal democracy in Indonesia (Duile 2017).

Psychological theories of identity are useful in examining how identity might be formed. One facet of this has been that many scholars agree that while identities may seem to be unitary, they in fact are defined, in large part, by the groups around them, and even more so by the establishment of outgroups. The relationships between these ingroups and outgroups were prominently described by Henri Tajfel in the 1970s, who suggested that individual identity is constructed based on the social group to which the individual belongs. Because of this, individuals can enhance their pride and self-esteem within their ingroup through comparison with outgroups. These ingroups, Tajfel argues, "may provide a basis for the building up a positive self-image, if it managed to preserve a system of positive evaluations about its 'folkways', mode of life, social and cultural characteristics." (Tajfel 1982, 11).

In the case of the Dayaks, the definition of these ingroups and outgroups is particularly important because it may be useful in explaining some aspects of group behavior. One might note that the recent flowering of Dayak identity has evolved through a struggle for recognition and justice within Indonesia. More specifically, decades of marginalization and conflict with other groups have been harmful to Dayak identity. This becomes particularly clear if one considers the significant numbers of Dayaks who converted to Islam in order to shed themselves of their Dayak identity throughout the 20th century (Tanasaldy 2012, 29).

At the same time, though, through conflict with others, Dayak ingroups developed, over many years, a set of perceptions of clearly-defined outgroups (Malays,

the Indonesian State, the Madurese). Perhaps one of the most divisive distinctions, in some areas of Kalimantan, has been that of *orang asli* (indigenous person) and *pendatang* (newcomer) (Rhee 2009, 46). This has likely fed into a tightening of the Dayak ingroup, which, united through a common struggle, has now gained more opportunity for mobilization and activism in the realm of politics and forest tenure. Thus, Dayak identity constructions have become an important reference point for activists; the use of Dayak symbols represents a shared identity through which strong community groups can form.

It is also important to note, however, that Tajfel's theories on social identity have limits. People belong to more than one social group, and this is particularly true for the Dayaks. Recall that even the term "Dayak", after all, was not chosen by the Dayaks, but instead was popularized by early European explorers (Tanasaldy 2012, 30). And, the "Dayak" label did not gain acceptance among the Dayaks until the 20th Century (Sillander and Alexander 2016). Further, people who identify with the term "Dayak" might also identify with smaller groups, like the Iban or the Kenyah. They also might identify with larger groups, like Borneans or Indonesians more generally. Thus, while theories of ingroups and outgroups certainly apply to the Dayaks, it would be misleading to not acknowledge that identifications with different groups intersect and interact with one another, and that the Dayaks are no exception.

Development of outgroup perceptions

In discussing Dayak identity reconstructions, it also important to discuss how the boundaries separating Dayak identity from its outside have formed. Of course, some of these are clearer than others. Identity is complex, especially for the Dayaks, many of whom move through and belong to multiple groups. Regardless, like for many

marginalized communities, history has played a significant role in defining the relationships between the marginalized and their marginalizers. The Dayaks during the colonial period experienced severe social exclusion, when differentiations between the Dayaks and Malay Muslims grew increasingly stark. As Dutch colonization swept through Borneo, European conceptions of ethnicity were imposed upon the people of Kalimantan and contributed to the definition of the Dayaks as an island-wide ethnic group (Tanasaldy 2012, 30). Part of this grew out of a Dutch desire to contain the spread of Islam by establishing Christianity in its place. Further, the creation of ethnic group identities under colonial governments has been extensively studied. Some scholars have found that a range of actors, which might include missionaries, officials, and others, play a significant role in the construction of ethnic groups, often through the creation or imposition of ethnic labels (Nagel 1994). In the context of the Dayaks, although these labels sometimes had been used before colonization, they did not become mainstream until they were used in censes, reports, or other official documents created by the colonizing governments (Tanasaldy 2012, 31).

The Dutch delineated the Dayaks in contrast to the Muslim Malays, and because many Dayaks remained animist in belief, to the Dutch, there was still opportunity for Dayak "salvation" and conversion to Christianity (Alcorn and Royo 2000). The Dayaks were also subject to corveé labor and taxation under the Dutch, whereas the Malay elite were afforded some degree of self-governance and were seen as a source of trade revenue (Davidson 2003, 3). The Dutch also applied an evolutionary approach to justify the marginalization of the Dayaks, whereby the Dayaks were seen as less evolved and low-ranking compared to their European and Malay counterparts (Duile 2017). The Dutch

further accused the Dayaks of being incapable of managing their own land, and made attempts to outlaw shifting cultivation, which had long been the traditional means of sustenance for Dayak communities (Wadley 2007, 113).

These factors together formed the basis of Dutch rule in Kalimantan and were the start of the development of a "state" presence in the region. Despite this, the Dayaks usually favored Dutch rule over the Malay Sultanate; Dutch Christian missionaries set up the beginnings of a formal education system for the Dayaks and tried to improve Dayak livelihoods (Tanasaldy 2012, 32). Although these efforts generally were unsuccessful, some Dayaks continued to favor Dutch rule up until Indonesian independence. And, the missionary education taught the Dayaks the Western ideals of liberty and democracy, which provided their activists a foundation upon which the first Dayak political organizations would later be formed (Davidson 2003, 6).

Many Dayaks who did not become Christian under Dutch rule instead converted to Islam. The marginalization of the Dayaks during the colonial era, and actually for decades thereafter, drove many Dayaks to convert. Widespread conversion to Islam, in fact, even predated colonial rule to the extent that the majority of Malays who lived upriver, or inland, were once Dayak (Ibid, 4). That is, conversion to Islam represented a shift not only in religion, but also, in some ways, in ethnicity and culture. For many Dayaks, to become Muslim was to partially escape the heavily marginalized Dayak identity and to become, to some degree, Malay (this was a process known as *masuk Melayu*, or to "enter" and "become" Malay) (Gerke 1997). These Dayaks, after their conversion, then became known as *Senganan*, and tended to distance themselves from their own Dayak communities quick;y after conversion (Tanasaldy 1981, 33). This also

sometimes happened through intermarriage, and in cases where Dayaks married Malays, they often underwent a religious ceremony that both converted them to Islam and assimilated them with the Malay ethnic group (Gerke 1997).

Often this process consisted of an active renunciation of Dayak identity. In 1997, Solvay Gerke interviewed one Dayak woman who had married a Kutai Muslim man. She reported that after her conversion, she was no longer allowed to have any contact with her own ethnic group, which included being forbidden to visit her parents. She was also made to give up a number of Dayak culture practices, in which, before her marriage, she had actively participated. For example, she was no allowed longer to smoke or eat Dayak food (Gerke, 1997). Remarkably, then, there existed in some ways a distinct, but permeable delineation between ethnic groups.

Thus, it is also important to note that identities are flexible. In Bornean societies this is particularly true. Some research has found that a more nuanced approach is crucial because ethnic standards that impose rigid ethnic categories oversimplify the processes of identity construction in Borneo (König 2016). The Dayak woman discussed above, for example, felt that she had not wholly abandoned her Dayak identity despite being made to leave behind many outward expressions of it. The imposition of ethnic categories would fail to include this important complexity.

Regardless, for Dayaks who chose to convert to Islam, the advantages were many; *Senganans* enjoyed more access to education, avoided higher taxes, and were able to dissociate themselves from perceptions of the Dayaks as backward, primitive, and dangerous (Duile 2017). Further, *Senganans* were generally able to escape much of the marginalization they had experienced at the hands of the Malays, which for the most part

had prevented them from participating in social activities beyond those of their own groups. Because of this, the Dayaks were entirely excluded from participating in any political activities beyond Dayak communities until Indonesian independence. Later, one question for activists was whether or not to extend the Dayak label to those who had previously converted to Islam yet expressed desire to participate in Dayak politics after World War II (Tanasaldy 2012, 24).

Empowered Dayak communities and their role in governance

During Japanese occupation in the early 1940s, the Dayaks had yet to involve themselves in politics. Generally, positions of power had been reserved for the better-educated Malay elite. Yet, the Japanese occupation was important for the later rise of Dayak politics; the execution of virtually all Malay Sultans revealed to the Dayaks that the Malays had in fact never been endowed with the supernatural powers that they had claimed, and therefore had no right to rule the Dayaks (Duile, 2017, 126). Furthermore, because of the disappearance and execution of the Malay elite under Japanese occupation, some educated Dayaks were appointed to the newly vacant political positions when Indonesia was liberated.

By the end of World War II and the early years of Indonesian independence in 1945, the situation of the Dayaks in West Kalimantan began to shift. The Dayaks became much more involved in politics, as the loss of the local elite under the Japanese paved way for the installation of a new Dayak elite. In 1945, a group of Dayak schoolteachers, alongside a few other Dayak leaders, formed the Dayak in Action Party (DIA), which was transformed into the Dayak Unity Party (PD) a year later. PD then moved to Pontianak, the administrative center of West Kalimantan (Davidson 2003). Oevaang

Oeray, a founder of PD, emerged as a leader of the Dayak elite who advocated heavily

for Dayak rights. Oeray would later become a symbol of the birth and development of the

first Dayak political movements.

In addition, with the help of the Netherlands Indies Civil Administration (NICA),

the Dayak Affairs Office (DAO) was opened in 1946, and became the first organization

established for the sole purpose of handling Dayak affairs. Later in 1946, seven Dayaks

were appointed to the newly created West Kalimantan Council, which consisted of forty

members in total. This was the first time that the Dayaks played an official role in

policymaking. They were also given seats on local councils in a number of districts.

Malay laws that had discriminated against Dayaks and perpetuated inequality were

abolished; for one, it was finally mandated that the Dayaks received equal quality of

education (Tanasaldy 2012).

These sorts of strides, among other policies that increased Dayak participation in

politics despite their comparative lack of experience and education, were in part a result

of the post-war Dutch interim government. This helped secure Dayak support for the

return of Dutch rule after World War II (Ibid, 19). Support from the Dayaks was critical

for the Dutch government because the other significant ethnic group in Kalimantan, the

Malays, were lukewarm at best to the reestablishment of Dutch rule. However, after the

transfer of sovereignty from the colonial government, the new Indonesian government

accused the Dayaks of treason because of their past alignment with the Dutch.

However, not all Dayaks were supportive of the Dutch. It was also at this time

that many Dayaks began to take a notably hostile stance toward colonial rule and its

effects. Oeray argued that Dayak backwardness was not only a result of ignorance, but

also a result of circumstance after decades of marginalization and discrimination at the

hands of the Dutch and the Malay Sultanate (Davidson 2003, 12-13). This obvious

delineation of outgroups, in contrast to the Dayak ingroup, helped form the foundation

for the Dayak political identity as it exists today.

Importantly, early Dayak leaders were rather bent on "modernizing" Dayak

society. Education presented a significant problem for these leaders. On one hand,

qualified Dayak educators were scarce. On the other, a general distrust existed of

Indonesian teachers from outside of Dayak communities, whom the Dayak leaders feared

would disfavor their students. In promoting modernization, PD leaders also encouraged

Dayak communities to abandon their traditional practices. For example, Dayak

communities were asked to adopt wet-rice cultivation to replace swidden agriculture. PD

leaders also rejected longhouses, and argued that the Dayaks should instead live in single-

family homes (Davidson 2003, 14). So, the PD was harshly critical of not only the Dutch

and the Malay Sultanate, but also of traditional Dayak practices, which, they believed,

inhibited progress. While the Indonesian government, particularly under Suharto, was

later largely blamed for the forced abandonment of traditional Dayak cultural practices, it

is important to note that early Dayak political leaders also contributed to this.

Regardless, the PD was hugely successful in the first elections in West

Kalimantan, and in the 1958 election, had become the largest ethnic political party in the

province (Duile 2017, 127). However, Dayak politics again fell quiet after the

implementation of President Soekarno's regulations requiring the disbandment of all

regional political parties for fear of secessionist movements. In the end, the PD was

absorbed by other political parties, and because of this, the strength of Dayak political

identity declined (Ibid.). It is also important to note, however, that later, under Soekarno, the Dayaks participated in killings of ethnic Chinese, who had been accused of being communists in the 1960s (De Jonge and Nooteboom 2006, 204). Thus, the ethnic Chinese became another outgroup for the Dayaks, even though the Dayaks' political force had largely dwindled.

The Suharto Era

President Suharto, who served from 1967 to 1998, suppressed regional politics even further. Moreover, because Suharto's highly centralized government denied the existence of ethnic groups in Indonesia, marginalized groups were prohibited from receiving preferential treatment. Further, there was very little opportunity for the Dayaks to participate in centralized governance, as any positions were heavily bureaucratic and dominated by the Javanese (Tanasaldy 2012, 37). The relative lack of education in Dayak communities also made participation difficult, as the Dayaks tended to be less qualified. All of these factors presented barriers for the Dayaks to involve themselves in politics during the 31-year-long term that Suharto served.

Suharto's denial of ethnic identity was harmful in other ways. In wanting to unify national identity, cultural diversity was suppressed (Li 2000). Furthermore, Suharto's conception of national identity was heavily biased towards the Javanese, and, as such, ethnic groups throughout Indonesia had Javanese culture imposed upon them. Another effect of this was that areas where it was more difficult to impose a culture of national unity were often labeled as "isolated communities" (Duile 2017, 128). Because of this, many Dayak communities labeled as isolated became heavily romanticized in popular discourse and were associated with traditional ways of life.

Furthermore, Suharto's regime went on to blame much of Indonesia's degrading natural environment on the agricultural practices of the Dayaks, and blamed shifting cultivation specifically for forest fires and destruction (Ibid, 129). Longhouses, where numerous Dayak families often lived together, were labeled dirty, unhealthy, and, subsequently, illegal (Tanasaldy 2012, 40). Some communities were forced by the Indonesian military to destroy their own homes. The state under Suharto furthermore delegitimized Dayak animism by recognizing only five religions: Islam, Hinduism, Buddhism, Catholicism, and Protestantism. It was through these measures, among many others, that Suharto's regime suppressed indigenous culture and excluded the Dayaks from the rest of the Indonesian mainstream unless they integrated in ways that the regime saw fit.

Suharto also made substantial changes in Indonesian forestry policy, and this significantly facilitated the exploitation of Indonesia's national resources by private interests, and in many cases removed customary land from the Dayaks and leased it to corporations. State control over natural resources was also tightened. These activities were almost always legitimized in the name of national interest, as the government claimed that they were necessary for Indonesia's growth and development (Duile 2017).

Dayak identity and ethnic conflict

Today, West Kalimantan is one of the most ethnically diverse provinces of Indonesia. The four ethnic groups in West Kalimantan are the Dayaks, the Kalimantese Malays, the Chinese, and the Madurese. While numerically, the Madurese migrant population has not been particularly significant, they have remained highly visible as they

often established their communities geographically separate from the other ethnic groups (Nooteboom 2010).

The Madurese have occupied an important role as another outgroup for the Dayaks. Many Madurese were moved to West Kalimantan through Indonesia's *transmigrasi* program, whereby hundreds of thousands of Indonesians were moved from overpopulated islands to outer, more rural areas of Indonesia in an attempt to redistribute Indonesia's growing population (Henley and Davidson 2013, 10). Originally, the *transmigrasi* program was initiated by the Dutch colonial government, but by the end of Dutch rule it had largely faded from existence. It was, however, revived under Soekarno at the end of World War II, and ended two decades later.

Transmigrasi fueled both ethnic tensions and environmental issues. First, the government grabbed land from the Dayaks and reassigned it to transmigrants, which led to accusations by the Dayaks that the government was giving preferential treatment to the migrants. There was also a widespread belief that the transmigrants were taking jobs from local communities (Tanasaldy 1981). These ethnic tensions fed into violent conflicts between the Dayaks and the Madurese in 1996 and 1997. Furthermore, the land that was distributed to the transmigrants was often converted to monoculture crop plantations, which were perceived as more modern compared to traditional Dayak methods of farming (Duile 2017, 130). Because of this, anti-plantation protests started among the Dayaks, although these remained rather small until NGOs later provided support.

Violent ethnic conflicts arose in December 1996 and January 1997 in the district of Bengkayang. According to de Jonge and Nooteboom (2006), casualties numbered between 500 and 1200, the majority of which were Madurese. In 1999, violence again

erupted between the Malays and the Madurese, although the Dayaks quickly joined the side of the Malays. There were again hundreds of casualties, and thousands of Madurese were forced to flee to other islands (Peluso and Harwell 2001). The Madurese who did not flee, either by choice or inability, were placed into government-sponsored refugee camps. Violence again broke out in Sampit in Central Kalimantan, where again, hundreds died, and almost the entire Madurese population of Sampit, numbering near 150,000 total, was evacuated to Madura and Java. In many places, in addition to the violence were rumors of beheadings and cannibalism. Virtually all traces of the Madurese were wiped out of these areas. In Sambas, the areas where the Madurese once lived, are nearly indistinguishable, except for abandoned mosques and banana trees (De Jonge and Nooteboom 2006).

The media attributed much of this violence to a regression to the old Dayak cultural practices of headhunting. A *Washington Post* article wrote, "Almost all the victims have been Madurese, and many of them were beheaded by the Dayaks, who are descendants of a tribal group in Borneo known for practicing headhunting and cannibalism until the late 19th century. Some of the dead also had their hearts cut out" (Ch and Rasekaran 2001). Many Dayak accounts, however, cited that this violence was not tied to headhunting, but instead, that ethnic groups throughout Indonesia, including the Madurese, had used violent tactics in ethnic conflicts for decades (Nooteboom 2010). Regardless, much of the public discourse surrounding these attacks supported a preexisting stereotype of the Dayaks as primitive and violent. Even today, Borneo has consistently been labeled the "Land of the Headhunters", instead of the "Land of the Dayaks," which would of course be more accurate. Associating instances of violence

with headhunting is also misleading; as described earlier, headhunting was a ritualistic cultural rite, and not associated with war in the way that it was framed by the media (Peluso and Harwell 2001).

These sorts of conflicts had an important impact on Dayak identity. Although marginalization made some Dayaks ashamed of their identity, as resistance efforts against the government grew, indigenous identity increasingly more and more a point of strength, wherein greater unity emerged out of a common struggle. This is a pattern from which many social movements have emerged, as ingroup identity becomes strengthened in the presence of outgroups (Weisel and Böhm 2015).

Dayak empowerment in the 21st Century

Finally, decentralization since the fall of Suharto has greatly changed the political climate of West Kalimantan. For one, regional governments have gained greater autonomy, as education, labor, public works, and natural-resource management are now under the purview of regional governments. These regional governments, furthermore, are now allowed to generate their own revenue and receive a higher share of tax revenue generated within their borders (McWilliam 2006, 56). While these adjustments took place all over Indonesia, in Kalimantan their effects were particularly strong. This was, in large part, because of the richness of the region's natural resources. The areas of Kutai Timur, Kutai Bara, and Berau, for example, have become some of the wealthiest districts in Indonesia as a result (Asien et al. 2017, 15).

Dayak communities have benefited from increased regional autonomy in a variety of ways. Their participation in governance has soared. Many districts in West Kalimantan are majority Dayak, which has bolstered the election of Dayak politicians to office

(Tanasaldy 2012). Furthermore, hierarchical village structures that had been imposed during the New Order were abolished, which allowed Dayak communities to return to their customary village governance systems. Dayak communities, as a result of this empowerment, have also begun to reconstruct their identity, and ethnic pride has blossomed. One scholar noted, for example, upon arrival to East Kalimantan in 2016, the abundance of diverse ethnic symbols throughout Samarinda, the region's capital city. He wrote, "wooden statues reminiscent of totem poles are installed adjacent to shopping malls and names of indigenous groups (*suku*) and locales from Borneo are inscribed in the urban environment through street and shop names" (Oesterheld 2016, 138). This is a reversal from what many Dayak communities have experienced historically.

This represents a reversal from an unfortunate pattern of marginalization of the Dayaks, which predated colonial rule under the Malay Sultanate. This new pride has manifested itself in the outward expression of Dayak culture, and this is becoming increasingly visible all over Kalimantan. Longhouses, for example, which were once labeled dirty and associated with Communism, have been reclaimed and are now being used by politicians as centers for Dayak events. Other cultural symbols, including indigenous art, music, and dance, have also been repopularized (Ibid.).

This has also consisted of a reclamation of traditional systems of forest management in Indonesia. Although indigenous groups in Indonesia in the past were marginalized and labeled as backward and uneducated in part because of their close relationship with the forest, they now have begun to reclaim their traditional management practices, which have been legitimized by centuries of experience having lived on that land. These arguments make sense; it is, further, in the best interest of communities that

are some of the most reliant on forest resources to focus efforts on managing these resources in a sustainable way, as it is fair to assume that these resources will continue to be valuable to them in the future. Thus, by strategically utilizing popular perceptions about the Dayaks being close to nature, activists have been able to use these to legitimize claims to land tenure, where the Dayaks now occupy roles as keepers of traditional, sustainable knowledge (Asien et al. 2017)

This phenomenon was coined a 'Revival of Tradition' by Henley and Davidson (2013), who noted that decentralization was expected to bring alongside of it increased commitments to human rights and the fostering of a more open civil society. What was more unexpected, however, was that there was also a reconstruction of identity all over Indonesia. A wide range of regional manifestations of these patterns exists, but they likely share some common influences. A global indigenous peoples' movement has given rise to similar revivals of ethnic identity; perhaps part of this is due to a shift in thinking of the political Left (Henley and Davidson 2013). That is, in recent decades the Left has placed a greater emphasis on cultural diversity and ethnic identity in opposition to constructions of nationalism or class. These arguments have been bolstered by an increased interest in indigenous rights. The International Labor Organization's Convention 169, for example, recognized indigenous peoples' right to a land base. More recently, the United Nations General Assembly also adopted the UN Declaration on the Rights of Indigenous People in 2007, which set minimum standards for member states to meet in recognizing indigenous rights. Thus, one contribution to reconstructions of Dayak identity has been increased pride, which has flourished as part of a broader, international trend in the proliferation of human rights doctrines.

Chapter Three: Forestry, *adat* law, and the Indonesian state

***Adat* law and the Dayaks**

As discussed previously, knowledge of traditional forestry practices may aid in legitimizing Dayak claims to user rights. Because of this, an understanding of Dayak forest management systems is important. As mentioned in Chapter 2, *adat*, or customary law, governs these traditional forest management systems. In fact, *adat* law prescribes the protocols that govern many aspects of decision-making in Dayak life, and is particularly salient in managing forest use. Unfortunately, Indonesian national law and customary law often are incompatible with one another. Thus, a tension exists where the Dayaks face pressure to maintain *adat* law, yet must also adhere to state law when it is required.

Historically, the state's observance and protection of customary law has remained rather weak in Indonesia. In the case of any inconsistencies between *adat* law and state law, state law prevails (Butt 2014). As a result, legally, *adat* law can only truly be enforced where gaps exist in state law. Furthermore, Indonesian state law has tended to be Western in nature, which in some cases is incompatible with *adat* law. One example is the Western concept of the "right of ownership", under which land is registered and may be mortgaged. By contrast, under *adat* law, most land is communally held and controlled by the village head (Butt 2014, 66). Further, many indigenous communities prefer to live under the traditions of *adat* law, rather than national law, and will do so when they are able (Rahardjo 2016). For example, many Dayak civil and criminal cases are settled by village heads or *adat* heads and thus never see the Indonesian court system (Liu, Faure, and Mascini 2018, 58).

Adat institutions are also crucial to the maintenance of Dayak forest resources because they govern the behavior of communities and their relationships with the physical environment (van Ast, Widaryati, and Bal 2014). *Adat* law distinguishes between two types of land ownership: community owned land (*tanah milik kelompok*), which usually is cleared by groups and might contain shared resources like fruit trees, and individually owned land (*tanah milik perorangan*) (Szczepanski 2002). Usually, an individual or family will cut down trees in a plot of land, burn the brush and debris that remain, and then use the ash to fertilize the soil, which, like in many forested areas globally, is nutritionally quite poor. Afterward, they cultivate the land, often for two or three crop cycles, and then the land is left fallow for another period, usually ranging between 10 or 15 years.

Through *adat* law, an association between swidden agriculture and what Westerners might call the "supernatural" exists as well, perhaps as a means to address the looming uncertainties with which swidden agrarian societies must cope. More specifically, Dayaks face issues like infertility of forest soils, insecure supply of resources like water, and abundance of pests. Thus, one component of *adat* is a belief that humans may communicate with the spiritual world to ensure that natural forces will act in their benefit (Thomson 2000, 54). Thus, the relationship between swidden agriculture and *adat* law is quite close.

Adat also governs the distribution of forest products among community members. These systems often are quite complex and involve a number of overlapping user-rights claims. For example, villages once consisted of several longhouses, in which many families lived communally. One longhouse might have held up to 60 apartments (Peluso

1993). Now, however, most villages consist of clusters of single-family homes, which share community-owned land as well as forest products from that land. In some cases, other villages or groups of outsiders pay a "tax" to the village to gain access to resources of the common property. Usually this consists of an in-kind contribution of 20 percent of whatever resources were harvested, although today, cash transactions also are common (Ibid.). Some forest products, regardless of whether they have been grown on community or privately-owned land, are common property of the village. For example, any community member may harvest mushrooms or bamboo shoots, even if they grow in a privately owned garden. These, again, are protected by legal systems that have been established under *adat* law.

Further, if a villager wishes to plant on an unused swidden area that had previously been occupied by another villager, the first villager must obtain permission from his or her predecessor and the local *adat* authorities (McCarthy 2000, 108). These authorities usually consist of a community *adat* leader, who arbitrates conflict with respect to *adat* law, as well as an *adat* council, which enforces *adat* norms and rules. Councilmembers are usually appointed based on reputation and knowledge of *adat* (UNFAO n.d.). Thus, *adat* not only oversees the spiritual relationship between the human and the natural world, but also more practical arrangements of land inheritance, transfer, and management of collective properties. Again, many Dayaks see *adat* law as a central component of their cultural identity (Thomson 2000). Many also perceive the forest to be a very important source of cultural and spiritual benefits (Meijaard et al. 2013, 6)

The Indonesian State and its forestry

Indonesian forests are generally extremely diverse, and are concentrated mainly on four islands: Sumatra, Kalimantan, Sulawesi, and Papua. Land use change has been a serious issue in Kalimantan, where some of the primary threats forests are illegal logging, land conversion to oil palm plantations, and forest fires (Rosenbarger 2009). Further, the abundance of dipterocarpaceae, a family of hardwood trees, is especially valuable to loggers. More generally, the Indonesian State has classified all forest into three categories: production forest, protection forest, and conservation forest. Of these, production forests are the largest, and make up 66 percent of all forest (Sardjono and Imang 2015).

Historically, the extraction of forest products has been a crucial source of revenue for Indonesia. Much of this revenue was generated from the sale of concessions to commercial logging companies in production forests (Sardjono and Imang 2015). For example, Suharto's regime aimed for a stabilization strategy that underpinned the harvest and export of logs, which led to the investment of capital from large transnational corporations from the United States and Japan. By the 1970s, the forestry sector had become the second largest source of profit for the Indonesian government, after the oil sector (Hidayat 2015). It is important to note, further, that the oil sector has also been inextricably linked to deforestation; much of Indonesia's oil is stored in its forested areas. The exploitation of both of these sectors, then, has led to rapid deforestation.

Because of this, local communities have suffered, as their livelihoods rely on these depleting resources. These communities also have faced challenges of adaptation to changing government policies and environments despite having lived there for, in some cases, centuries. Additionally, for decades, shifting cultivators were accused of

environmental harm and the destruction of forests (Dove 1983). These shifting

cultivators, along with landless migrant farmers, were often labeled the primary causes of

deforestation in Indonesia (Soedjito 2015, 420). However, it has now been increasingly

accepted that shifting cultivation can actually be quite sustainable. Further, the

deforestation caused by shifting cultivation has been small in comparison to the

deforestation related to corporate activity, like the felling of logs by timber companies

(Angelsen 1995, 1713). Currently, shifting cultivators tend to hold more negative

perceptions about the impacts of large-scale land clearing than do other groups (Meijaard

et al. 2013, 6).

Historically, the Dutch imposed the first formal, top-down forest governance

system in Indonesia, although *adat* law was still practiced on the outer islands under

Dutch rule (Liu, Faure, and Mascini 2018, 33). Since independence, the Indonesian

government declared all forest under its authority, and thus is the primary actor

responsible for its management and governance (Chipeta and Durst 2010). This has been

asserted by the Indonesian Constitution, which gives the state the right to "control" its

natural resources, and was later reaffirmed in the 1960 Basic Agrarian Law (BAL) and

the 1976 Basic Forestry Law (BFL), both of which served to further tighten the state's

grasp on natural resources (Liu, Faure, and Mascini 2018, 34). The 1976 BFL prohibited

communal or private ownership of forest resources, which then allowed the state to grant

forest concessions and then profit off of these concessions. Local communities suffered,

as the state's claims to forested areas often overlapped with their traditional land (Vargas

1985). Furthermore, the state exaggerated the percentage of forest cover in certain areas

in order to meet the baseline for the "forested area" designation and to ensure its

authority there accordingly (Liu, Faure, and Mascini 2018, 34). Both the BAL and the BFL, along with other relevant legislation, will be reviewed in Chapter 4.

The Dayaks may register their land under the Indonesian state, which would confirm user rights for subsistence farming, but it is often prohibitively expensive and the application process is extensive and complex (Szczepanski 2002, 237). In the 1980s, conflict existed between the national government and the provincial government, as the national government stated that the right of land ownership should be granted to shifting cultivators, while the provincial government disagreed (Vargas 1985, 250). Although decentralization has brought numerous benefits for local communities, it has also worsened ambiguity in the law, complicated by disagreements among national, provincial, and local governments. The government's failure to acknowledge swidden agricultural practices, which leaves lands fallow for years at a time, has also caused problems. The national government has, in some cases, declared fallow land as "abandoned", even though the Dayaks likely would have later returned to it (Szczepanski 2002). Because of this, it is much easier for the government to confiscate land at will, as officially it often is untitled and unregistered.

However, as the process of decentralization has continued, the government has relinquished some of its authority over forestry. On one hand, decentralization has created the opportunity for the involvement of local actors. On the other, decentralization of forestry may have actually led to increased deforestation by district governments, which later caused the Ministry of Forestry to reclaim some of its initial authority in the years following 1999 (Hohne et al. 2018, 220). Like the national government, provincial and local governments have also faced corruption and enforcement issues in the

distribution of land titles, even though decentralization was expected to address these problems, which had long afflicted management at the national level. This emphasizes the need for greater community involvement, where accountability and transparency would, in theory, increase, as local populations expand their role in the management of resources.

Yet, simultaneously, the expansion of the forestry sector has improved the lives of many; it has resulted in huge economic growth, poverty eradication, and created many jobs. These trends continued following the 1970s. During the so-called "golden age" of forestry, forestry exports in the 1980s hovered around US $200 million per year, but by the 1990s had jumped up to US $2 billion per year (Sardjono and Imang 2015).

During the Reformation Era, after the fall of Suharto in 1998, decentralization allowed for heightened participation of local communities in the forestry sector. And, this has been a platform upon which organizations like the United Nations Food and Agriculture Organization (FAO) and the Center for International Forestry Research (CIFOR) have been able to encourage good governance in the realm of forest resource management. Significant progress has indeed been made. For example, criteria for sustainable forest management have been created, the divide between environmental and poverty reduction organizations has lessened, and conversations surrounding forestry policy have increasingly involved multiple stakeholders, which has led to more transparency and accountability (Hidayat 2015).

However, the forestry sector, and more specifically, the Ministry of Forestry, has been notorious for corruption and mismanagement. Part of this arose from Suharto's centralization of natural resource industries, which reduced transparency and allowed

government officials to exploit their authority for their own personal benefit. For example, in 2000, Bob Hasan, a former Minister of Trade and Industry in Suharto's government, was tried for causing losses of around USD $75 million to the state and USD $168 million to the Indonesian Association of Forest Concessionaires (APHI) (*BBC News* 2000). Even today, corruption in the forestry sector is rampant. A huge source of revenue, near USD $15 billion per year in 2012, was a product of the sale of forestry permits that allow logging and other forms of forest resource extraction (Bachelard 2012). One problem, then, has been the existence of a system of concessions awards dependent upon bribery of forest officials.

Regardless, balancing conservation and development is difficult, as mentioned earlier. Historically, development in Indonesia has sometimes been antithetical to conservation. The country's heavy reliance on natural resource exploitation, including on forest products and hydrocarbons, has meant that development often necessitated deforestation. And a shift in the past decade to heightened sustainability has in some ways intensified this conflict. Reducing carbon emissions, for one, hampers some of Indonesia's most profitable industries. However, the government also has recognized that Indonesia will likely feel the effects of climate change intensely in the future. Climate change may lead to extremely costly trends of decreased rainfall, increased flood risk, and rising sea levels. One study found that the economic cost of droughts and fire in Indonesia in 1997-1998 was about USD $9 billion (Applegate et al. 2002).

These issues are likely to worsen in the future as the climate change problem intensifies. Thus, the Indonesian state has a clear incentive to push for more effective sustainable practices, although it faces the challenge of balancing these against more

immediate economic development interests. Furthermore, Indonesia's state-owned

enterprises (SOEs) are present in a variety of these industries, including in agriculture,

mining, and energy, and as such, the Indonesian government itself directly profits from

forest resource exploitation (Rosenbarger 2009). And, an estimated of 60 to 80 percent of

Indonesia's carbon emissions are a result of deforestation (Bachelard 2012). Regardless,

these challenges have created opportunity for the Dayaks to assert themselves as keepers

of traditional, sustainable knowledge. Efforts to better incorporate local communities into

sustainable development have increased in Indonesia. This may help strengthen

arguments for indigenous land ownership.

Social forestry and common pool resource management

One way that local communities have been incorporated into sustainable

development efforts has been through social forestry programs. In more recent years, a

growing global movement has increased the involvement of indigenous or local

communities in sustainable resource management programs. These programs may help

address some of the challenges that governments have faced in managing the resources

on their own.

While a changing political and economic environment in Indonesia has

contributed to improving wellbeing nationally, the Dayaks continue to lag behind by

some measures. Ethnic differences in economic activity have been one contributor.

According to Nooteboom (2010), in Kalimantan, the Javanese tend to farm in

transmigrasi-established areas, or work in the better-paid jobs of the service sector and

the public sector. The Chinese own most of the shops in some areas of Kalimantan, and

dominate the retail and supply sectors. Many of the Madurese are quite poor, and work in

strenuous physical labor, such as construction, garbage collection, and brickmaking, although some have opened businesses like repair shops and *sate* (grilled meat) stands. The Dayaks generally live relatively far away from towns.

Further, in Indonesia, rural people dependent on state forests tend to be poor (Sunderlin, Dewi, and Puntodewo 2007, 32). A close correlation between high forest cover and poverty also exists throughout most of Indonesia, although with some variation. In Kalimantan, high forest cover actually is correlated with a relatively low poverty rate (Ibid, 16). The reasons for this are unclear, although it could be that increased economic activity from natural resource extraction has helped lessen poverty in some areas. Another possibility is the positive impact of forest dwellers' direct access to forest resources. According to Pambduhi, Belcher, and Dewi (2007), "Higher levels of forest resources and suitable land for agroforestry are also associated with higher welfare. Relatively remote, well endowed forest villages with limited economic alternatives show a high well-being relative to other villages in the area being studied." (1431) It was also noted, though, that generally the majority of local people in their study area lacked access to forest resources and because of this were highly disadvantaged. This affirms the importance of securing access to forest resources for local communities.

In Indonesia, the first social forestry programs were incorporated into national policy during the 1980s, but they faced challenges of navigating complicated and conflicting legislation that inhibited successful implementation. In 1995, the Ministry of Forestry introduced programs with a CBFM focus for the first time in Indonesia, under Ministerial Decree No. 622 of 1995 (Purnomo and Anand 2014, 29). The primary

purpose of the policy was to improve degraded forests and increase community participation, although the policy has since been altered multiple times.

Since then, one criticism has been that the state-imposed social forestry programs have remained top-down in nature and conflict with unofficial community systems that had already been established for decades (Rosenbarger 2009). On the other hand, government involvement may also be important in ensuring the recognition of rights, facilitating conflict resolution, and providing technical support. Regardless, the changing political landscape in Indonesia has created opportunity for the Dayaks to manage their resources locally, partly because of political decentralization. Thus, for the Dayaks, one important question will be where the balance between government intervention and community autonomy exists.

It is be useful first to examine some factors that have fed into the success of common pool resource management more generally. Elinor Ostrom (1999) has laid out eight design principles that central to long-enduring common-pool resources institutions:

1.   The resource should have clearly defined boundaries. The individuals and households who retain the rights to withdraw resources and the boundaries of that resource itself must be clear.

2.   Congruence should exist to ensure that the rules that assign benefits and the rules assign costs are fair. Participants must perceive these rules as fair as well.

3.   Users should be involved in collective choice arrangements that can modify operational rules governing the extraction of the resource. If a group of users perceive the system as unfair, it is important that

mechanisms to address their grievances exist, otherwise they may

begin to cheat, and enforcement costs may rise.

4.   Monitoring is important to maintain accountability. Often the monitors

are users themselves.

5.   Graduated sanctions should exist for users who violate operational

rules that limit their participation in the institution.

6.   Users should have access to low-cost, effective conflict-resolution

mechanisms.

7.   Government authorities should not challenge the rights of users to

form institutions.

8.   For common-pool resources that are part of larger systems, the above

principles should be nested so that externalities may be addressed in a

broader, cohesive organizational setting.

It is important to note that social forestry programs vary substantially, and so must

the implementation of these principles. Nonetheless, they are useful broad guidelines for

understanding factors that have been demonstrated to be central to successful social

forestry programs. For the Dayaks, many of these principles have not yet been met.

Ostrom's principles that have had particular effect on the Dayaks will be discussed

below.

With respect to Design Principles 1, Chapter Four will discuss ambiguities in

Indonesian law that lead to a lack of clearly defined boundaries. Even in instances where

these boundaries have been clearly defined, further, in some cases communities have continued to see their land rights violated.

Furthermore, increasing the involvement of local communities benefits not only the communities themselves, but may also help address some of the challenges the government has faced surrounding the monitoring and enforcement of forestry policy. This would help address Design Principles 3 and 4. For one, forests in Indonesia can be large and scattered, and in areas where forest cover percentage is high, protecting forest borders from outside users can be costly. Forests are particularly scattered in West Kalimantan, compared to the rest of Borneo (Meijaard et al. 2013, 3). When communities are allowed to use the forests, they have an incentive to engage in enforcement against outside users. Conversely, if communities are not allowed to use the forests, they are less likely to report violators, as they could face legal repercussions themselves (Robinson et al. 2012). Legal community involvement also protects biodiversity; by defining the groups with legal access to forest resources, overexploitation of these resources becomes less of an issue, first, because local communities become more likely to enforce this exclusivity, and second, because there are fewer groups of people extracting these resources in the first place.

Another problem is a lack of government support, which likely hampers legitimacy, conflict-resolution, and training. This leads to issues described by Design Principle 7, in which the state might also be overly heavy-handed and therefore risks infringing upon the authority of local communities when it is unnecessary to do so. Increasing the involvement of capacity-building organizations might be beneficial in providing support where the government has been lacking, ensuring fairness in

community involvement in decision-making, and bringing issues to the agenda as needed. However, stronger networks among groups are needed. For example, *Alianzi Masyarakat Adat Nusantara* (AMAN) (Alliance of Indigenous Peoples of the Archipelago) is the primary organization representing the interests of indigenous communities. According to their website, they represent 2,366 communities with a total population of over 18 million (AMAN n.d.). While their main focuses are land reform and the recognition of community rights to self-governance, forestry and land tenure are other key issues. Because of its broad focus, however, AMAN has found itself stretched rather thin and thus, in the realm of forestry, has mainly focused on raising attention to issues (Colchester 2002, 23). More focused capacity-building organizations, working with AMAN, could be beneficial.

It is also important to note, though, that the Indonesian government has indeed made significant efforts toward more effective community forestry. On one hand, decentralization was expected to increase the sustainability of forest management by more effectively incorporating local communities. Yet, its effects instead have contributed to mass exploitation of forest resources by regional governments, as this is often the fastest and easiest way to develop their economies and increase their income (Sardjono and Imang 2015).

With respect to Design Principle 7, the main reason why governments take control of forestry is due to concern that, without government regulation, resources will be over-used and will become depleted. This is the tragedy of the commons. After decentralization, while regional governments may have had the best interests of conservation in mind, the implications of an approach that excludes local people from

forest use is neither fair nor practical. The hope is that community involvement would help address some of the challenges that the government has faced when using a top-down approach.

The increased opportunity for social forestry was borne, at least partly, out of decentralization. In theory, encouraging community participation in decision-making processes would better support options that benefit local communities. This might include, for example, improved recognition of indigenous rights as well as heightened utilization of traditional forest management practices. Decentralization has also increased the pressure for local elected officials to pay attention to the wants and needs of constituents. Better transparency has the potential to decrease corruption. The government would likely also benefit from increasing its own transparency and accountability. For one, the national government has lost significant revenue from the exploitation of forest resources in the logging industry due to corruption and tax evasion (Human Rights Watch 2009).

Awareness of forestry programs presents another issue. Many communities in Kalimantan, particularly those located in forests, may lack information on how to participate in social forestry programs. Forestry and its related laws in Indonesia are constantly changing, so it can be difficult for communities to keep up. This can challenge Ostrom's Design Principles at all levels. Without knowledge of the rules, or how to participate in these programs in the first place, it is of course not possible to have long-enduring common resource management systems. State-sponsored educational programs might help mitigate this issue. Furthermore, in order to encourage communities to consider forestry as a long-term project, states should make the permit application more

flexible, extend permit periods, and make renewals easier. This might help address some concerns that decentralization feeds into decision-making focused only on the short-term. Further, the current system is unclear, and permits may be subject to revocation if they are perceived to conflict with state interests (Rosenbarger 2009). A more comprehensive set of recommendations will be elaborated upon at the conclusion of this thesis.

Still, real concerns about increasing community involvement exist. For one, some worry that local groups might lack long-term perspective and fail to see greater potential consequences of some decisions. Further, the rapid decentralization that Indonesia underwent has meant that local governments are often unequipped to handle their new responsibilities (White and Smoke 2005). As mentioned before, one example of this was widespread corruption surrounding forestry concessions by provincial governments after decentralization. So, another issue is government support. The government faces the challenge of promoting community involvement by providing technical support and training, while also allowing enough freedom for communities to have real decision-making powers.

Forestry and the International Community

It is also important to note that many forest products serve as public goods, not just for Indonesia, but for the international community as well. Forests are critical to protecting biodiversity and carbon sequestration, both with global repercussions. The increasing threat of climate change has brought these issues to the forefront of the international agenda. Carbon sequestration is especially relevant now, with the establishment of carbon credit programs under the United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD+)(Bayrak,

Mustafa, and Marafa 2016). However, efforts to lower forest carbon emissions have not impacted all stakeholders equally. UN-REDD+, in particular, has raised concerns regarding the extent to which local communities will be included in land and natural resources use. UN-REDD+ incentivizes countries to use forest carbon emissions as a standard to measure a country's performance, and thus how much financial reward it should receive (Astuti and Mcgregor 2015).

 In theory, UN-REDD+ could promote poverty alleviation if it improves local participation in forest governance, and if funds from carbon credits are distributed to local communities. However, it could also threaten local communities, if, for example, it prevented them from using forest resources for subsistence (Bayrak, Mustafa, and Marafa 2016). Again, a tendency exists for the government to maintain its control, and motivating it to reduce carbon emissions may also encourage it to insulate the forest from development all together.

 To protect local communities, UN-REDD+ has implemented safeguards, such as its guidelines on Free Prior and Informed Consent, to help ensure transparency and increased community participation. However, when governments do not recognize indigenous rights to start, these safeguards lack impact. In Indonesia, one issue has been that land tenure agreements are often unclear and poorly enforced, so Free Prior and Informed Consent guidelines are then largely symbolic (Bayrak, Mustafa, and Marafa 2016). Capacity-building programs have been established to help empower local stakeholders and to ensure their benefit from UNREDD+, with limited success.

 Communities in Indonesia have lacked technical knowledge and skills as well as the organizing skills required for effective collaborative planning (Larrabure and

Moeliono 2013). Thus, one challenge for the Dayaks will be how to navigate these systems and establish leadership that can adequately organize communities and communicate with outside groups. Furthermore, even after community forestry programs have been implemented, monitoring and enforcement represent significant issues. Funding is limited, and government spending on the environment decreased throughout the 1990s and 2000s (Aden et al. 2001). While since then, the budget allocation for environmental planning has increased, the World Bank has noted that Indonesia's macroeconomic policies continue to disfavor environmental sustainability, as they reward revenue rather than stewardship (Wingqvist and Dahlberg 2008). Lack of infrastructure needed to access forests, like roads and trails, also make enforcement issues problematic. Capacity-building organizations will probably play an important role in providing technical support and expertise. And, as discussed previously, increased community involvement may help mitigate some of the issues surrounding monitoring and enforcement.

Chapter Four: Indonesian Law and *Adat* Communities

As discussed earlier, one serious challenge for the Indonesian government has been the question of how to address regulating access to forest resources. The government must balance a wide range of interests, including those of *adat* communities, corporations, and conservation advocates. While these are not necessarily mutually exclusive, they have often been at odds with one another. Legislation aimed at addressing these issues has been passed, although problems of ambiguity harm invocation of the law and can lead to corruption and mismanagement.

These problems have a direct impact on *adat* communities, whose livelihood strategies often rely on availability of and access to forest resources. This chapter will discuss legislation affecting these communities, but it is first important to understand how the Indonesian state defines indigeneity, as this is of course fundamental to understanding the law. However, currently, different terms are used to refer to indigenous people. According to a report by AMAN, an organization which represents interests of indigenous Indonesians, the Ministry of Social Affairs and the Ministry of Environment and Forestry have identified some groups as "geographically isolated communities" (*komunitas adat terpencil*), while other government legislation instead uses the term "customary law societies", or "customary law communities", (*masyarakat hukum*) a colonial term (Coalition for Enforcement of Law 2017). Using the term "geographically isolated communities" has been understood by some to refer to areas where it has been more difficult to impose an image of national unity (Duile 2017). The term "indigenous peoples" (*masyarakat adat*) is the term that has been frequently promoted by indigenous peoples' networks and NGOs; AMAN itself stands for *Aliansi Masyarakat Adat*

Nusantara (Indigenous People's Alliance of the Archipelago). In addition to these, however, other groups claiming indigeneity exist, outside of those identified by the government as indigenous.

Even among the international community, some ambiguity exists surrounding how indigenous groups should be defined. The 2013 United Nations Manual for National Human Rights Institutions, for example, even notes that there is no universally agreed upon definition for indigeneity. One factor is the concern that adopting a formal definition at the international level removes flexibility and, instead, communities should be allowed to define their indigeneity as they see fit. This, however, creates challenges for countries like Indonesia, where there has long been conflict over how to define indigeneity. In some instances, groups might have an interest in labeling themselves indigenous, if, for example, indigenous groups gain exclusive access to particular resources. Thus, reason exists to restrict the definition of indigeneity; indigeneity as grounds for special rights loses meaning if outside groups manage to exploit this. At the same time, though, retaining flexibility is also important, as it recognizes and protects the diversity of indigenous groups within Indonesia.

Thus, defining indigeneity has been an issue within groups claiming customary land rights in Kalimantan. In the context of Indonesia, indigenous groups often have been mobile, which complicates definitions of indigeneity that emphasize historical ties to a particular tract of land. For example, in Malinau, in East Kalimantan, the Merap, an indigenous group with historical claims to the area, differentiate themselves and the Kenyah, another Kalimantese indigenous group, by labeling themselves *orang asli* (indigenous or original person) and the Kenyah *pendatang* (migrant or

newcomer)(Wollenberg, Moeliono, and Limberg 2009). That is, although the Kenyah are indeed Dayak, and are, like the Merap, indigenous Kalimantese, they are nonetheless referred to as non-indigenous, because of their relatively new arrival to a given area. Thus, while to an outsider, the Merap and the Kenyah might appear equally indigenous, that is not always how it is perceived within indigenous groups. Further, for the Kenyah, who migrated to Malinau in the 1960s and 1970s, their classification as migrants is significant, as it could threaten their claims to land. The Merap, who are far fewer in number, occupy large tracts of land within Malinau based on historical claims, even though the Kenyah are indigenous to East Kalimantan as well (Ibid.)

In addition to indigeneity, other issues of ambiguity in the law also impact natural resource management and conservation. One example surrounds the issue of deforestation. On one hand, in some cases, activities leading to deforestation are legal, and even actively encouraged by the state. This might include, for example, drilling to access oil reserves. In 2018, the government cut several regulations in an effort to increase investment in oil and gas, which had been declining (Yuniarni 2018). In other cases, deforestation might be illegal, though facilitated by state officials, such as when logging permits are distributed corruptly (Bachelard 2012).

And, as mentioned in the previous chapter, natural resource extraction is a significant contributor to Indonesia's gross domestic product (GDP). In 2017, agriculture, forestry, and fishing contributed to around 13 percent of the nation's GDP. While these figures have declined significantly from previous decades (in 1986, agriculture, forestry, and fishing contributed as much as 24.3 percent), natural resources continue to play a substantial role in Indonesia's national economy (World Bank 2017).

Yet, conservation and indigenous communities represent other interests against which the Indonesian government must balance these revenue sources. Thus, in one scenario, where deforestation is a consequence of legal activities, one strategy might be to encourage the Indonesian government to pass regulatory legislation. Initiatives like UNREDD+ have attempted to achieve this, with some success, by creating incentives for governments to reduce carbon emissions. Indonesia has passed some legislation that outlines mechanisms for reducing carbon emissions with UNREDD+ support (The REDD Desk 2015). In another scenario, however, where deforestation occurs illegally, and the Indonesian government is either complicit or is simply unable to effectively monitor and enforce the law, increasing local community involvement has great potential. And, Indonesian law is critical here.

As has been emphasized throughout this thesis, recognizing forest access and ownership for indigenous communities like the Dayaks decreases corruption from government officials; increased community participation encourages transparency in political processes. Further, it can motivate local groups to monitor and enforce land use protections from encroachers. This chapter, then, will review, first, Indonesian legislation affecting *adat* communities, and second, how this legislation, alongside government programs, forms a changing legal environment that *adat* communities have been required to navigate. Lastly, case studies demonstrating some of the challenges in implementing this legislation will be discussed.

Legislation affecting *adat* communities

The Indonesian Constitution

As mentioned previously, the existence of *adat* communities was first recognized in the 1945 Constitution, which contains two articles that directly impact indigenous communities.

The first of these is Article 18B(2), which states that the government must respect *adat* customary land rights:

> The State shall recognize and respect, to be regulated by law, the homogeneity of societies with customary law along with their traditional rights for as long as they remain in existence and in agreement with societal development and with the principle of the Unitary State of the Republic of Indonesia.

While this is significant, one issue is that the Constitution avoids the term *adat* community (*masyarakat adat*) which conveys a connotation of autonomy compared to the term traditional community (*masyarakat tradisional*) (Bedner and Huis 2008, 170). An important question is, if a community is perceived by the government to no longer be "traditional," whether or not it retains its "traditional rights". These rights themselves are also unspecific, and the Constitution fails to clarify exactly what rights they encompass. Further, the stipulation that *adat* law must not interfere with the law of the State fails to protect *adat* communities in a meaningful way. Limiting indigenous protections by requiring that they do not hinder state interests is a consistently used strategy, as will be illustrated in later legislation. Former President Suharto later claimed that all Indonesians are equally indigenous, which effectively removed any special status from *adat* communities (Li 2000, 149). The 1945 Constitution's insufficient protections for *adat* communities likely played a role.

Basic Agrarian Law and Basic Forestry Law

Restriction of property rights is one method that the Indonesian government has used to confront problems of deforestation. As mentioned in previous chapters, public, private and community forests exist in Indonesia, although ambiguity surrounding how these are defined has led to conflicts between users. The 1960 Basic Agrarian Law and the 1967 Basic Forestry Law together comprise the primary pieces of legislation governing natural resources, and thus impact the access of *adat* communities to these resources.

The Basic Agrarian Law in particular has had an immense impact on the regulations of traditional land rights for indigenous communities. To start, at its surface, the Basic Agrarian Law appears to protect *adat* rights in a meaningful way, stating that is necessary that "a National Agrarian law is established, based upon the Adat-law," and, later, in Article 5, that "the Agrarian law which applied to the earth, water and air space Is Adat-Law…" (*Act No. 5 of 1960 Concerning Basic Regulations on Agrarian Principles* 1960). However, Bedner and Huis argue that the Basic Agrarian Law redefines *adat* law from its common usage, and instead, means "the original law of a group of Native Indonesians (2008, 178). Thus, it longer acknowledges the wide variety of *adat* laws in Indonesia. The state's failure to recognize the diverse set of interests among *adat* communities presents significant challenges to communities interested in claiming customary rights. According to a 1990 Environesia publication, the government later remarked that "in reality *adat* laws are so diverse and widespread that [it] is nearly impossible to adequately incorporate all *adat* principles into a national law…" (as cited in Rossabi 1999, 35).

Furthermore, similar to the Constitution, the Basic Agrarian Law, in Article 5, goes on to state that *adat* law must not conflict with the "National and State's interests based on the unity of the Nation, With Indonesian Socialism as well as with the regulation stipulated in this Act and with other legislative regulations…" Despite the allusion to Communism, however, the Basic Agrarian Law was also, for the most part, based upon individual notions of land ownership, and often failed to recognize communal or collective land tenure, which then severely limited the traditional *adat* systems of community land tenure (McWilliam 2006).

Thus, as discussed previously, national and state interests retain priority over the customary rights of indigenous communities. Finally, in Article 9(2), the law requires that all Indonesians must have equal opportunity to acquire land, which then prohibits indigenous communities from obtaining any special rights, as well as from establishing their own laws regulating use on *adat* land (Bedner and Huis 2008, 179) .

The Basic Forestry Law of 1967 built upon the Basic Agrarian Law, although it contained even fewer protections for indigenous communities. Part of this was probably due to its passage under the New Order, led by Suharto, who was particularly hostile to *adat* rights. The Basic Forestry Law required that *adat* lands be classified as state forest, and not private forest, which forced *adat* communities, now living on state forest, to follow national forestry policy (*Act No. 5 of 1967 Concerning Basic Provisions of Forestry* 1967). As a result, *adat* communities lost their rights to till land within the forest, and instead retained only the rights to collect forest products (Bedner and Huis 2008, 182). In some cases, *adat* communities could not adequately support themselves

and were forced to move to other areas. Many of these communities left with neither

compensation nor recognition of their customary claims (McWilliam 2006).

The Basic Forestry Law also continued to severely weaken communal rights for

indigenous communities, and made cases where *adat* laws was implemented in a manner

that, in its own language, "disturb[ed] the goals stipulated in this law" illegal. This

referred, in some cases, to perceived interference with national interests in conservation

and production, but in others, it referred to communities using their rights to obstruct the

construction of development projects, including "large-scale forest clearance for large

projects, or in the interests of transmigration, and so on." Again, this demonstrates the

damage that the Basic Forestry Law caused to the rights of indigenous communities.

However, since the fall of the New Order government, the changing political system in

Indonesia has fostered democratization and decentralization.

However, the speed with which this has occurred has created significant impacts

on indigenous communities, both positive and negative. Thus, this chapter will continue

to explore more recent legislation concerning the recognition of human rights,

decentralization, and reclassification of indigenous land. Partly as a result of these

policies, labeled *reformasi* (reformation)*,* Indonesia has experience a flourishing of

identity politics.

Act No. 39 of 1999 Concerning Human Rights

Following the fall of Suharto in 1998, *adat* communities were once again

recognized in national legislation. Act No. 39, in Article 6, states:

The differences and needs of indigenous peoples must be taken into consideration

and protected by law, the public, and the Government. The cultural identity of

indigenous peoples, including indigenous land rights, must be upheld, in

accordance with the development of the times.

The acknowledgement of indigenous land rights is important. Later in the Act, in

Articles 36 and 37, rights to own property, and freedom from arbitrary or unlawful

seizure are also guaranteed, along with a requirement that "the right to ownership of a

property in the public interest shall not be revoked, except with the restoration of fair,

proper and adequate compensation, based on prevailing legislation." While the rights to

ownership indeed are significant, one issue is that indigenous groups often are not

granted ownership, and instead, are granted only use rights.

As a 2002 report from the Asia Development Bank noted, Articles 6, 36, and 37

together are relevant in the protection of *adat* land rights, as they require that any seizure

of *adat* land must be done through fair, legitimate means, where *adat* communities have

given free and prior informed consent (Asia Development Bank 2002). In practice,

however, this has not been the case.

Act No. 22 of 1999 Concerning Local Government and Act No. 32 of 2004 Concerning Regional Administration

Changes in governance structure resulting from decentralization have had

substantial impacts on the management of Indonesia's forests. Immediately following

Suharto's regime, a series of laws were passed, which shifted power from the central

government to district governments and municipalities (Liu, Faure, and Mascini 2018).

Post-Suharto, the Indonesian government has adopted two pieces of legislation on

regional autonomy: Act No. 22 of 1999 Concerning Local Government and Act No. 32 of

2004 Concerning Regional Administration.

These replaced the existing Act No. 5 of 1979, which reduced, and in some cases, eliminated, the autonomy of *adat* institutions. Under Act No. 5 of 1979, new governance structures, based on Javanese village models, had been introduced, and *adat* institutions were incorporated into these new structures, which had severely limited their decision-making power, and required that all decisions be subject to district head approval (Bedner and Huis 2008, 172). The traditional *adat* leaders were excluded from natural resource management in particular, and instead, their responsibilities were reduced to facilitating *adat* ceremonies. (Asia Development Bank 2002).

Act No. 22 of 1999 reformed the village governance structure that had been imposed under Act No. 5 of 1979. It allowed traditional forms of village government to be re-installed, and also encouraged democracy at the local level (Bedner and Huis 2008, 172). Its preface states:

> Law No. 5/1979 on regional administrations (Statute Book No. 56/1979, Supplement to Statute Book No. 3153), which brings uniformity in the name, form, structure and position of village administrations, is no longer compatible with the spirit of the Constitution of 1945 and the need to recognize and honor the right of regional origin, which is special in nature, so that it must be replaced.

Act No. 22 of 1999 thus removed the hierarchy among local, district, and provincial governments that had been imposed by the central government. In other words, local district heads were no longer required to report to the governor regarding local-level decisions. The Act also granted local governments increased financial responsibility for infrastructure and personnel, including for schools and roads. However, conflicting interpretations on two Articles within the Act have led to disagreements between local

officials and the Ministry of Forestry (Rosenbarger 2009, 19). Article 8 stipulates the central government retains the authority to regulate issues of natural resource management, while Article 10 requires local governments to retain responsibility for protecting natural resources.

Act No. 32 of 2004 builds upon Act No. 22 of 1999, and in Article 12, it further acknowledges the importance of local culture and tradition in establishing local governance systems:

> Village or the like means a unity of constitutional community which has borders and the authority to govern and manage the interest of the local people based on the history and custom of the local community acknowledge and respected within the frame of the Unitary Republic of Indonesia.

The Act, however, also maintains that villages must remain under the guidance of government regulation. Thus, while the law allows for more autonomy, higher levels of government retain control (Bedner and Huis 2008).

Act No. 39 of 2014 on Plantation Development

Act No. 39 of 2014 addresses the rights of indigenous people in instances of land appropriation. In Article 12(1), it states, "companies must consult indigenous land right holders to obtain agreement on the delivery of land and compensation." Further, Article 103 explicitly prohibits government officers from issuing permits of the land of indigenous rights holders, and threatens a five-year prison term as well as a fine of five billion rupiah (around US $350,000).

Constitutional Court Decision No. 35/PUU-X/2012 of May 2013

In 2013, Indonesia's Constitutional Court affirmed the rights of indigenous

peoples to their land and customary forests. In doing so, it extensively references human rights instruments, including ILO Convention 169 on Indigenous and Tribal Peoples (Coalition for Enforcement of Law 2017). It also amended Indonesia's 1999 Forestry Law, which said, "customary forests are state forests located in the areas of custom-based communities." The decision removed the word "state" from this definition, and thus now says, "customary forests are forests located in the areas of custom-based communities." This affirmed that customary forests are no longer a part of state forests, and was a shift from the classifications that had previously been established under the 1999 Basic Forestry Law (Sari 2013, 21). However, how to establish customary forest, in practice, remains unclear. Again, ambiguities surrounding land tenure policy hurt both indigenous communities as well as the forests in which they live.

In some other ways, the situation in Indonesia has been improving. For one, the Indonesian Constitutional Court has been central to the recognition of indigenous land user rights. Since the fall of Suharto in 1998, the Court has emerged as one of the greater successes of the Indonesian reformation movement, or *reformasi.* After its establishment in 2003, it has been perceived as independent from other branches of government, competent, and fair: a significant achievement given the corruption rampant in Indonesia's broader political environment (Butt, 2014, 60). Further, although the Court has no enforcement powers, it has relied on its reputation and popular support to add legitimacy to its decisions. However, the Court's reputation has declined after a scandal in 2013, in which the Court's Chief Justice, Akil Mochtar, was arrested for allegations of receiving bribes and money laundering (*The New York Times* 2014). Because of the Court's reliance on its reputation, this was a significant blow to its political and legal

clout. Thus, it is unclear how scandals like this might impact the enforcement of its rulings in the future.

Draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples

A draft bill, which was placed on a list of bills for the current House of Representatives 2014-2019 term, would legally enshrine the rights of indigenous Indonesians, following the 2013 Constitutional Court decision. In 2018, however, the Indonesian government signaled that the bill was not likely to pass, dubbing it "not a necessity," and wrote that, if passed, it would create budget problems, spark conflicts, and encourage indigenous beliefs contrary to the six religions recognized by the government (Rogers 2016). While a number of more fragmented laws on indigenous rights had been passed, this bill would have tied them together.

Controversy over the draft bill has had recent political implications. Although current President Jokowi was labeled the first-choice candidate of AMAN during the 2014 presidential election because of his commitments to indigenous issues, AMAN has since pulled its support for Jokowi in the upcoming April 2019 election. The former President of AMAN, Abdon Nababan, has stated that AMAN now represents over 24 million indigenous voters, so Jokowi's failure to push for the passage of the draft bill will hurt his campaign (Gokkon 2019).

International Treaties

Additionally, Indonesia is now a signatory to the 2007 United Nations Declaration on the Rights of Indigenous Peoples. While this commitment is non-binding, it nonetheless enshrines rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world," as well as their protection

under national and international law (United Nations Department of Economic and Social Affairs 2007). However, the government has continued to dispute the concept of indigeneity, claiming, in some instances, that all Indonesians are equally indigenous, with the exception of the ethnic Chinese. This has created a basis for the government to reject indigenous rights claims (Coalition for Enforcement of Law and Human Rights in Papua 2017). Of course, this stands in stark contrast to previous legislation and court rulings, where the government has used language that explicitly acknowledges and recognizes the existence of indigenous people and their rights.

The pathway to recognition of forest claims through *adat* law

The substantiation of forest claims through recognition of *adat* law is embedded within the Indonesian national law framework, and requires that communities meet several criteria. Whether or not communities meet these criteria is decided by an independent committee of experts. These criteria are that "*adat* is practised according to its rules; *adat* leadership/institutions still exist; territory is clearly established; and the people still depend upon the forest." (De Royer et al. 2015, 225)

However, one issue is that although the government requires formal, written documentation to substantiate claims, when little conflict exists, people often turn to informal forms of settlement, including through *adat* heads, rather than through legal offices. This can lead to a lack of formal documentation. Furthermore, although some groups had begun documenting their *adat* laws in the 1960s, other groups began more recently. Thus, groups like the Iban, who have a long history of formal documentation, may have stronger claims. Conversely, other groups who began the process of formal

documentation more recently have had the opportunity to "construct" history with the knowledge of how to use this history to their advantage (Ibid.).

Regardless, the Draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples, which has been stalled in the current House of Representatives, has included some provisions to change the process. According to Arizona and Cahyadi (2013), under the Bill, the recognition process would consist of three stages: identification, verification, and ratification. Each stage, further, has its own set of criteria. Within the identification stage, local communities must demonstrate a history of *adat* law communities; *adat* territory; *adat* law; *adat* property rights, inheritance, and artifacts; and a customary governance system. A community would be able to initiate the identification process on its own, or may choose to work with the local government in doing so. Following the initial identification process, the case would then be passed to the regency, provincial, or state level Committee on the Indigenous Peoples, depending on the scope of the claim, for verification. The criteria that these committees consider would be distinct, and add an element reflecting customary land management by native peoples more specifically.

If the case passes the verification stage, it then would be sent to the regent, governor, or president for the third stage, approval. Who decides in the final verification stage would depend upon the geographical scope of the claim; if the claim is limited to a single regency, it is decided by the regent, while if the claim spans multiple provinces, the president has the final decision. Communities then would be given the opportunity to challenge the decision. There are, however, some issues here. For one, the model relies heavily on non-independent, political actors, like the governor and president, who are not

impartial. Because these actors are accountable to satisfying the needs of voters, for example, it is conceivable that their decisions may be swayed by outside groups. Further, national the government has signaled that it is unlikely to pass the Bill regardless.

Government programs

In addition to legislation, the Indonesian government has developed a number of programs aimed at promoting conservation. These include forest certification and related community-based forest management systems. Historically, the Indonesian government's attitude towards land tenure often negatively impacted the forest management behavior of both communities and corporations. For one, as mentioned previously, the imposition of state-created village government systems over preexisting *adat* governance systems severely weakened *adat* institutions and reduced their ability to govern traditional forest management effectively. The establishment of concessionaires and transmigrants in forested areas created competition with local communities as well, and many of these communities then were forced to cultivate on vulnerable forestland or to shorten fallow periods. In response to these issues, the government introduced programs aimed at enhancing the engagement of local communities in forest management (Liu, Faure, and Mascini 2018). Two examples of these, forest certification schemes and community-based forest management programs, will be discussed below.

Forest certification schemes

The Indonesian government's forest certification schemes began in the 1990s, when international NGOs began organizing boycotts of unethically-sourced timber (Liu, Faure, and Mascini 2018, 40). Although initially the main purpose of forest certification was to discourage illegal logging and promote sustainable practices, it now often

emphasizes creating economic and social opportunities for local peoples as well (Harada and Wiyono 2014). Two voluntary certification organizations now exist: the Forest Stewardship Council (FSC) and the Indonesian Eco-label Institute (LEI). Each of these contain measures that require protections for indigenous peoples' rights, and thus represent one method that the government has used to try to balance the interests of industry and local communities. It is important to note, as well, that although both LEI and FSC are voluntary, timber companies often face significant pressure to obtain certification. For example, Lowe's, an American home improvement retail company, will purchase Bornean wood only if it has been FSC certified (Lowe's n.d.).

Principles under the FSC, for example, specifically mention indigenous rights, prescribing that customary rights to own, use, and manage their land and resources must be respected, and that forest management must benefit local communities (Liu, Faure, and Mascini 2018). Further, the FSC was initially established, in part, as a remedy for some of the problems that community-based forest enterprises had faced when pursuing certification, which included high costs of auditing, assessment, and implementation (Harada and Wiyono 2014)

Similarly, LEI's certifications include standards for ecological and social sustainability, and require a community-based forest tenure system and that negative impacts on local communities must be minimized (Liu, Faure, and Mascini 2018, 43). Both LEI and FSC thus also set standards for community-based forest management programs, which will be discussed further in this chapter. In addition to these voluntary schemes, a mandatory certification program has been established under the Ministry of

Forestry. However, the program has been criticized for a lack of independence and transparency (Ibid, 41).

Another issue has been an absence of effective certification bodies that monitor timber operations. International efforts to boycott timber that has been cut illegally have aimed to reduce such practices, but without proper certification bodies, these efforts often lack substance. For one, certification bodies sometimes issue certificates without proper assessment. For example, the *Koalisi Anti Mafia Hutan* (Anti Forest Mafia Coalition) found seven instances in which timber-processing companies in Papua New Guinea had been issuing licenses despite processing wood sourced from illegally logged forests (Syahni 2017).

And, when this occurs, legal consequences for violations often are not carried out effectively. Little transparency exists regarding when these certification bodies, which are supervised by the National Accreditation Committee and the Ministry of Environment and Forestry, impose sanctions on timber companies for noncompliance (Cetera et al. 2018). Further, in some instances, the Indonesian government has been severely criticized for its improper handling of offenses related to illegal logging. In one instance in 2014, Labora Sitorus, a Papuan police officer, received a light sentence of two years in prison and a fine of 50 million rupiah ($4250) for charges including money laundering and illegal timber smuggling (Montesori 2014). A statement from the Environmental Investigation Agency decried the case, saying it "highlights failings of [Indonesia's] legal timber system." (Environmental Investigation Agency 2014a).

Conflict has also stemmed from involvement of regional governments in illegally distributing forest resource extraction permits, which led to the Ministry of Forestry

attempting to recentralize power through a series of ministerial decrees in 2000, with

regional governments continuing to issue such permits in spite of this through 2004 (Liu,

Faure, and Mascini 2018, 38). Thus, decentralization and subsequent efforts at

recentralization have been a recurring pattern. Again, ambiguity in the law is a

contributing factor. In addition to this, the illegal distribution of forest permits has often

encroached upon indigenous land. A case study of resulting conflicts between a

plantation company and several Dayak communities will be discussed later in this

chapter.

However, because of an increasing desire for sustainably-sourced timber in

markets in the EU, the US, and Australia, combined with a distrust for government

regulation in developing countries, third-party legality verification systems has been

created (Ibid.). One of these is the Timber Legality Assurance System (TLAS), which

was established in 2009. In conjunction with this, in 2016 the government began issuing

Forest Law Enforcement, Governance, and Trade timber export licenses. Licensed

Indonesian timber now is able to enter the European Union with much more ease;

conversely, non-licensed EU timber imports undergo a number of procedures to ensure

that it is sustainably sourced (Cetera et al. 2018). Because the program is relatively

recent, evidence of its effects is not yet available. However, some organizations, like the

World Resources Institute, have reported instances of "timber laundering," in which

illegal timber is mixed in with legal timber, and both receive certification.

Community-based forest management

Legislation governing community-based forest management (CBFM) has also

been passed, following the government's recognition of customary forests in 1990. While

CBFM programs established under the Indonesian state do not grant ownership rights to local communities, they allow varying degrees of participation in forest management depending on the program. CBFM systems also necessarily vary with regard to the characteristics of local communities, which include what types of timber and non-timber products are extracted, as well as the degree of local communities' dependency upon them.

An important distinction relevant to CBFM and other community forestry programs, then, is one of access and property. This was described Ribot and Peluso (2003) in their "theory of access" outline. Issues unique to access represent, for the Dayaks, pivotal factors that have the potential to protect or constrain their livelihood strategies. Ribot and Peluso define access as "the *ability* to benefit from things—including material objects, persons, institutions, and symbols," and property as the "*right* to benefit from things." Thus, the Indonesian government controls resource access through its ownership of forest property, while communities, like the Dayaks, must work through these institutions to maintain their access. One way in which this is achieved is through the implementation of CBFM programs, where rights to access are facilitated by the government, as the property owner and controller of access.

Several policies exist in both private forests and state forests to support CBFM in Indonesia. Currently, all systems of community forestry are based on "core memberships" of local communities that were often marginalized and seen as inferior during the first few decades of forestry development following the 1970s (Sardjono and Imang 2015). These systems are also complicated. Legally, a number of different frameworks exist through which stakeholders may cooperate.

Indonesia has three main community-based forestry schemes: community forest (*hutan kemasyaratkan*) (HKm), private forest (*hutan rakyat*) (HR), and village forest (*hutan desa*) (HD). A number of legal arrangements surrounding CBFM now exists in Indonesia, but three are particularly relevant: The Village Forest, the Community Forest, and the People's Timber Plantation. It is important to note, though, that these programs only cover state forest, and thus are not relevant to customary forest that now has been classified separately from state forest. However, the area of forest land that actually has been recognized through indigenous claims has been rather small[1], and thus the reality is that many of the Dayaks continue to rely upon state forest land, and these programs therefore continue to maintain their relevance to Dayak livelihoods.

The Village Forest (*Hutan Desa*) secures forest use access of local communities to forest resources. Again, it covers only state forest land, which is controlled by the national government. Under the program, forest management is carried out by village communities over a period of 35 years, with the possibility for a renewal covering the following 35 years pending the approval of a long term work plan (Sari 2013, 38). In addition, committees within the communities are responsible for regularly submitting both annual and long-term plans to the provincial governor to secure their user rights. Thus, the targets of the Village Forest exist at the village level. Because the other two main programs, the Community Forest and the People's Timber Plantation focus primarily on community farmer's groups, the Village Forest and its management by village institutions is most relevant for the Dayaks. The permits issued under the program

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[1] President Jokowi's promise to return 12.7 million hectares of land largely has been left unfulfilled; as of 2017, titles to only 1.9 million hectares of forest land had been distributed (Chandran 2018)

may cover both protection and production forests if no conflicting rights or permits for those areas exist, although the activities permitted differ depending on whether the forest land is classified for production or protection (De Royer, Van Noordwijk, and Roshetko 2018, 170). For example, within a protection forest, only extraction of non-timber forest products is allowed, while in a production forest, communities may extract both timber and non-timber forest products.

The Community Forest (*Hutan Kemasyarakatan*) is focused on promoting the welfare of communities living in and around forested areas by protecting their access to forest resources (Sari 2013). Unlike the Village Forest, only community farmers' groups are eligible to apply for permits. However, the Community Forest program also applies to national forest land that has been classified as production or protection forest, as long as no conflicting permits exist. And, similar to the Village Forest, the types of activities that are permitted differ depending on the classification of the forest land as well; non-timber forest products may be extracted from both protection and production forest, but timber forest products may be extracted only from production forest (De Royer, Van Noordwijk, and Roshetko 2018, 170). Thus, Community Forest and Village Forest are very similar in their scope, and mainly differ in their target populations.

The People's Timber Plantation (*Hutan Tanaman Rakyat*) is aimed at accelerating economic growth by focusing primarily on increasing timber production for local communities, which, in theory, would reduce unemployment and poverty. Because the focus is on timber production, however, the program only applies to production forest. Similar to the Community Forest, the program is limited to community farmers' groups.

As mentioned above, of the three programs, the Village Forest is most relevant to this thesis, first, because the Dayaks have participated significantly in the Village Forest program, and second, because research on its effectiveness exists. In Kalimantan, the land area classified as Village Forest has indeed been increasing. In 2012, around 144 square kilometers had been classified in Village Forest, but by 2016, this had risen to 1,195 square kilometers (Santika et al. 2017, 62). However, in 2016, only 65 percent of Village Forest land that had been granted to communities in Kalimantan had been intact forest (with forest cover between 80 and 100 percent). Over 20 percent of the land granted had already been severely degraded (with forest cover less than 40 percent)(Ibid.). Thus, quality of the land, in addition to the quantity, is extremely important. Forest livelihoods are of course heavily impacted by the quality of the forest upon which they depend. In areas with severe forest degradation, the ability of local communities to reap the intended benefits of CBFM schemes is significantly limited.

Regardless, the Village Forest program has been successful by some measures. One aim of community-based forest management schemes, generally, is to promote sustainable forest use. In Kalimantan, some research has demonstrated that the Village Forest program has indeed helped avoid deforestation, although its effectiveness in doing so has varied over different years and locations (Ibid.). However, significant issues also exist. These have included a lack of monitoring, particularly in areas that are not effectively managed, which has created opportunities for illegal logging. Another problem is that, for the Dayaks, the Village Forest program does not adequately consider the complexities of customary peoples' claims (Fujiwara 2017). For one, the requirement

that a map of the requested land area be provided makes it difficult for communities experiencing conflicts over territory.

As will be discussed in the case studies later in this chapter, such conflicts are particularly relevant in *adat* communities due to competition between groups with ancestral ties to land and groups that had been moved to that land for various reasons. Also important is the Village Forest program's lack of emphasis on working alongside existing *adat* governance structures that often have long-established rules regulating the sharing of forest resources. This may worsen mistrust among communities and local governments, particularly because state law takes precedent in any instances where conflicts between state law and *adat* law exist.

A study by Fujiwara (2017) found that following the establishment of Village Forest programs, some communities hurried to claim land use rights due to concern that private corporations would grab the land. This led to a lack of preparedness for many claims, where communities failed to reach agreements outlining Village Forest land and its boundaries among communities. Furthermore, in some cases, oil palm plantations were created on land that had already been approved for incorporation into the Village Forest Program, which both affirmed and intensified already-existing fears that corporations would seize land. Again, a significant issue is ambiguity. Generally, even when permit requests are submitted, the process by which they are approved often is extremely slow. The process of applying for permits also lacks accessibility, as many communities are unaware of how to apply. However, the government has made efforts to streamline the process. For example, a two-year moratorium was implemented in 2011 on licenses for primary natural forests in order to create time to undertake forest governance

reforms (Austin et al. 2014). It has since been extended three times, and is now expended to end in 2019 (Munthe and Jensen 2017).

 Regardless, in part because of these problems, alongside perceived low financial benefits from local management, some communities in West Kalimantan have preferred private industry work (Langston et al. 2017). Thus, a significant issue in CBFM programs in Kalimantan has been the continued presence of poverty for communities reliant on forest resources, difficulties in securing access to such resources, and profitable alternatives to convert forest land. Economic factors, then, may in some cases be attractive enough to outweigh the potential benefits of local management and its relationship with *adat* customs and increased conservation.

 In addition, CBFM may consist of other agreements between private companies and local communities (company-community partnerships), or between conservation offices and local communities (Collaborative Conservation Management) (Liu, Faure, and Mascini 2018, 39). Company-community partnerships have been implemented in cases where, for example, a company is granted a concession for a timber plantation where community members had claimed ownership, creating conflicts. In some cases, community members might grow trees in partnership with private companies, and, in return, receive a share of the profits (Nawir and Santoso 2005). Collaborative Conservation Management, while often centered around conservation offices and local communities, may also involve a multitude of stakeholders, including NGOs and other government structures. However, the bargaining power of local communities is often weak in comparison to that of companies and conservation offices, and thus, the rights of these communities can remain limited (Ibid.).

Furthermore, some forest certification schemes now include provisions that encourage CBFM. The FSC, for one, has a community-based forest management scheme that is also targeted at local communities, by allowing community producers to form management units and apply for a single FSC certificate. While forest certification schemes were once perceived negatively by some small or non-industrial operations, partly due to concern over negative economic consequences and rising costs, these smaller operations in recent years increasingly have been involved in forest certification schemes (Maryudi et al. 2017) . And, forest certification schemes may improve local peoples' perceptions towards conserving forests and its potential financial benefits (Harada and Wiyono 2014)**.**

Case studies

While the government has referenced *adat* communities extensively in its legal frameworks, in practice, little has been accomplished. One could be a perception that by affording indigenous communities special protections and exclusive rights to natural resources, revenue from resource extraction by larger corporations will fall. Another issue is oversight. Indonesia's monitoring and enforcement systems have remained weak, and, combined with an ineffective judicial system, when indigenous land rights have been violated, there has been little recourse (McCarthy and Robinson 2016). As will be demonstrated below, this is intensified when the law is ambiguous. One of Elinor Ostrom's (1999) principles important to long-enduring common-pool resources institutions, as discussed in Chapter Three, is that the resource should have clearly defined boundaries. The lack of clearly defined boundaries, here, severely hampers the

ability of local communities to manage their resources effectively. This section will discuss barriers to indigenous claims in six case studies.

The first three case studies, from Central Kalimantan, Lombok province, and West Sinjai, demonstrate issues of corruption and ambiguity in the law, as well as the challenge governments face in balancing the interests of industry and local communities. Another issue is the assumption that communities are unitary in their desire to assert indigenous identity; because indigenous claims are recognized at the community level, the reluctance of some members may hinder the claims of others.

The fourth and fifth case study, from North Kalimantan and West Kalimantan, both pertain to challenges in claiming indigeneity to gain land tenure. As will be discussed below, a significant issue is how definitions of indigeneity based on historical ties to a particular tract of land can lead to intensified land conflicts between indigenous groups. The problem is complicated, for one, by the fact that many indigenous groups throughout Kalimantan have remained quite mobile, which severely weakens land claims for some. Finally, the sixth case, from Indonesian Papua, will show the Indonesian government's impulse to retain control in the face of strengthening *adat* institutions.

Case Study: Gunung Mas, Central Kalimantan

In one instance, reported by the Environmental Investigation Agency in 2012, Dayaks from nine Central Kalimantese villages in a formal letter to the sub-district government rejected the proposal of an oil palm concession, and later attended meetings with the regency and provincial government, reaffirming their objections (Environmental Investigation Agency 2014b). The regency then reviewed the case and issued an instruction banning the annexation of the forest on the basis that the communities held

land rights there. The regency then instructed the company to map tenure claims within the concession. Indigenous land within the concession was divided into individual land and communally-owned land.

Subsequently, one Dayak community leader reported being offered a bribe from the company for cooperation in establishing the oil palm concession. When he refused, company representatives then asked community members to mark out the locations of their holdings and then paid a flat rate per hectare. The company, however, had failed to properly consider community land, and many community members sold much of their communal land, even though the sale of community land also had been prohibited by the regency government. Two months later, a third party was issued a permit to extract nearly 60,000 cubic meters of timber from within the concession. Thus, even though the community had followed procedure in objecting to the proposal of the concession, bribery, corruption, and ambiguity resulted in the issuing of the concession regardless. This led to a loss of communal land, upon which Dayak livelihoods often rely heavily.

Case study: Rempek Village, Lombok

While located outside of Kalimantan, a case study of land tenure conflicts in Lombok, an island West of Bali, illustrates issues of ambiguity in the law, corruption, and the failure of government authorities to adequately address these conflicts, probably because they were often involved in corrupt activities themselves. This case study draws from the research of Langston et al. (2017), who studied Rempek village and its tenure conflicts extensively.

Land ownership in Rempek has remained ambiguous since the first half of the twentieth century, when the Dutch colonial authority demarcated forest boundaries and

allowed farmers to cultivate land on its outer edges. Later, after Indonesian independence, the Forest Agency established its own official forest borders in 1957, and there was little dispute over these until the 1980s, when the district office began permitting villagers to cultivate one square hectare of production forest per individual. It is important to note that this permission granted land use, and not ownership. In 1984, however, as part of the National Land Certification Scheme, land ownership certificates within the area were distributed, and their recipients were district and sub-district officials. Five years later, the government retracted its program that had allowed villagers to plant within the production forest, thus creating significant conflict with local communities, which refused to leave.

In 1991, the National Land Agency undertook a mapping and surveying project, which suggested that the land, in actuality, belonged outside the forested area that was under the ownership of the Ministry of Forestry, and thus belonged to the local government instead. Nonetheless, the central government responded by issuing concessions to a timber company to begin extracting timber within the area of dispute. Conflict escalated, as villagers became emboldened by the support of the National Land Agency and national NGOs. Efforts to establish community forestry projects later were made by NGOs, but failed, as they did not address the boundary issues and thus community members refused to accept the projects. Finally, in 2012, the NGO Samanta, along with community members, established a community-based forest management scheme. While members now receive user rights, the conflict is not yet resolved, from their perspective, as land certifications have not yet been issued.

The conflicts resulting from poorly defined land tenure in Rempek have had a number of negative impacts on villagers. State forest in particular often lacks adequate infrastructure, and thus roads are poorly maintained, making it difficult for children to get to school, electricity is not supplied, and houses are ill-constructed. While the land claims in Rempek do not have a customary basis, the villagers face similar issues that customary communities do. Ambiguity in the law often leads to a distrust in government and can be serious limitations to improving the livelihoods of local villagers, particularly in scenarios when their livelihoods depend upon the conflicted land. Although natural resource extraction is often justified in the name of national interested, as demonstrated in this case, the negative impacts clearly affect some groups much more than others.

Case study: Turungan, West Sinjai

Conflicts between the national and regional governments are another potential problem. One case documented by De Muur (2018) demonstrates first, a lack of cohesion between the judiciary and the regional and local governments, and second, that a diverse range of interests exists, even within a customary community that may appear to be unitary to outside observers.

West Sinjai has experienced significant conflict land ownership conflicts between the regional government and local communities since the mid-1990s. Many villagers in West Sinjai live on state forestland and cultivate rice, coffee, and cloves. Some farmers have suggested, though, that during the colonial era, the land was recognized as community forest. Between 2009 and 2015 the regional forestry department arrested and charged 15 local farmers with illegal logging in a state forest. In response, student activists asserted that the arrests were motivated, in part, by regional government

officials' interests in receiving annual reforestation funds from the central government. These arrests, the activists argued, were used to demonstrate to the central government that these reforestation funds were indeed necessary to rehabilitate forests that had been degraded by local communities.

One farmer in particular, named Bahtiar, was encouraged by local activists and AMAN to register his village community as a member of AMAN, which would entitle it to AMAN's legal services. In order to do so, though, he needed to prove that his community indeed fit the legal definition of *adat* communities, which requires the existence of *adat* laws, *adat* institutions, and a communal *adat* territory. According to Bahtiar, his community easily met these requirements.

Although national legislation recognizing *adat* communities has been passed, regional legislation has been lacking. Student activists had for years pushed for the passage of regional legislation, but this was hampered by a lack of connections with influential local officials. This was partly due to reluctance from some village members to politicize their indigenous identity. Some members believed that customary rules and institutions should be kept within the community, and thus were not interested in using indigeneity as a means to claim land use rights. Thus, it is important while indigenous status is applied to entire communities, members of these communities may have interests that conflict with one another. In addition to this problem, officials from the regional forestry department also believed that although communities in the area claimed to be indigenous, they in fact were not, and were motivated only by the prospect of obtaining more land.

The failure of the provincial government to recognize Bahtiar's *adat* rights ultimately led to his conviction for illegal logging. In the end, the court ruled that *adat* communities may only be recognized in court when they have already been recognized by district regulations. Because the provincial government had not recognized the community as indigenous, it was found that Bahtiar had no right to cultivate the land. This also suggests that it is not the responsibility of the judiciary, but instead of regional and local governments, to recognize *adat* communities.

Case study: Malinau, North Kalimantan

One case, mentioned earlier in this chapter, demonstrates the conflicts that may arise from tenure claims that rely on definitions of indigeneity based on territoriality and a history of occupation of that land. As is the case for many Dayak groups, history of use and *adat* law constitute central bases for tenure claims in Malinau, a region of North Kalimantan. Wollenberg, Moeliono and Limberg (2009) extensively studied conflicting claims put forth by a number of groups, all indigenous to Kalimantan, although with varying degrees of historical ties to Malinau. One group, the Kenyah, originally from Pujungan, settled in Malinau with the permission of the customary head of the Langap, a nearby village, in 1972. A decade later, the government resettled two Punan communities in the same area. Around the same time, a Merap group from the Sengayan River also moved to the area, resulting in four Dayak communities living nearby one another in Malinau. Agreements on land use were made among one another based on *adat* law, as well as with the nearby Langap village.

Little conflict existed between the four Dayak groups before commercial forest clearing began in the areas, which opened up the forest for small-scale exploitation. Two

of the groups, the Merap and the Kenyah, thus put forth land claims; the Merap claimed

they were the oldest settlers and the Kenyah emphasized their agreements with the

Langap village. Neither Punan communities had strong claims. The potential financial

benefits in compensation payments and fees led to a race in claiming forestland based on

adat.

This case study also demonstrates the processes through which *adat* rights are

recognized by the state. As mentioned previously, an independent committee of experts

first must verify that a number of criteria have been met. These criteria require that *adat*

law is still practiced, *adat* institutions still exist, territorial boundaries are clear, and the

communities continue to be reliant on forest resources. The continued existence of *adat*

law and its institutions tend to be more difficult to prove. Before the large-scale

exploitation of forest resources in Malinau began, for instance, the lack of conflict

between adjacent communities meant that there was little need for members to seek out

formal institutions for conflict resolution. Instead, disputes generally were settled through

informally by *adat* leaders, and thus little documentation exist. Further, since

Wollenberg, Moeliono, and Limberg's research, the Punan had only recently begun

writing down their *adat* laws and history, and thus, in some ways, had an advantage in

that they were able to "construct" history to better fit their claims. The Kenyah and the

Merap, by comparison, had written their *adat* laws as early as 1968. Some interpretations

of history, in the end, further led to conflicts, though, as families from some communities

have claimed larger tracts of land based on asserted familial ties with past sultans.

Regardless, a major issue surrounding *adat* claims in Malinau has surrounded a

history of migration combined with settlements sponsored by the government, which has

led to the establishment of four communities, all indigenous to Kalimantan, in one area. While inland groups like the Kenyah were often more territorial, their territories were not always permanent. Further, coastal groups like the Punan, which depended more heavily on trade, were even more mobile. Again, claims that rely on historical attachment to given areas remove bases for claims from groups recently settled in an area, including communities that had been resettled by the government in the 1960s and 1970s. At the time of the study, some Punan groups had moved from Malinau and returned to their ancestral territories. The Punan, further, historically had remained quite scattered in small groups, which even further weakens their claims to land tenure. Thus, while claims based on historical presence are beneficial to some, they have the potential to severely constrain sources of livelihood for potentially equally deserving others. The government has also been reluctant to interfere when conflicts have arisen, creating anxiety for communities with weaker claims that increasingly lack economic security.

Case study: Kapuas, West Kalimantan

The following case study, from Kapuas, West Kalimantan, will further illustrate some of the issues related to indigenous claims to land tenure based on territory and prior occupation. Specifically, such definitions of indigeneity often fail to acknowledge that virtually all ethnic groups have been migrants at some point, and the Dayaks have been particularly mobile.

This case study draws from the field work of De Royer et al. (2015), who studied two villages in West Kalimantan. The first village, Manua Sadap, has been occupied by Iban Dayak communities, while the second, Pulau Manak, has been occupied by Embaloh Dayak communities.

The Iban Dayaks are spread throughout northwestern Borneo, although their West Kalimantantese population is relatively small compared to their population across the Indonesian-Malaysian border, in Sarawak. Their migration from the up-river Iban region in Sarawak began in the late 19th Century. The Embaloh Dayak communities, by contrast, have been established in the area for at least twenty generations, and describe themselves as the original inhabitants of the region. Both communities share Dayak cultural practices; at the time of the study, many inhabited longhouses and practiced swidden cultivation. However, both communities in recent years have experienced heightened competition for land, which, accompanied by increased use of fertilizers and pesticides, has forced communities to adapt their agricultural practices and cultivate fewer plots. Non-farming employment was extremely low throughout the region, so both communities further heavily relied on forest products as secondary sources of livelihoods. This reliance has intensified conflicts, as both communities are dependent on access to forests.

Historically, little conflict existed between the two groups. The Iban occupied upstream, uninhabited areas of mature forest that had been unoccupied by the Embaloh Dayaks, who settled in the lowlands near the Embaloh river. The relationship between these two communities, further, was established through *adat* procedures, covering the border between the two communities, river resources, and common forest properties. *Adat* law was also used as the primary system of village governance within each of the two communities.

The introduction of a UNREDD+ pilot program in the area intensified arguments over forest boundaries and resource ownership, due to the program's possible financial

benefits. Because of this, both groups constructed historical claims to tenure. The Embaloh asserted that because the Iban were relatively recent arrivals, the Embaloh themselves were the legitimate owners. The Iban argued, on the other hand, that they deserved land ownership and recognition because of their assistance to the Embaloh during conflicts with Melayu groups. These conflicts led to the abandonment of some previous *adat* agreements, which outlined, for example, shared ownership of a tract of mature forest. In addition, definitions of indigeneity under UNREDD+, which link land tenure claims to a historical occupancy of land, runs the risk of excluding particular indigenous groups like the Embaloh. As Li (2007) notes, definitions relying on geographic boundaries often restrict claims to isolated communities. Recognition that customary land is often fluid and changing, instead, would broaden conceptions of indigeneity, and recognize the diversity of Dayak groups and their often competing interests.

Case Study: Indonesian Papua

A recurring pattern for the Indonesian government has been one of releasing and reclaiming control. When the government decentralized after the fall of Suharto, for example, provincial governments began distributing forest concessions at alarming rates, prompting the national government to recentralize some of its control in forestry (Liu, Faure, and Mascini 2018, 38). In Papua, alongside of Indonesian decentralization more generally, were demands for Papuan independence, which prompted the central government to grant the province special autonomy status. This has led to decentralization laws in Papua and the province's subsequent rise in the strength of its *adat* institutions (Muhammad 2013). While outside of Kalimantan, the Papuan case

illustrates the government's desire to maintain control and its attempts to balance this control with the increasing strength of indigenous movements. However, the Papuan case has been intensified by threats from these secessionist movements, which perhaps explains the government's willingness to undertake more drastic measures in retaining control (Ibid.).

Nonetheless, the passage of the Special Autonomy Law facilitated the establishment of the Papua Customary Council (*Dewan Adat Papua*), which claims to represent more than 300 tribes in Papua. The Council has been praised for its strong democratic legitimacy and pushing for the right to a livelihood, with an emphasis on customary land tenure (Kayoi, Wells, and Shepherd 2008, 172). Yet, the Council has also repeatedly criticized the Indonesian government, claiming, in a 2010 report submitted to the United Nations Human Rights Council, that "human rights abuses by the state including violations of the rights of Indigenous People", that "there is no freedom of expression and that the situation is steadily worsening in Papua", and that "West Papuans[2] are being jailed, tortured, and killed for peacefully expressing their political opinion and desire for decolonization and self-determination" (Papua Customary Council 2010). In response, the government has refused to recognize the Council, leading to a lack of implementation of concrete programs for Papuans (Dewi 2017).

Maryudi et al. (2017) reports that instead, the Indonesian government in 2010 created the Papuan Customary Deliberative Assembly (*Lembaga Musyawarah Adat*), using the

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[2] Papua refers to the Indonesian part of New Guinea, on the west side of the island. West Papua and the province of Papua are distinct; West Papua separated from the province of Papua in 2003, although the Papua Customary Council represents indigenous groups in both provinces.

name of a past institution that opposed the central government in the 1990s. The new

Papuan Customary Deliberative Assembly, established with the support of the national

government's Coordinating Ministry of Political, Legal, and Security Affairs, has tried to

remove the influence of the Papua Customary Council and increase support for the

central government's own institution. While it has attempted to work at a grassroots

level, however, it has not garnered much popular support.

Another issue, according to Dewi (2010), is that under Papua's Special Autonomy

Law, every policy implemented in Papua must first be approved by *adat* institutions. The

central government may then use the Papuan Customary Deliberative Assembly to

approve unilaterally any policies it desires. For example, the Papuan Customary

Deliberative Assembly has been brokering land to draw in foreign investments. This,

however, has come at the cost of overriding the village *adat* heads. In doing so, the

government has created the Papuan Customary Deliberative Assembly as its own *adat*

"proxy" institution to promote its own interests in Papuan development.

Government efforts to reclaim control from indigenous institutions in Papua are more

severe than in Kalimantan; it is likely that its behavior has been motivated, in large part,

by a perceived overstep from the Papuan Customary Council in criticizing the

government. Yet, the Papuan case does illustrate the trend in Indonesia of the rise in *adat*

institutions and the government's general impulse to retain control. This may then help

explain why legislation like the Draft Bill on the Recognition and Protection of the Rights

of Indigenous Peoples has so far failed to pass; that is, one concern is that the

government's increasing support of indigenous rights is largely symbolic. Current

President Jokowi, for example, has been repeatedly criticized by AMAN for his lack of action on indigenous issues (Nugroho 2019).

Ostrom's (1999) principles on common pool resource management call for autonomy; that is, that government authorities should not infringe upon the rights of users to establish their own institutions. The Indonesian government's interventions, then, may hamper the abilities of *adat* institutions under the Papuan Customary Council to manage their forests in an effective manner.

Concerns

Valid concerns regarding creating avenues for forest tenure claims, however, have also been raised. While the establishment and growth of large corporations clearly has had negative impacts, positive impacts also exist. The government's concern with developing the national economy reflects this. The growth of industry is often associated with the stimulation of local economies. This was the case, for example, in the industrial revolution of the United States, where the exploitation of natural resources fueled the immense speed with which the American economy flourished (Klein 2012).

Natural resource-intensive industries may also promote the growth of transportation infrastructure and can create new venues for isolated populations to gain access to resources like education and healthcare, both of which have great potential to improve quality of life and social mobility. During the New Order, for example, logging companies were often legally required to construct health and social facilities for local communities (Tanasaldy 1981, 185). While, in theory, this should have had many benefits for these communities, corruption of government officials and logging

operations severely hampered the potential benefits (Ibid.). Thus, despite a requirement

for corporations to create social facilities, this was often not the case in practice.

On one hand, diversification of livelihoods, which for the Dayaks often relies on

access to forest resources, has a safety net function. Indeed, some research has attributed

livelihood diversification to helping families escape extreme poverty internationally

(Asfaw et al. 2015; Rist, Feintrenie, and Levang 2010; Ellis 1998). As described above,

many Dayaks rely on subsistence farming, often consisting of swidden agriculture, as

well as forest products and some non-farm work, which helps protect against the potential

volatilities of resource availability. On the other hand, other research has noted that other,

more specialized occupations, like those created by oil palm plantations and larger

industries, have greater poverty alleviation potential. This is particularly true in measures

of health care, education, and infrastructure (Rival and Levang 2014, 20; Gönner 2017,

48). For these reasons, many rural indigenous households now prefer occupations in

larger industries over farming and traditional forest use (Rival and Levang 2014). It is

also important to note, though, that historically, in many cases, industry has not provided

stable, long-term jobs for local populations. In Western Kalimantan, often the majority of

skilled-workers in plantations are not locals (Alqadrie 1990). Locals are also sometimes

perceived as uneducated, more difficult to deal with, and lacking the specific skills

needed by plantation operations (Tanasaldy 2012, 188).

Regardless, this has contributed to two different "moral economies" (Lounela

2017). On one hand, subsistence farming traditionally has encouraged a collectivist

orientation, where the emphasis has been on subsistence and the sharing of products

within communities. In opposition to this has been a shift to market dependency, where

some now generate income from larger industries like the rubber economy. Changing

cultural values, then, is one effect. Gönner (2017) describes a dichotomy of the expansion

of oil palm and coal mining operations pushing and pulling livelihoods away from and

towards subsistence farming. The first scenario, the "push" of declining resources

availabilities, has been the primary focus of this chapter. It is concerned with issues

preventing some indigenous communities from accessing forest resources upon which

their livelihoods depend. The effect is that many turn to occupational opportunities

afforded by larger industries. The second scenario, the "pull" of industry and its potential

economic benefits, emphasizes the attraction, especially for many young people, of more

modern lifestyles that traditional agricultural practices simply cannot provide.

Whether or not industry has truly been beneficial to Kalimantese indigenous

peoples,

it is therefore important to emphasize the diversity of indigenous interests. Even outside

of economic interests, consider, again, the case study in West Sinjai. Some older village

members preferred not to register their community as indigenous because although they

identified as indigenous, they believed that their indigenous practices belonged within the

village, and should not have been exposed to outsiders (Van Der Muur 2018).

Regardless, the political climate borne out of *reformasi* has brought with it a

proliferation of identity politics and heightened demands for community control over

customary land and resources. One effect has been increased tensions among ethnic

groups. This has included conflict between Dayak and non-Dayak groups, such as Dayak

violence against the resettled Madurese in the 1990s, described in Chapter Two, as well

as conflict within Dayak groups, such as the above-mentioned conflicting claims between

the Punan and the Kenyah in the Malinau region (Larrabure and Moeliono 2013). While cultural identity for the Dayaks has long been political, this has become particularly salient after the Constitutional Court in 2013 ruled requiring indigenous land claims to be accompanied by the existence of *adat* institutions and other *adat*-related criteria described above.

Assertions of indigenous identity, then, have become inextricably linked to decentralization, as indigenous communities have emerged as powerful interest groups in the realm of Indonesian politics. AMAN, for example, played a pivotal role in supporting the passage of the 2013 Constitutional Court decision and then by exerting pressure on President Jokowi to pass pending legislation in accordance with the Court decision. AMAN, as a representative of a large voter base, is also likely to impact the April 2019 election cycle. However, an AMAN representative in February 2019 stated, "There is no strong reason for choosing Jokowi since six out of the nine development programs he has promised have not yet materialized. There is no reason to choose Prabowo either since he has never brought up indigenous people's issues" (Nugroho 2019). The prioritizing of indigenous interests in these campaigns, or lack thereof, may be an important signifier of the future direction of indigenous tenure rights, particularly because criticisms of current President Jokowi include his failure to fulfill his own campaign promises of pushing for the passage of the Draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples (Ibid.).

Chapter 5: Recommendations

To summarize, a fundamental concern for the Dayaks is one of claims to forest land. Fujiwara (2017), drawing from a diverse body of literature outlining the challenges that communities face in gaining resource access, identifies three broad categories: regulatory procedures, roles among actors, and resources. The Dayaks, unfortunately, have faced all three challenges. Because the Dayaks as an indigenous group also face issues of defining indigeneity in addition to these challenges, such issues will be discussed as well. Thus, this chapter will be structured into these categories, and recommendations will be suggested within each.

Regulatory procedures

Within barriers created by regulatory procedures is the critical issue of ambiguities in the law, which has been a common theme throughout this thesis. It hampers the ability of communities, first, to obtain recognition of their indigenous status, and second, to benefit from the rights that should follow in theory.

The first issue is related directly to Indonesian law, as decisions made regarding why some groups are granted status yet others are denied is oftentimes unclear. Even definitions of indigenity, to start, are ambiguous and are a source of contention. For one, conceptions of indigeneity put forth by intergovernmental organizations, such as in the 2007 UN Declaration on the Rights of Indigenous Peoples, emphasize historical ties to a particular tract of land, yet in Indonesia, the reality is that many West Kalimantese indigenous groups have been rather mobile. Uncertainty in how to define indigineity, further, can be a difficult issue for the government as well as for indigenous peoples. Even when the government is well-intentioned, it is extremely difficult to identify what

tracts of land ought to be granted to which groups, particularly because mobility is a

necessary component of livelihood strategies for many Dayak groups.

With regard to the second issue, ambiguity may also lead to anxieties from

indigenous communities in securing their land rights, which in some cases has created

competitive environments where groups scramble to apply for land without being fully

prepared for the application process. And, the lack of preparedness has sometimes led to

the rejection of such rights claims. In other cases, even some communities that had their

claims recognized later found that the government allowed oil palm plantations to be

constructed on their land (Fujiwara 2017).

A possible explanation is the impulse of the Indonesian government to retain

control. Shlager and Ostrom (1992) describe the necessity for governments to protect the

rights of local users to manage their resources. Yet, ambiguity in some cases may be used

as a tool for governments to retain power. The Supreme Court's 2013 recognition of

indigenous land as distinct from state land and the Indonesian House of Representatives'

subsequent failure to pass concrete legislation enforcing the decision is one example

among many (Rogers 2016). Ambiguity allows the government a degree of flexibility in

the law's invocation, and while decentralization has indeed increased decision-making

power among local communities, ambiguity has remained a critical issue, as national,

provincial, and local governments often are not equally informed.

One means to address the government's tendency to maintain control is through

the co-management of resources in community forestry, wherein both the government

and the community would share power. This has been the focus of many community

forestry efforts, and in Indonesia this often takes the form of community access rights on

state-owned land. Indeed, formal CBFM systems in Indonesia, like the Village Forest, exist in state forest and thus deal with access, and not ownership. On one hand, co-management of forests has been quite effective in some cases in Indonesia (Bock 2012). For the Indonesian government, co-management can be particularly attractive because it allows local communities to participate in forest governance, yet some state-control can be maintained. On the other, though any improvements in such systems surely would be valuable, one concern is that the existence of such systems could be used as a means to justify government retention of customary lands. Because communities already have access, it then becomes easier to deemphasize the need for customary ownership.

Of course, claiming indigeneity for customary land rights is a separate matter. The current state of affairs in Indonesia is that, in actuality, a relatively small area of land ownership has been granted to indigenous communities. Thus, many communities continue to rely on community-based forest management systems that focus on access rather than ownership. While ideally, passing legislation that more concretely affirms the rights of indigenous people to customary land ownership would remove issues of access to government-owned land, improving and protecting such access in instances where ownership has not yet been granted is also necessary.

Interactions among actors

Problems of interactions, for the Dayaks, are related to feelings of distrust among communities and governments at different levels, which often are fueled by difficulties in negotiating an intricate, often corrupt, political system. Decentralization, again, has complicated the issue further. In some cases, the interests of different layers of government have been openly at odds with one another. One example is the Ministry of

Forestry's 2000 decision to recentralize control on the issuing process of forest extraction permits and provincial governments continuing to issue the permits in spite of this, leading to serious forest degradation (Liu, Faure, and Mascini 2018). Regional governments profited from the sales of these permits, much to the chagrin of the Ministry of Forestry, which had recentralized, in part, to aid in natural resource conservation. In other cases, the issue has been a lack of communication, which sometimes led to officials simply not knowing about certain programs. This was indeed the case with the establishment of a 2014 moratorium on issuing new licenses to convert primary forests and peatland, where often lack of enforcement was due local officials not knowing about the moratorium (Austin et al. 2014).

Corruption represents yet another problem, and likely is a significant contributor to general feelings of distrust between indigenous communities and governments at all levels. In the same instance, mentioned in the previous paragraph, where provincial governments continued to issue forest extraction permits despite the Ministry of Forestry's prohibitions, a chief motivator was corruption—some officials directly profited from the corrupt distribution of such permits to logging concessionaires (Hohne et al. 2018). Ostrom's (1999) second principle on common pool resource management, then, which asserts that participants must perceive the rules assigning benefits and the rules assigning costs as fair, is directly inhibited by such corruption and the mistrust of officials that it breeds.

One solution might be the introduction of effective mediators with the capacity to facilitate political negotiations with which indigenous groups often lack experience. A critical part of building back trust from local people is communication, or what Brown et

al. (2002) has dubbed, "turning 'participation' into 'citizenship'", where community members perceive themselves as active stewards of forest resources, rather than passive participants in their extraction. Hopefully, the presence of mediators would also help reduce corruption, as increased monitoring as well as knowledge of application processes, in theory, should work to deter resource misuse.

Yet, at the same time, some evidence suggests that increased numbers of mediators do not necessarily lead to increased recognition of indigenous land rights claims (Lane 2002). Thus, not only is the existence of mediators important, but also their quality. A number of different organizations in the past have provided mediation effectively; indeed, NGOs and organizations like the United Nations Development Program have provided capacity-building services in social forestry programs with some success (Danks and Jungwirth 1990; Kleine 2009; Rawlani and Sovacool 2011). It is important to note though, that in order for management to be facilitated, indigenous communities must first be provided with secure rights. Thus, AMAN, the primary NGO representing indigenous peoples' interests in Indonesia, has been involved heavily in advocating for the recognition of customary land, which of course is fundamentally necessary for obtaining land ownership to start.

Also related to mistrust of actors has been increasing suppression of political dissent in recent years. In February of 2019, a group of United Nations from the Human Rights Council called for investigations into multiple cases of alleged killings and illegal arrests of indigenous Papuans, in response to an online video of a young indigenous Papuan handcuffed, with a snake wrapped around him, during a police interrogation (Raavad 2019). Representatives of the Indonesian police force have since apologized, but

this represents, as described by the UN, "tactics… often used against indigenous Papuans and human rights defenders… symptomatic of the deeply entrenched discrimination and racism that indigenous Papuans face, including by Indonesian military and police" (Ibid.).

This particular case is more extreme than what has been observed in Kalimantan generally, but it nonetheless represents significant barriers that indigenous groups continue to face. Furthermore, suppression of dissent is still felt strongly by the Dayaks; one leader attending a conference on indigenous rights in March of 2016 stated, "we did all we could to protect the forests. We tried to seek help from local government but instead were blamed, captured, criminalized for defending out own lands" (Satriasanti 2016). Even minor voicings of dissent increasingly have faced punishment: in March of 2019 a university professor was sentenced to four years in prison for singing an old anti-army song at a rally in Jakarta (Paddock 2019). One concern, then, is that criticisms against the government could lead to repercussions that might include, in addition to unfair arrests and alleged killings, revoking access, particularly if indigenous groups are perceived as noncompliant.

Resources

A lack of resources has been another barrier to recognizing Dayak customary land claims. Often this has included a lack of knowledge necessary for navigating processes like permit applications, which is worsened by the changing nature of Indonesian forestry policy that can make it difficult to remain up to date. A researcher at the Center for International Forestry Research (CIFOR) aptly summarized the issue: "One of the major challenges causing slow forest tenure reforms is the lack of knowledge of people on the ground on its legal aspects and stages of the reform process" (Shahab 2018). An example

of this is the requirement for formal documentation for indigenous status applications.

Groups that began this documentation process more recently, with knowledge of the

criteria that must be met, thus are able to report history to their advantage (De Royer et

al. 2015). Because this knowledge is so important, then, capacity-building is a promising

option, where technical experts provided by NGOs or other or organizations may support

communities in maximizing the strength of their claims. Capacity-building indeed has

helped realize community welfare in Indonesian social forestry systems (Pujo et al.

2018), although it is important that the unique situation of the Dayaks are recognized.

This has been a significant pitfall of current CBFM systems, like the Village Forest, in

their effectiveness for indigenous peoples.

The government has indeed made efforts to streamline access to programs like the

Village Forest, which, with support from organizations like CIFOR shortened its

application procedure time from between two and three years to between 24 and 37 days

(Shahab 2018). In conjunction with this, CIFOR also released a guidebook to aid both

local communities and implementing agencies in navigating the different phases of

applications for CBFM schemes. Similar support for indigenous communities seeking to

apply for indigenous status recognition, then, might be an effective option.

In addition to a lack of resources at the community level, a lack of resources at the

subnational government level also exists. Generally, the capacity of subnational

governments in Indonesia has remained low; infrastructure and economic strength remain

concentrated in economic capitals, and lobbying for funds from Jakarta continues to be a

common strategy, despite improvements from decentralization (Wollenberg, Moeliono,

and Limberg 2009, 283). In addition, Indonesian government system was, in many ways,

simply unprepared for the speed with which decentralization occurred. Following decentralization, the majority of officials had had little or no experience with local government, and while many found the ideas of democracy appealing, they lacked knowledge on how to employ these ideas in practice (Ibid.). All of this resulted in the overlapping and often overly complex system that has been particularly difficult to navigate for indigenous communities. Up until the fall of Suharto, the Dayaks as a group had remained, for the most part, excluded from politics, and thus also had little experience in navigating political systems as well. Many of those initially excited by decentralization returned to their old, informal networks with the bureaucracy after realizing the complexities brought by these changes (Ibid.).

Defining indigeneity

A final and fundamental barrier is one of defining indigeneity. As discussed earlier in this chapter, significant issues exist in the ways in which indigeneity is defined by the international community, and in how it applies to Indonesia. The United Nations Manual for National Human Rights Institutions notes that while no formal definition has been adopted in international law, it lists factors, developed by the Chairperson-Rapporteur of the Working Group on Indigenous Populations, which are important to the understanding of indigeneity. These include, among other factors, "priority in time, with respect to the occupation and use of a specific territory" (2013, 7).

While indigenous groups should indeed have rights to their ancestral land, it is difficult to decide for which groups and in what situations indigenous status should be granted. And definitions of indigeneity among the international community have also remained ambiguous, partly in order to retain flexibility, as the situation of indigenous

peoples varies widely across different countries. For the Dayaks, though, it is clear that frequent mobility leading to competing claims means that the government is indeed in a difficult situation in mediating conflicts and making decisions about recognizing indigenous status.

Even within indigenous groups, significant conflict has existed. The case study mentioned in Chapter 4, documented by Rhee (2009), in which the Merap and the Kenyah labeled their own communities indigenous and labeled the other communities newcomers demonstrated the complexities of the situation. While both communities are indeed indigenous to Kalimantan, indigeneity to a specific area, or tract of land, also becomes important. Because of this, indigenous groups like the Kenyah, who have migrated to newer areas for various reasons, find themselves in difficult situations wherein they lack strong claims to their new land, yet have left their old land, perhaps without the possibility for return.

Again, the development interests of larger industries must be considered as well. Thus, it is not surprising that land conflicts have been so prevalent. Interests of indigenous groups, other local communities, and industry must be balanced, and often this has led to groups scrambling to compete with one another to file claims (Fujiwara 2017). At the same time, though, the process by which indigenous claims are recognized can also help affirm and strengthen state control over land governance because the state then remains the authority on recognizing indigeneity. Some research also has discovered that the indigenous groups best connected to local government officials are more likely to have their land rights recognized (Van Der Muur 2018, 171). Promoting accountability

and transparency by increasingly involving actors external to the decision-making process, as well as raising awareness of applications, might help mitigate this issue.

Regardless, recognizing indigenous groups based on the maintenance of indigenous institutions is a reasonable start, and has contributed to growing indigenous movements throughout Indonesia. And, the strength of these movements is indeed important in promoting indigenous rights. For example, AMAN has repeatedly used its large, reportedly 24 million-strong member base to exert pressure on political actors (Nugroho 2019). The strength of social movements, furthermore, often depends quite heavily on the successful creation of a robust collective identity. While it is important to note that the Dayaks are indeed a diverse set of indigenous communities, the collective cultural identity upon which the Dayak indigenous movement has based itself has been critical to community mobilization. As a discussion paper published by the Biodiversity Support Program aptly notes, "People move from seeing themselves as weak to seeing themselves as resourceful shapers of their own destinies" (2000, 96). Such collective beliefs, further, can help weave together a larger polity from often disparate, competing communities.

NGOs and other organizations also may play an important role in facilitating community resilience and utilizing collective cultural identity. With such support, Dayak groups could become more able to participate in processes like territory mapping, filing land claims, and documenting *adat* laws, all of which help substantiate claims to indigenous identity, and later, customary land ownership. Providing support to grassroots organizations or community alliances is one way in which this could be achieved. While external NGOs may indeed play a critical role in providing such support, it is further important that such external organizations do not compete with grassroots community

groups, and instead focus efforts on capacity building. Local empowerment has been a critical factor in the establishment and strengthening of the Dayak social movement since the fall of Suharto (Alcorn and Royo 2000).

One important question, though, will be whether indigenous groups that have moved from land with which they have historical ties will be granted land elsewhere. Often such groups have moved out of necessity. Corporate land-grabbing, for one, has been a significant factor that has forced some groups to move to other areas, often creating or intensifying land conflicts. Because of this, the scale of indigeneity is important. A group might be indigenous to Indonesia as a whole, or to Kalimantan, or to a particular tract of land within Kalimantan. Land rights claims based on indigeneity relate directly to this issue of scale. For example, if an indigenous West Kalimantese group has been displaced, one question is whether or not its customary land claim is legitimate. It depends on scale: whether the group's broader indigeneity to West Kalimantan is enough to qualify it, or if its newcomer status on a smaller scale disqualifies it.

Currently, the answer is ambiguous. The reality is that although the government indeed has made significant strides in recognizing customary land as separate from state land, the vast majority of Dayak groups, including those who have indeed been classified officially as indigenous, have not yet seen their customary land claims realized. Because only small areas of land in actuality have been recognized as customary, it is unclear how this issue will be addressed. One solution might be to reclassify state land as customary land for displaced indigenous groups, despite a lack of historical ties to their new area. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), in the United States, takes an approach such that when land is irretrievably

polluted, amenities in a new tract of land are adapted to match the amenities of the previous tract of land (Environmental Protection Agency n.d.). This model might have potential for indigenous groups in Indonesia, in that the government conceivably has an obligation to provide land for displaced groups. These groups often have been displaced due to state action, such as the sale of extraction permits to logging corporations that encroach upon customary land.

It is important, though, that the quality of this land is considered. As mentioned in Chapter 4, this indeed has been an issue in the Village Forest program. Over 20 percent of the land that had been granted to local communities for use had already been severely degraded, with forest cover of less than 40 percent (Santika et al. 2017, 62). Another concern is the potential for triggering a cascade of degradation, where the movement of displaced communities from one tract of land to another might lead to increased forest degradation. One argument that has been raised throughout this thesis has been the sustainability of indigenous forestry practices. Shifting cultivation, for one, has been demonstrated to be quite sustainable, protect greater biodiversity, and has contributed to less deforestation than alternative farming practices (Soedjito 2015, 420). It is also important, though, that enough territory necessary for shifting cultivation is maintained. There must be enough land for fallow periods to be given ample time to regrow before they are cultivated again. And, the monitoring functions that indigenous communities provide, if they perceive themselves as active stewards of forest resources, could protect land from degradation produced by extraction industries and illegal activity like poaching.

Further, another concern is whether or not indigenous groups should be required to maintain their *adat* institutions after indigenous status has been granted. Even though a resurgence in Dayak pride has occurred, some young Dayaks have indicated desire to associate themselves with modern lifestyles, and because of this it is possible that the preservation of *adat* institutions could be perceived as a hindrance (Gönner 2017). In Thailand, for example, many young, rural Northeasterners seasonally migrate to Central Thailand, in part in search of higher income, but also due to a desire to associate themselves with the modern, consumerist culture prevalent in cities (Camfield, Masae, and Mcgregor 2013). It is therefore conceivable that rural peoples from less populated islands in Indonesia may begin to migrate to urban areas. Thus, one issue is that this might legitimize the Indonesian government revoking indigenous status and thereby customary land rights. An emphasis on ownership rather than access is again important, as this would protect indigenous land rights more permanently.

Summarizing recommendations

To summarize, a number of barriers exist for indigenous groups seeking recognition of customary land rights. Ambiguity in regulatory procedures has been a major barrier, where indigenous communities often have trouble navigating the complex and multilevel political and legal systems in Indonesia. A lack of resources also exists both for communities and for local governments, wherein a lack of knowledge worsens the consequences of these ambiguities. Streamlining processes like permit applications and creating manuals targeted at local officials and community members, which in the past have been spearheaded by CIFOR, could help mitigate this issue. It is important to remember, as well, the unique situation of indigenous peoples in Kalimantan, as *adat*

institutions and practices must be respected. Recall that the maintenance of these institutions is a necessary requisite for legitimizing claims to customary land.

In addition, a corrupt political system, where different layers of government often compete with one another, is another problem. This has fed into heightened conflict between local communities and government officials, particularly where land rights are threatened. The government also actively has repressed political dissent, and this issue has worsened in recent years. All of these interactions have fed into a general mistrust of the government. Increased involvement of community members in political processes could help promote openness and transparency, and as a result, could help reduce corruption.

Lastly, conceptions of indigeneity are important. The construction and reinforcement of a collective identity has been a key component of encouraging the maintenance of Dayak *adat* institutions and the strengthening of the Dayak social movement. Such collective identities are fundamental to political movements internationally, and NGOs often have the capacity to aid in facilitating this. This indeed has been the strategy of AMAN, as an indigenous interest group, which as a result has been able to exert political pressure through its large voter based. Due to discontent with both candidates running in the 2019 Indonesian presidential election, AMAN participated in a growing social media movement, "#SayaGolput", translating, roughly, to abstaining, or casting a blank vote. As stated previously, many indigenous groups have been frustrated with President Jokowi's failure to meet previously made promises on improving Indonesia's human rights record (Nugroho 2019).

Regardless, the resurgence in Dayak pride in large part has been a welcome consequence of decentralization, as indigenous communities and their role in local governance has been realized. And, this resurgence has helped strengthen the indigenous movement throughout Indonesia, which has been met with some success in the government's recognition of customary land rights claims. Significant progress must still be made, however, in securing customary land rights. It is important to note that while the government in many cases has granted access, through programs like the Village Forest program, and many improvements to such programs could indeed be made, the government has done little to grant ownership. And, this ownership would protect indigenous land permanently, increase community involvement and self-perceptions as active agents in forestry, and in doing so, aid in both security of indigenous livelihoods and protecting biodiversity in Indonesia's forests.

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