



‘The fridge in the forest’: Historical trajectories of land tenure regulations fostering landscape transformation in Jambi Province, Sumatra, Indonesia



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ABSTRACT

Indonesia has attracted increasing global attention in recent years due to concerns over large-scale deforestation. The island of Sumatra in particular is severely affected by the rapid expansion of monoculture cash crops. Since Dutch colonial times, land tenure regulations here have generally favored such resource exploitation. The current National Development Plan continues to see Sumatra as a center of resource production in order to eradicate poverty and accelerate national development. This developmental focus, however, is accompanied by contested land use scenarios.

Taking a historical perspective, this research discloses different layers of past and present land tenure regulations to understand present contestations of land use, resource exploitation, and their social consequences. Based on a village case study, the research demonstrates how different political eras and their accompanying land tenure approaches are inscribed in today's local landscape. We found that de jure regulations which were added to customary laws created a situation of legal pluralism. Our case study explains how local actors craft institutional arrangements in a process of institutional bricolage to use ‘their’ resources.

1. Introduction

Indonesia has attracted increasing global attention in recent years, due to deforestation, excessive resource extraction and large-scale cultivation of monoculture boom crops, especially oil palm (Potter, 2008: 69; Susanti and Maryudi, 2016). In the process of accelerating economic growth, land has been turned into a contested commodity. This process is accompanied by decreasing opportunities for local communities to access land, and forced transformation of local livelihoods (Hein et al., 2015). In Sumatra, many remaining forested areas have been designated as protection areas, with further restrictions on communities' access to the land on which they depend for their subsistence livelihood (Yusran et al., 2017). Against this background, ambivalent situations like the following can be observed:

Signposts at the gates of a protection forest in Jambi Province, Sumatra, Indonesia, state:

The law of the Republic of Indonesia, Number 41 Year 1999 on Forestry, Paragraph 50 on Forest Protection and Nature Conservation says: (1) The destruction of the forest infrastructure and facilities is strictly prohibited. (2) (3) No one is allowed to a. cultivate, use or occupy illegally a forest area; b. encroach the forest, c. cut trees in the forest area.¹

Signs carrying these passages of Forestry Law can be found frequently in and around the Taman Hutan Raya - Sultan Thaha Syaifuddin Senami Forest Reserve, referred to simply as *Tahura*² by the local population.

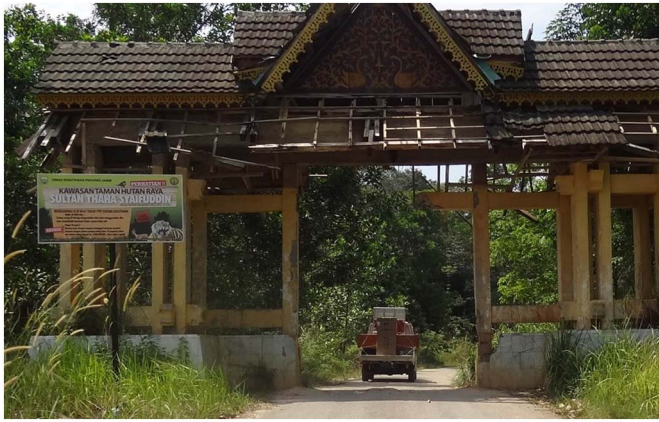
While we were studying one of these signposts, a refrigerator loaded on a truck driving into the protection forest passed by (see [Picture 1](#)).

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¹ Not listed on the signpost: (2) ‘Anybody who has received the license of forest area use; the license of utilizing environmental services, the right of timber and non-timber forest product utilization, the license of timber and non-timber forest product collection; is not allowed to undertake any activities leading to forest damage.’

² Tahura or Taman Hutan Raya is ‘a grand forest park [that] shall be a nature conservation area intended to provide a variety of indigenous and/or introduced plants and animals for research, science, education, breeding, enhancement, culture, recreation and tourism purposes. Nature Conservation areas as defined in Article 1 Recital 13 consist of the following areas: a National Park b. Grand Forest Park and c. Natural Recreation Park.’ (Act of the Republic of Indonesia No. 5 of 1990 concerning conservation of living resources and their ecosystems).



Picture 1. Truck loaded with furniture passing the main gate to the Protection Forest Sultan Thaha Syaifuddin.

Why should a refrigerator be driven into a conservation forest? Contrary to the stipulation of Paragraph 50 (3), the forest reserve seems to be a place of bustling human activity: a busy tarred road leads into the forest, along which trucks loaded with bunches of oil palm fruit leave the forest reserve while vehicles loaded with furniture and other household items enter it. Following the tarred road and refrigerator into the protection area, well-established settlements, rubber and oil palm cultivation as well as signs of active logging become apparent, existing side by side with a provincial forestry office (*Dinas Kehutanan*).

This episode from Jambi is an apt example of current controversial land-use approaches and land-related conflicts all over Sumatra. Decreasing access to agricultural land for smallholders is a starting point from which to explain this situation, but it does not seem to reveal the whole story. The apparent lack of concern of the actors involved in handling this ambivalent situation calls for an investigation of regulatory frameworks in order to explain the outlined scenario.

Against this background, this article starts by providing a historical background on the development of land tenure regulations along various epochs. Having situated current controversial land-use approaches in this context, ambivalent behavior patterns of land-use actors can be explained through the support of the institutional bricolage concept.

In Indonesia, there are numerous institutions regulating access to land. In parallel to state institutions passing statutory laws, customary or traditional institutions with long-established systems also govern access to land. While customary land-tenure systems are theoretically acknowledged by the Indonesian constitution and referred to in the basic land regulations, in practice, local claims are widely disrespected by the state. Thus, local communities are often restricted from accessing and benefiting from land within existing power relations (Hall, 2011; Ribot and Peluso, 2003). Land-use conflicts produced by an overlap of codified laws and customary regulations have been investigated by a number of scholars (e.g. Afiff and Lowe, 2007; Bakker and Moniaga, 2010; Beckert et al., 2014; Galudra et al., 2014; Hein and Faust, 2014; McCarthy, 2006; Peluso, 1992; Steinebach, 2013; Urano, 2014). While these studies focus on the pluralism of regulating systems existing side by side and the ways, in which one or the other is ignored or strengthened, the study at hand is concerned with the merge of different systems. This merge is understood as strategy to cope with complex and often overlapping realities, fostered by different systems existing in parallel. This study hence further develops on the perspective of systems existing in parallel by illuminating on actors' land-use decisions as the outcome of a blend of customary regulations and various de jure land-use regulations. Our analysis, based on the chronological emergence of institutional pluralism, focuses on the question of how actors deal with the resulting complexity de facto. We argue that actors craft their own sets of rules, choosing from a vast

variety of current and past de jure laws as well as customary rules. We follow the refrigerator, as a representation of current controversial land-use approaches, into the forest to dismantle the emergence of overlapping layers of land-use regulations and their impacts on local actors' approaches to resource use.

2. Institutional bricolage: framing the landscape

In situations 'where co-existing interdependent legal orders that have different legitimations and are based on different organizational structures are prevalent', von Benda-Beckmann and von Benda-Beckmann (2011: 171) speak of *legal pluralism*. In these situations, the interdependent legal orders provide a ground for competing legitimacies. The competition for legitimization is on the one hand fed by legal pluralism where for example customary rules compete with statutory rules. On the other hand, a second arena of competition is fostered by a plurality of heterogeneous state apparatus with overlapping areas of responsibilities pursuing various and sometimes unaligned hence conflictive interests. Sahide and Giessen (2015): 1) in this context speak of "fragmented land-use administration in Indonesia". While for example the Ministry of Forestry might push for an expansion of protected forest areas, the Ministry of Transmigration aims at developing areas for cultivation purposes. The target areas of various ministries can at times overlap.

Local actors' resource management decisions' and their agency are framed by this complex situation with a vast variety of regulatory arrangements. The actors take their land-use decisions within this framework by borrowing from existing institutions, by borrowing from different styles of thinking and from learned sanctioning in social relationships. By bringing these aspects together in resource-use decisions-making processes, actors construct new institutional arrangements (Clever, 2003: 16). The actual local resource use and management arrangements are likely to be a complex blend of customary and state regulations (Clever, 2001: 29). It is a process in which people draw on existing social and cultural arrangements to shape institutions in response to changing situations, a process referred to as 'institutional bricolage' (Clever, 2000: 380). Social identities such as the belonging to a certain ethnical group (Clever, 2003: 17) influence institutional bricolage as well as the agency of social actors. It is also in this context that legitimization takes place. The meaning and effect of a law in a particular place depends on the 'history, the social setting, the power structure and the actual configuration of opportunities' (Lund, 2008: 134). Especially in situations of legal and institutional pluralism, different, competing legitimacies are at play. Legitimacy here refers to the status of a rule that is socially accepted and therefore heeded. Rules and their legitimacies are not static though, they are constantly challenged. Gaining, maintaining or losing legitimacy is negotiated in a dynamic process, a process we, borrowing from Sikor and Lund (2009), refer to as legitimization practices.

Hence, rules do not embody intrinsic legitimacy; their legitimacy must be actively established through legitimization practices (Sikor and Lund, 2009: 6). When authorities of different institutions overlap, social actors are likely to reference property claims to different politico-legal institutions, making property relations appear ambiguous to outsiders (Sikor and Lund, 2009: 8). The concept of institutional bricolage and the legitimization practices outlined, support the analysis of local actors' translation of state laws and customary rules blending into a legitimized reality. The concept hence serves as supportive tool in understanding current land-use controversies such as bringing a fridge into a protection forest where settlement is prohibited.

3. Research region and methods

The Indonesian Masterplan for Economic Development identifies six development corridors to enhance economic growth. Within these six corridors, the island of Sumatra has been designated as a center for the

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