

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

Central Kalimantan has been selected as the primary REDD+ pilot in Indonesia. In its peatlands expectations of payments for carbon emission reduction currently shape the discourse over natural resource management as a means of influencing policy and exercising power. Different types of actors use their own interpretation of history, facts, rules and norms to support their claims. Shifting national policies have over the past decades shaped the distribution of power and actual use of peatland. Actions to reduce emissions will need to appreciate the institutional complexity.



photo: Yana Buana

Main findings

1. Contesting claimants were found to use current contradictions and inconsistencies of Indonesian laws, multi-sector policies and the articulation of local property rights and customary rights.
2. The ambivalence of the forest definition and associated property rights has 'path dependence', reflecting historical change of government laws, paradigms and public administration.
3. Legal arguments are not necessarily decisive in settling disputes, but the lack of respect for legality contributes to confusion, undermining authority.
4. Carbon rights in this area are not clear yet. They are at least as complex as the set of actors and agents who interact during the process that starts with a natural forest and ends with a landscape with few trees, high emissions but still high carbon stock.

Implications

- The state at national and provincial levels are two among several claimants and negotiated cooperation among stakeholders will be needed, rather than asserting a single legal authority.
- Market-based REDD+ implementation will add confusion as unresolved carbon rights come as an addition to the already complex layers of unresolved property rights.
- A co-investment paradigm of REDD+ can contribute to resolving disputes on property rights and seek more transparent use of state authority and power.

The expectation of financial incentives for emission reduction has led to a debate on 'carbon rights'. In many countries, the debate uncovers a power contest among the government layers. The interaction of 'carbon rights' with existing or emerging rights, authorities and power over land-use decisions is not easily understood. Land 'ownership' is only one of several elements influencing the level of emission reduction. Emission reduction is measured as a change over time in carbon stocks, relative to agreed baseline or expected change and after correction for leakage or displacement of emissions to other locations. These alone demand clarity and procedural justice if the 'legal basis' of property rights and governance over forested land and resources is to be resolved. However, this clarity does not yet exist in many landscapes in Indonesia. Hence, 'carbon rights' come as an addition to the already complex layers of unresolved property rights. The complexity extends from the relationship between individuals and local communities, between both of these and local government, between sub-national entities and Indonesia as a state, and in Indonesia's relation with global negotiation platforms on mitigating climate change.

Shifted policy, shifting regimes: confused management of forest peatland

The peat domes of Central Kalimantan Ex-Mega-Rice Area cover around 1.5 million ha on the interfluvies of a number of rivers. These rivers have a long history of human use, with a string of settlements and a tradition of upstream-downstream mobility of various ethnic groups practising 'swiddens' along with shifting village locations. Ownership

claims on some parts of the riverbanks and hinterland depend on the details of the settlement history. During the colonial era, de facto use of the riverbanks was sanctioned by the government, but after independence the Republic of Indonesia claimed ownership of, and control over, all land and resources for the benefit of the people of Indonesia. The Agrarian Affairs Office in the early 1970s concluded that customary institutions had already diminished, leaving local people with vague or no land-use rights. But when the State started granting permits for logging concessions in designated forest areas, de jure concessions clashed with de facto use rights of local people. The construction of drainage canals for the Mega-Rice Project and establishment of transmigration settlements not only brought a new influx of migrants with land ownership claims, but also altered the institutional arrangements and property rights of existing local communities. The Mega-Rice Project shifted the existing property rights in the area into what was considered to be an open access regime. Each villager began to compete to gain access to natural resources. Confusion and rights contestation worsened in the 1997/1998 'forest fire' episode that hit the area. The forest fire was interpreted as a result of a combination of El Nino conditions causing a prolonged dry season and the increased vulnerability of peatland by drainage and logging. The extent of carbon release into the Indonesian atmosphere was estimated to be between 0.81 and 2.57 Gt— this is equivalent to 13–40% of the mean annual global carbon emissions from fossil fuels—which contributed greatly to the largest annual increase in atmospheric CO₂ concentration ever detected. These episodes of fire events pushed the government to close the Mega-Rice Project (thus becoming the 'Ex-Mega-Rice Project') and, since then, efforts have been focused

Table 1. What type of resource use?

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

Table 2. Notes of 'legal' discourse and disputes used by provincial government and Ministry of Forestry

No.	Date of Issue	Note	Legal and Discourse Statement
1.	12 September 2000	Ministry of Forestry Note No. 778/VIII-KP/2000	<ul style="list-style-type: none"> • Acknowledges the Governor's Decree No. 008/965/IV/BAPP as the final 'legal' result of harmonization between provincial spatial development plans (RTRWP) and forest land-use by concession (TGHK) • Stipulates that the land that has been regarded as non-forest zone (APL) under this decree may not need forest zone status conversion procedure
2.	11 September 2006	Ministry of Forestry Note No. S.575/ Menhut-II/2006	<ul style="list-style-type: none"> • The Governor's Decree No. 008/965/IV/BAPP/ 1999 cannot be used for final legal result of harmonization because it had not been followed by a Ministry of Forestry decree on forest designation • Ministry of Forestry Note No. 778/VIII-KP/2000, revoked 12 September 2000
3.	2 November 2006	Governor of Central Kalimantan Note No. 126/1809/Ek	<ul style="list-style-type: none"> • The Ministry of Home Affairs No. 050/2301/1996 stipulates that the harmonization process can be solved through a Governor's Decree. Therefore, the decree above is 'legal' • The harmonization process had been consulted with the Directorate General of Forest Planning within the Ministry of Forestry
4.	22 December 2006	Ministry of Forestry Note No. S-776/Menhut-II/2006	<ul style="list-style-type: none"> • Insisted that the Governor's Decree cannot be used as the legal basis for forest status conversion • All land-use planning must follow 1982 forest land-use by concession (TGHK)
5.	3 January 2007	Governor of Central Kalimantan Note No. 522/010/Ek	<ul style="list-style-type: none"> • Insisted that the 2003 Provincial Spatial Plan that is based on the Governor's Decree above can be used for the regencies to convert forest to other land-use systems • Instruct the regencies to not hesitate to convert forest to other purposes
6.	13 April 2007	Ministry of Forestry Note No. S.225/Menhut-II/2007	<ul style="list-style-type: none"> • Insisted that the provincial government follow Ministry of Forestry Note No. S.575/ Menhut-II/2006 • Reiterated previous statements that the 2003 Provincial Spatial Plan must be followed by the Ministry of Forestry Decree to be considered a legal forest-status conversion
7.	3 July 2007	Governor of Central Kalimantan Note No. 522.11/1084/Ek	<ul style="list-style-type: none"> • Agreed to support the consistency of laws and regulations • Denied the accusation that the 2003 Provincial Spatial Plan was the result of a harmonization process between provincial spatial development plans (RTRWP) and forest land-use by concession
8.	3 July 2007	Governor of Central Kalimantan Note No. 522.11/1089/Ek	<ul style="list-style-type: none"> • Instructed the regencies not to issue any permits within the forest zone until the dispute was settled

rehabilitating the area. There is increasing consensus that emission reduction in peatland is technically feasible, urgent (high emissions) and probably cost effective. It is explicitly mentioned as part of the Indonesian–Norway Letter of Intent signed in 2010. Several donors and international organizations are exploring effective ways of reducing emissions in this area, to bring peatland emissions into the emerging REDD schemes.

Conflict of authority and power struggle dominate the discourse on 'rights'

The policy adopted by the provincial government to exploit the Ex-MRP area was in contrast with recent central government policy. The provincial government claimed scientific support for its position with reference to a study by

the Agricultural Research and Development Office in 1998, showing that around 327 853 ha and 345 340 ha of the Ex-MRP are considered suitable for oil palm cultivation and rubber plantations, respectively. Besides scientific support, the provincial government uses the Minister of Forestry's (MoF) Note No. 778/VIII-KP/2000 to argue their 'legal claim' over the exploitation of the Ex-MRP for oil palm and mining concessions. The Note provides a legal basis for the provincial government to convert state forest lands into other land-use systems, as long as conversion is accompanied by spatial developments plans. However, in 2006, the central government issued a Note, which superseded the previous Note, and demanded with drawal of all concession permits issued by the provincial government since the year 2000. The Note also deemed the 2003 spatial planning regulation of the provincial government illegal. The provincial government defended

its decision by stating that the spatial development plan, which was rendered illegal by the MoF, had been harmoniously processed with consent and in conjunction with the forest land-use map (TGHK) of the MoF, too, which was supported and approved by the Ministry of Home Affairs. After presenting these facts, the provincial government accused the MoF of unreasonably and irresponsibly rendering the 2003 spatial planning regulation illegal. The MoF reacted that the provincial government's management claim over the Ex-MRP area could not be treated as 'final' since there had not been a forest designation decree. Once again, the MoF ruled-out the legality of the 2003 spatial planning regulation in that it couldn't be used as a legal basis for converting the forest status and exploit the Ex-MRP for oil palm and mining concessions. The conflict of authority between the Central Kalimantan Provincial Government and the MoF created much confusion at the regency government level: the provincial government insisted on the regency government continuing to apply the 2003 spatial planning regulation as a basis for exploiting the forest, including the project area, and to ignore the MoF's demands.

The MoF was challenged by the aggressive actions of the provincial government and demanded the termination of forest exploitation or it would bring the provincial government to court. As a rebuttal, the provincial government maintained its claim and criticized the MoF for inconsistent policies, citing rampant conversions of many forest areas for other purposes based on the MoF's decree. However, in the end, the provincial government conceded to the MoF and instructed the regency government to discontinue issuing permits until the policy conflict was settled. Up to the time of writing, negotiations between the provincial government and MoF are still ongoing. This experience has shown that opposing agencies have vested interests, which they use to justify their interpretations and actions. Hence, the legal discourse on forest management needs maximum clarity if it is to succeed.

Carbon rights and conflict resolution

The local course of history has developed competing actors' power to claim carbon rights. Past recognition by the Dutch colonial government was adopted by local communities as part of land rights disputes. However, this reconstruction of rights depends to a large extent on power. To exert greater power to claim land, local communities sought recognition from village leaders through land ownership notification. Local communities also reconstructed their experiences during the forest concession era to claim certain rights in forest peatland. Acquiring rights was linked to labor and investment used for drainage works, in this case, but most of their claims also linked to social identity as customary people. Using such claims as customary people, the land that they use can 'legally' be regarded as a customary right. Customary rights are recognized through a Governor's Statement, Decree and Regulation and are used as their claim to the peatland area. Legal arguments are not always the decisive arguments in settling a dispute. Legal argument is only one of the discourses in which arguments can be found to sustain a claim, which was recognized by all disputants more clearly after the decentralization era in 1999. These arguments are mostly used, however, when government layers claim rights to control the Ex-MRP area. The decentralization policies changed the nature of power relations between the central and local governments. These policies and their legal acts influence on ongoing discourse between the central and local governments and reconfigurations of local property rights. Changing the local course of history requires changes in the balance of power, with formal rights only effective where these can be enforced. In this case study, rights, authorities and power are jointly determining carbon rights. Carbon markets require clarity of ownership as basis. Given the confusion and contestation, we can expect that a co-investment paradigm is feasible (van Noordwijk and Leimona, 2010) not a buyer-and-seller model.

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