

Separating Sisters From Brothers: Ethnic Relations and Identity Politics in the Context of Indigenous Land Titling in Indonesia

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Environmental and social transformations in Jambi province, Indonesia, are inextricably interlinked. Large-scale agro-industrial development and nature conservation policies equally alienate local communities from their agricultural lands and turn land into a scarce resource. Consequently, access to agricultural land becomes increasingly contested, not only between communities and state institutions or companies but also among communities themselves. To secure or restore local 'indigenous' land rights against land grabbing and green grabbing by states and companies, indigenous land titling has become a powerful tool all over the world. Ongoing activities of indigenous land titling in Indonesia have been largely perceived as an act of justice by indigenous and land rights activists and affected communities. Yet, a challenging step towards titling is the identification of who is and who is not 'indigenous'. This highly political process creates ethnicity-based identities tied to rights and possibilities around land as a contested resource. Based on a case study of a national park in central Jambi, this paper shows that what is perceived as an act of justice against the state can also produce injustice among local communities by heavily impacting and transforming local social structures and relations.

Keywords: Ethnic Identity; Indigenous Land Titling; Indonesia; Jambi; Land Use Conflicts



INTRODUCTION

The explosion of (trans)national commercial land transactions has triggered public and scholarly debates on economic and political strategies of land grabbing, including green grabbing (Borras & Franco, 2012; Stephens, 2011). Large-scale commodification of land for whatever production or conservation purpose is entangled with land reforms, agricultural dispossession, enclosures, and exclusions governed by complex regimes (Borras, Hall, Scoones, White, & Wolford, 2011; Hall, Hirsch, & Li, 2011; Li, 2010). One focus of public and scholarly land grabbing debates is the emergence of conflicts where companies restrict local communities' access to resources or drive indigenous people off their land (Turner & Caouette, 2009). In Southeast Asia, the agrarian transition has created new sites of struggle in which counter-hegemonic movements and forms of resistance take place in often very novel ways by tapping into collective frames such as ethnicity and identity (Potter, 2009). Worldwide, the transnational con-

cept of indigeneity has become a powerful tool in conflicts over land and restoration between local communities and other stakeholders. The concept itself has advanced from references to doomed or dying tribes to positive, rights-based discourses (Dove, 2006, p. 192; Merlan, 2009; Tyson, 2011, p. 653) and it is often central in reclaiming localities and formulating territorial claims by communities and villages. For instance, the International Labour Organizations' (ILO) *Indigenous and Tribal Peoples Convention 1989 (No. 169) in Independent Countries* decreed that national governments should give back lands that were traditionally occupied by indigenous peoples and let them set their own priorities (Colchester, Anderson, Firdaus, Hasibuan, & Chao, 2011).

As the concept of indigeneity is related to special rights and entitlements, the identification of indigenous peoples is a demanding process that seemed to be solved by stressing people's right of self-identification (ILO, 1989). Yet, apart from several characteristics suggested in the ILO convention,¹ indigeneity has been taken to imply first-order connections between group and locality (Dove, 2006; Merlan, 2009). Whereas indigenous rights activists often pursue a "strategic essentialism" (Li, 2000, p. 399, see also Großmann, Padmanabhan, & von Braun, this issue) to legitimate territorial claims, there is a broad consensus in scholarly debates on the relational character of indigeneity (Dove, 2006; Li, 2010; Merlan, 2009). Indigenous peoples are defined as much by their relation to the state as by any other intrinsic characteristic they might possess (Merlan, 2009, p. 305). Indigenous peoples, scholars suggest, should be firmly set against the modern nation state which they reside in or are enclosed by (Tyson, 2011, p. 653). At the same time, the category of indigeneity distinguishes 'natives' from others. The self-identification as 'indigenous' is thus a process and a positioning (Li, 2000) that realigns the ways groups and communities relate to the nation, the state, and the 'non-indigenous' population (Steinebach, 2012). Whereas shifting power relations between the state and indigenous groups have been the focus of scholarly and public debates, the relation between the indigenous and non-indigenous population has not received much attention. This applies to the Indonesian context as well, in which land conflicts are virulent and can be found on a total area of 1.28 million ha. The conflicts are mainly related to the plantation sector (Konsorsium Pembaruan Agraria, 2016, p. 5). In such conflicts, the strategic employment of collective frames such as ethnicity and local (indigenous) identity has been essential for legitimating territorial claims (Peluso, 2009) and has proven successful to reclaim "ethnic homeland" (Hall et al., 2011) from the state (Benda-Beckmann, 2005, 2011; Hein et al., 2016; McCarthy, 2005, 2007, 2009). While community-state relations have been in the center of much research (Peluso, 1995; Steinebach, 2012; Thorburn, 2004), the shifting power relations between communities themselves have been paid only little attention (Afiff & Lowe, 2007; Bakker & Moniaga, 2010). In this article, we focus on the process of creating 'indigenous' and 'non-indigenous' communities as an effect of state policies and the ways the state relates to its population. Along the example of a land use conflict and indigenous land titling process in Jambi province in Sumatra, Indonesia, we show that the identification and categorization of indigenous

1 Tyson (2011, p.653) identifies four criteria to form the basis for this special distinction: the principle of first come (descendants of pioneers), non-dominance (people living under alien state structures), cultural difference (being special), and self-ascription.

peoples and related rights can produce both justice and injustice for non-indigenous parts of the population. Empirical data was gathered during altogether 15 months of fieldwork in the Bukit Duabelas area, where a national park was established in 2000. Fieldwork among the Orang Rimba and sedentary villagers surrounding the national park took place between 2003 and 2005, with several restudies in the years 2006, 2010, 2011, 2012, and 2013. These villages are comprised of local pre-colonial villages and transmigration villages. The article is structured as follows: We start by describing the legislative framework of this case study by providing an overview on forestry laws and indigenous land titling in Indonesia. We then continue by introducing the contested national park area and the conflicting parties. From this starting point, we travel back in history to show how colonial and postcolonial land use policies heavily impacted local social structures by setting the basis for differentiating neighboring local communities as indigenous and non-indigenous.

FORESTRY LAWS AND INDIGENOUS LAND TITLING IN INDONESIA

Most land use conflicts registered in Jambi province are rooted in land dispossession of local rural communities during the Suharto era (1965-1998). In 1967, the Forestry Law² declared about 70% of Indonesia's territory as forest land under the jurisdiction of the state (Contreras-Hermosilla & Fay, 2005, p. 9; Indrarto et al., 2012, p. 23). The Forestry Law of 1967 was revised in 1999³ but still decrees that all forest, and the natural richness within it, is under the control of the state (Article 4) and instructs the central government to regulate its management and exploitation. The law then (Article 5) discerns between state forest (*hutan negara*), where no private rights can be obtained, and private forests that are "subject to rights" (*hutan hak*). According to the Forestry Law, customary forest (*hutan adat* or *hutan ulayat*) is classified as a sub-category of state forest and can only be recognized (not owned) when found to be still relevant and not in conflict with national interests. The vague definition of 'national interests' left the state with virtually uncontested power and control (Bakker & Moniaga, 2010, p. 189). Against this background, the Constitutional Court released a remarkable decision in May 2013, causing much cheer among Indonesian indigenous peoples and land rights activists. With this decision, commonly referred to as MK 35 the court accepted the juridical review of some parts of the 1999 Forestry Law requested by the Indigenous Peoples' Alliance of the Archipelago (AMAN) (Aliansi Masyarakat Adat Nusantara [AMAN], 2013). MK 35 declares that customary forest is no longer categorized as a part of state-owned forest, recognizing customary communities (*masyarakat hukum adat*) as right-bearing subjects (Rachman, 2013, p. 3). This shift of status and categorization resulted from the erasure of the word "state" from Article 1.6 of the Forestry Law No. 41/1999 that now reads: "*Adat* forests are forests located in customary communities' territory".

2 Undang-Undang Republik Indonesia No. 5 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Kehutanan, Republic of Indonesia, 1967.

3 Law of the Republic of Indonesia Nr. 41 of 1999 regarding Forestry, Republic of Indonesia, 1999.

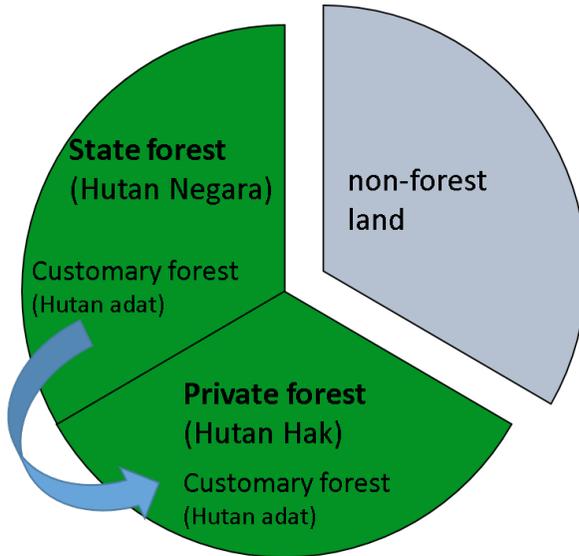


Figure 1. Revision of Forestry Law No. 41/1999 through MK 35. (own compilation).

This opportunity of land titling for customary groups within forest areas caused unease in the Ministry of Forestry (MoF) which feared losing authority over vast forest areas. The ministry reacted by sending out a curricular (*Surat Edaran*) addressed to all provincial governors and district heads as well as to all heads of regional-level forestry services (Down to Earth, 2014, p. 7). This immediate response to MK 35/2012 by the MoF was a legal regulation (62/2013) which sets out the rules for and stages involved in gazetting (legally determining) the forest zone. The document informed the authorities on MK 35 and, referring to the amended article, asserted that determining the status of customary forests required the legal recognition of indigenous peoples through a regional regulation (*Perda*) (Down to Earth, 2014, p. 8). In an interview, then Minister of Forestry, Zulkifli Hasan, stated that he saw “no problem with MK 35 as long as the customary forests are proposed and legalized by regional regulations”. In addition, he asserted that “it should be clear who the community members are” (HuMa, 2013). This question of identification is central in the discussion of this article.

CONTESTED NATIONAL LEGISLATION AND LOCAL REALITIES IN JAMBI PROVINCE

Jambi province is one of Indonesia’s most important locations for the production of rubber and palm oil.⁴ The area of agricultural land that is legally available to farmers

4 The province has a total size of 5.3 million ha (Badan Pusat Statistik Provinsi Jambi, 2011, p. 3). In 2010, licenses to plant 1.3 million ha with oil palms were issued to several agro-business companies (Rambe, 2014, p. 7). Approximately 800,000 ha are already reserved for mining purposes (Biro Perencanaan Sekretariat Jenderal Kementerian Kehutanan, 2013, p. 86). Another 650.000 ha of the province are planted with rubber trees by independent farmers (Dinas Perkebunan Jambi, 2011) while 2.1 million ha are defined as state forest and are under control of the Ministry of Forestry, including industrial timber plantations and

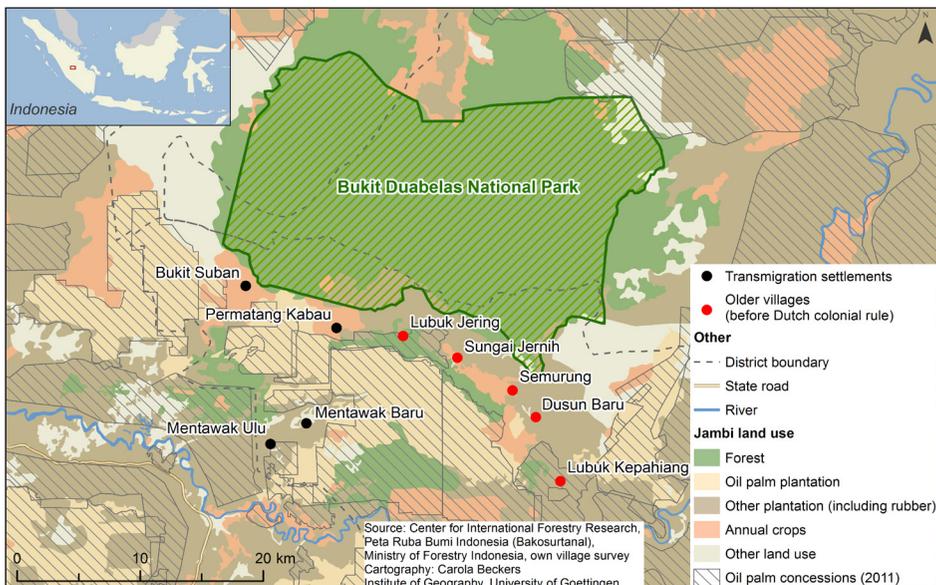


Figure 2. Map of Bukit Duabelas National Park and Air Hitam. (figure by Carola Beckers).

and communities is limited for the benefit of large-scale plantation business. Nationwide increasing numbers of land use conflicts mirror the heavily contested access to land in Jambi. In 2011, 44 conflicts were reported from Jambi (Priyan, 2012). Bukit Duabelas National Park (*Taman Nasional Bukit Duabelas*, TNBD) is one of these contested areas. The park was established in 2000 and encompasses 65,000 ha of tropical lowland rainforest where any kind of human agricultural activity is prohibited by law. The conservation area falls into the administrative jurisdiction of several regnancies and districts and is surrounded by oil palm plantations and different kinds of villages. In this article, we focus on the southern area of TNBD and its surroundings located in the district of Air Hitam.⁵ The district encompasses nine villages, four of which are transmigration settlements established by the Suharto government (see Figure 2) as part of social engineering and development policies as well as nation building programs.

Landless peasants from the densely populated island of Java were allocated huts and approximately 3 ha of land per household, accompanied by a certificate of ownership (*surat hak milik*) which made them official holders of legal land titles (Fearnside, 1997). The remaining five villages already existed before Dutch colonial rule, which came to Jambi province in the year 1906. The Melayu residents of these precolonial villages (Lubuk Kepahiang, Lubuk Jering, Dusun Baru, Sungai Jernih, Semurung, see Figure 2) claim parts of TNBD as customary land and forest (*tanah adat* and *hutan lindung*). Yet, these villagers usually do not hold any *de jure* title for private or communal land. The national park area is additionally inhabited by about 3000 Orang

conservation areas (Biro Perencanaan Sekretariat Jenderal Kementerian Kehutanan, 2013, p. 85).

⁵ Air Hitam covers an area of 47,100 ha and consists of 9 villages. According to local statistics, the population in 2010 was comprised of 23,650 people with a population density of 50.21 people/km² (Badan Pusat Statistik Provinsi Jambi, 2011).

Rimba (literally people of the forest) – semi-nomadic rainforest dwellers whose ethnic identity is inseparably linked to their rainforest surrounding. The Orang Rimba's livelihood consists of hunting, gathering of forest products as well as shifting cultivation and cultivation of jungle rubber (Steinebach, 2012). Like the non-transmigrant villagers, Orang Rimba claim the national park area as their customary land (*tanah adat*). As there is no agricultural land available outside the national park area, the still forested national park area has turned into a contested island of livelihood security for both groups. Both cultivate cassava or rice and especially rubber as a cash crop and a major source of income.⁶

Both Orang Rimba and the non-transmigrant villages have a long history of cultivating forest gardens consisting of various fruit trees (e.g., *durian*, *rambutan*). The Malay groups in the area practiced shifting cultivation to grow staples like cassava and dryland rice already before Dutch colonization. The Orang Rimba reportedly started the cultivation of rice in the middle of the 20th century. In line with colonial politics, the Malay population started to cultivate rubber as a cash crop in the 19th century, whereas the Orang Rimba adopted rubber cultivation on initiative of their Malay trading partners several decades later. Particularly for the Orang Rimba, the growing of rubber has proven to be a powerful means of land demarcation as – in contrast to forest trees – both villagers and the Orang Rimba regard them as property (of individuals or groups). Thus, others cannot easily fell rubber trees without heavy sanctioning. As a result, the Orang Rimba strategically use the planting of rubber as a proof of territorial authority: In sensitive or contested areas, they plant rubber as a 'living fence' to prevent intruders and illegal land clearing by villagers.

Conflicts mainly occur between the National Park Management (NPM) and the Orang Rimba, but also between the NPM and villagers.⁷ Both the Orang Rimba and villagers are at conflict with NPM concerning the rubber plantings which are regarded as illegal by the NPM. Several times, when the NPM felled rubber trees, it was afterwards threatened by armed villagers. The NPM also utilizes the rubber plantings as evidence that the Orang Rimba do not depend on the forest for their livelihood subsistence alone and therefore should be removed from the park area. Based on the same argument, their identity as truly indigenous forest peoples is questioned and resettlement areas are provided in the buffer zones of TNBD. Most of the Orang Rimba actively resist these accusations and resettlement orders. At times, violent conflicts over land and tree tenure inside the TNBD have also evolved between the Orang Rimba and the villagers. Reasons for these conflicts include illegal logging, felling of sacred trees, the destruction of Orang Rimbans' rubber gardens, unauthorized forest clearing, or the trading of forest land or rubber gardens among the villagers. Under such conditions, the possibility of indigenous land titling seemed a promising endeavor for the Orang Rimba communities to regain authority over customary land.

6 Illegal logging and rubber plantings by the sedentary population impact most of the national park area. Consequently, the Orang Rimba can no longer fulfill their subsistence needs from the forest alone.

7 The forestry department in cooperation with the social department of Jambi province have made various efforts to resettle the Orang Rimba from the park area. For example, the Orang Rimba were offered permanent housing and food supply for the first year of sedentary residence outside the forest. Yet, these measures proved unsuccessful as the Orang Rimba returned to their semi-nomadic lifestyle as soon as the food supply was stopped.

After the court’s decision on MK 35, they started to map their claims with the support of local NGOs. According to AMAN, the Orang Rimba could (despite their rubber cultivation) be easily identified as indigenous people in contrast to the Melayu villagers with their competing claims. In order to understand the impact of the court’s decision on these groups and in course of the social structure of the Air Hitam region, a look back in history is indispensable.

PRE-COLONIAL LEGITIMATION OF POST-COLONIAL CLAIMS

The current population of the Bukit Duabelas area traces their origin back to the founding of the Islamic sultanate Jambi Melayu II in the 15th century. By that time, different ethnic (*suku*) or cultural (*bangsa*) groups inhabited Jambi, following their own customary laws (*adat*) (Locher-Scholten, 2003, p. 48). *Adat* not only regulates social interaction within society, but also the use of natural resources and land tenure. Settlements were found along the nine main rivers and their tributaries determining Jambi’s infrastructure until the 21st century. The Sultan’s court was settled at the Batang Hari river. Along this central river and its larger tributaries, the territories (*kalbu*) of the so-called Bangsa Duabelas, or literally the twelve people, were located (see Figure 3).



Figure 3. Villages and rivers in the research area around 1900. (Hagen, 1908; highlights by the authors).

The Bangsa Duabelas have held genealogical ties with the Sultan’s court since the 15th century and, due to their common descents, formed what the Dutch later called “genealogical *adat* communities” (*genealogische rechtsgemeenschappen*; Haga, 1926). The Dutch distinguished them from the “territorialized *adat* communities” (*terri-*

toriale rechtsgemeenschappen; Haga, 1926) which did not hold kinship ties with the Sultan's court and are not of common descent. The Bukit Duabelas area was part of the Bangsa Duabelas territories and Air Hitam was ruled by a line of queens – descendants of the sultan's sister. Land was allocated to the residents for communal use and borders between village communities were defined by the hearing distance of a gong sound (Nasruddin, 1989). The villagers were not able to privately own, sell, or buy land. The inhabitants of Air Hitam were responsible to deliver firewood from the forest – that is the Bukit Duabelas National Park today – to the Sultan's court due to their kinship ties (Guillaud, 1994; Haga, 1926). The Orang Rimba were part of these complex socio-political structures in different ways: They were never direct subjects of the Sultan but they maintained economic relations with the ruler's middlemen (*jenang*) and with the sedentary Melayu population around them. The Orang Rimba also claim genealogical bonds with the Sultan's ruling dynasties. With the local elites, the Orang Rimba maintained a patron-client relationship that lasts until today. Memories of common origin shared by the Orang Rimba and sedentary Jambi-Melayu residents which identify them as descendants of brother and sister legitimate this patron-client relationship:

A bachelor left his community from shame of not yet being married. He took shelter in the forest where he found a fruit (*buah kelumpang*) that turned into a beautiful maiden and became his wife. The couple had four children: two sons and two daughters. The siblings parted, the female descendants continued to live in the forest and the male descendants started a village life outside the forest. Before their farewell, the siblings swore an oath to be responsible for each other's well-being. Thus, the relationship between the Orang Rimba and the respective village residents is imagined like that of brother and sister with the Orang Rimba holding the female position. (Rio Sayutti & Temenggung Mirak, 13 June 2004)

The Orang Rimba, like the sedentary Melayu, combine matrilinearity with uxori-local and matrilocal residence patterns and matrilineal inheritance structures of land, forest, and tree tenure. In case of divorce, the man returns to his sister's place as she is held responsible for her brother's livelihood. As the Orang Rimba are regarded as progeny of the female sibling, they are obliged to perform their respective duties in the patron-client relationship with the villagers conceptualized as descendants of the male lineage (Steinebach, 2012).

The intensity of contact between the Orang Rimba and people from outside the national park area has changed due to the socio-economic development in the area, including nature conservation and NGO activities. The patron-client relationships with the residents of surrounding pre-colonial villages, however, have been extended and expressed in the following proverb: "*Pangkol waris Tanah Garo, ujung waris tanah Serengam, Air Hitam tanah berjenang*" [the origin of the waris is Tanah Garo, the leading edge is Serengam and Air Hitam is the land of the jenang]. Tanah Garo and Serengam are names of villages whereas Air Hitam refers to the regions' five hamlets, including Lubuk Jering, which are all related by kinship ties. These three entities in effect formed a triangular external power structure around Bukit Duabelas. In the northern part of Bukit Duabelas, such relations were maintained with the triangular

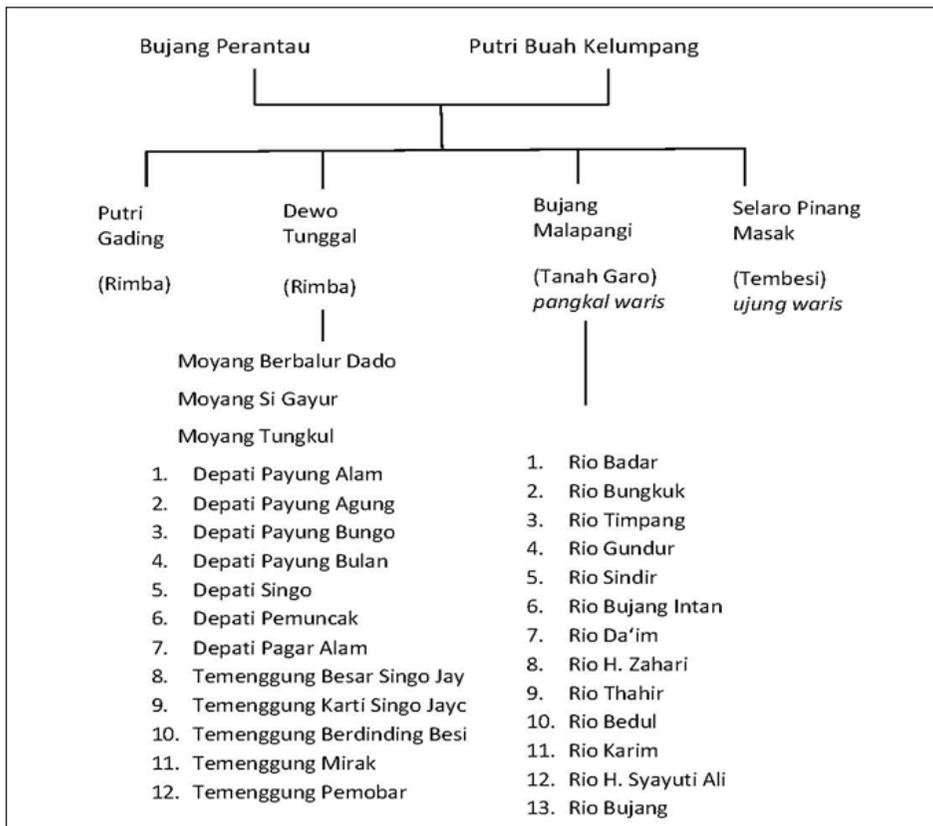


Figure 4. Kinship relation between Orang Rimba and Melayu villagers. (own compilation).

structure’s base (*pangkal waris*) (literally lineal heir) in the north central village of Tanah Garo and the top (*ujung waris*) located in the northeast village of Serengam Pakuaji. The function of the *waris* is similar to the *jenang* (middleman): They maintain trading relations, are a source of *adat* law, and serve as Orang Rimba’s intermediaries to the outside world. The positions, either as *waris* or *jenang*, define differing socio-political and economic bonds between the Orang Rimba and the holders of the respective positions.

THE TRANSFORMATION FROM SOCIAL TO ETHNIC GROUPS

In the first half of the 20th century, far-reaching administrative and juridical changes came with Dutch colonial rule. The Dutch introduced western concepts of nature-culture dichotomies turning socio-cultural landscapes into empty spaces and exploitable resources. Additionally, European concepts of property were applied and all, especially forested, areas that did not show signs of agricultural cultivation to the Dutch were declared as property of the state (*Domein Verklaring*) (Biezeveld, 2004, p. 140). The differentiation of forest and agrarian laws produced different categories of land and land rights. Also after the arrival of the Dutch, ideas about geographically

anchored communities started to circulate on a much larger scale (Goebel, 2013, p. 4). By the early 1870s, the archipelago had been divided into distinct ethnic groups (e.g., Sundanese, Javanese, Madurese), each with their own language and culture (Moriyama, 2005). The complex cultural diversity of the region was put into order through the category of ethnicity, which commonly points to a community that lives in a particular region and speaks a particular regional language. The Dutch captured these ideas about territorial ethnic groups in the legal system with the notion of *adat*, which encompassed concepts concerning custom, law, tradition, and territory (Burns, 2004; Elmhirst, 1999; Goebel, 2013). During colonial administration in Jambi, the territories known as *kalbu* were mutually divided and merged into 30 districts. In their efforts to consolidate state power, the Dutch created *adat* districts called *daerah hokum* (in Dutch, *rechtsgebied*) that erased all differences in status and title between the Bangsa Duabelas and the non-court related groups (Nasruddin, 1989, p. 299) in the Bukit Duabelas area. Instead, the population was divided along the lines of foreigners (*vreemdlingen*) versus indigenous natives (*inlanders*). The latter were subsumed and collectivized as *pribumi*⁸ or “sons of the earth/soil” (*oorspronkelijk*). The meaning of kinship and social relations as markers of difference were superseded and subsumed under the homogenous category of *pribumi* – creating indigenous natives with equal rights and obligations towards the state. This social homogenization and formal erasure of social hierarchies impacted and restructured existing power relations among the residents of Jambi.⁹ Dutch colonial rule separated sisters from brothers as they replaced kinship-based socio-political structures and land tenure systems with concepts of territory-based ethnicity and legal frameworks based on ideas of the European nation state. In Jambi, it also transformed the population of the Bukit Duabelas region from differentiated ruling dynasties into homogenous native groups.

NATION-BUILDING AND THE CREATION OF CITIZENS AND INDIGENOUS COMMUNITIES

Following Indonesian independence in 1945, the implementation of the 1976 Forestry Law again changed the local rights of (forest) resource use, land tenure, and concepts of communal ownership (*tanah adat*, *hutan adat*, *hutan lindung*, etc.). Sumatra, as one of the “outer islands”, was conceptualized by the regime as a remote area that is scarcely inhabited and provided endless ‘free’ land and unclaimed natural resources that only waited to be exploited. In Jambi, large-scale timber exploitation and infrastructural access by road building projects in the 1980s posed the preconditions for the realization of transmigration projects. These projects were not only for relieving population pressure and poverty on Java but also for fulfilling a political purpose in the context of nation-building that had already been started by Dutch colonial rule.

8 The word *pribumi* combines the Javanese prefix *pri* with the Sanskrit loanword *bumi* (earth, soil) (Siddique & Suryadinata, 1981, p. 663).

9 For example, it is reported that the Arabs (Orang Arab) who had been integrated into Jambinese society for five generations through marriages with Jambinese women and who had always played an important role at the *kraton* of Jambi asked to get the status of *pribumi* from the Dutch in order to acquire the same access and land rights as natives.

Between 1983 and 1997, around 25,000 households, mainly originating from central and eastern Java, were relocated to the Bukit Duabelas area. Each family roughly consisted of four members. The justification for the site selection can be found in a World Bank Report (1979) that states:

As the proposed settlement sites [in the Bukit Duabelas area] are mainly primary dryland forest, they have practically no indigenous population. Generally, the population density (12-18 persons/sq km) of the two districts (*kabupaten*) in which the project sites are located is low, even when compared to Jambi province (22 persons/sq km) or Sumatra as a whole (44 persons/sq km). (p. 16)

Striking in this formulation is not only the negotiation of the existence of until then privileged subjects of pre-colonial times but also the distinction between categories of indigenous (Jambinese) and non-indigenous (Javanese).

In the Air Hitam region, state transmigration projects heavily impacted land rights. The two villages Pematang Kabau and Lubuk Jering used to share common roots and trace back their origin to pre-colonial times. The founders of Lubuk Jering reportedly belonged to the local elites and shared genealogical ties with the Sultan. Pematang Kabau was a smaller hamlet founded by the same community and therefore administered as part of the village Lubuk Jering. In the wake of transforming and homogenizing local political and administrative structures, Pematang Kabau was administratively split from Lubuk Jering and the area was assigned as a transmigration settlement. This area used to be customary land (*tanah ulayat* or *tanah marga*). In 1986, 323 households were settled in Pematang Kabau. The transmigration areas were situated on a land that had just lost its status as *tanah adat* and turned into state land. It was confusing to the village population that the residents of Pematang Kabau who decided to become part of the transmigration scheme lost their rights to the customary land, whereas the ones who did not take part in the scheme continued to hold their *adat* rights to the land that was designated as a transmigration site.¹⁰ This situation has caused various conflicts because the area used to be forested area which the migrants – as a contribution to receive formal land titles – had to clear first.¹¹

Parallel to these transmigration projects, in 1979, another governmental decree¹² restructured the political and social organization of the population in the Bukit Duabelas region. The former village entities (*dusun* or *kampung*) were turned into so-called *desa* and given new political structures, hierarchies, and institutions that should formally replace the customary structures and laws of *adat* (Warren, 1990, p. 24). The former head of the community who, according to the Jambi Melayu political system, had to have close kinship ties to the groups' elders and former political leaders was replaced by an officially appointed village head.¹³

10 In the frame of transmigration settlements, 20% of the utilities (housing, land, subsistence) should be set aside for the local population to facilitate economic development in the respective areas.

11 Today, nine villages in the region Air Hitam claim *ulayat* rights to the area of the former *marga* Air Hitam.

12 Undang Undang Republik Indonesia No. 5/1979 tentang Pemerintahan Desa, Republik of Indonesia, 1979.

13 After the fall of Suharto, the existing Village Government Law was replaced with the legislation

The villages in the district of Air Hitam were allocated communal land, village boundaries were redefined, and resident identity cards were issued. Even though the village borders did not match with the communities' former territorial claims, the act of village constitution finally turned the village residents into acknowledged citizens of the Indonesian nation state. The formerly scarcely populated but socially complex and historically rich area suddenly became a place of state activities and control. The resettling of Javanese majority population was seen as a measure to establish state presence and weaken the power of local political elites (Elmhirst, 1999, pp. 813-815). Moreover, the transmigration program was an attempt to create uniformity across different cultural groups and homogenize socio-political structures of organization at village and community as well as at family level. In contrast, forest dwelling groups like the Orang Rimba were defined as "traditionally remote communities" (*Komunitas Adat Terpencil*, KAT) (Direktorat Pemberdayaan Komunitas Adat Terpencil, 2003). The state and public opinion stereotyped them as remote, uncivilized, and backward (Bertrand, 2004, p. 45; Li, 2000, p. 149). The social department of Jambi stated that there is a "big gap and much difference in the aspects of value system between [the Orang Rimba] and local socio-culture" (Direktorat Pemberdayaan Komunitas Adat Terpencil, 2003, p. 10). By categorizing the Orang Rimba as traditionally remote, the state neglected their position in the socio-political system of the Bukit Duabelas area. Instead, they became categorically isolated and turned into a minority group deprived of any rights. Again, state policies and national legislation continued to transform local kinship-based socio-political structures and land tenure systems into administrative categories of citizenship and codified legal rights. The Orang Rimba, like other communities all over Indonesia, became the constituting 'other' of the modern Indonesian villager and citizen. Thus, again 'sisters' were separated from 'brothers' as they were now categorized as a remote community and as non-citizens living next door to their 'brothers' who became fully acknowledged citizens. Yet, at the end, both the Orang Rimba and local villagers were equally deprived of their customary land tenure by the nation state.

GLOBAL DISCOURSES MEETING LOCAL REALITIES

These politics of marginalization, suppression, and dispossession generated smoldering conflicts that erupted after the fall of Suharto and with the beginning of political decentralization and a more NGO-friendly climate in the year 1999, when freedom of speech allowed the questioning of political decisions and articulation of local (indigenous) identities along rights over natural resources. Against the official line of Suharto's regime – which implied that Indonesia is a nation with no indigenous people or that all Indonesians are equally indigenous (Bertrand 2004, p. 45; Li 2000, p. 149) –, growing political freedom facilitated the foundation of AMAN which has mobi-

No. 2/1999 which reopened the space for local structures of governance and political organization. A significant change was that the village head became accountable to the village representative body (*Badan Perwakilan Desa*, BPD) instead of the district head. UU No. 5/1979 was revised to UU No. 32/2004, which states that each village, district, and province has authority over its internal affairs. Regulation UU No. 32/2004 reinforced the law it replaced, by allowing regional governments to restructure their formal administrative area as long as it did not inhibit economic development.

lized isolated groups in many regions of Indonesia and promotes their interests on a national level. This movement draws its legitimacy from the notion of 'indigenous peoples' as identified by the ILO Convention 169 (Benda-Beckmann, 2011, p. 185). In doing so, it links the local concepts of traditional communities to global discourses of indigeneity and indigenous rights. The convention aims to protect

tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. (ILO, 1989, Article 1(1))

Along these criteria, self-identification is considered fundamental for the identification of indigenous and tribal peoples.

Members of the Orang Rimba community from Air Hitam were part of the first congress of indigenous people of the archipelago in 1999, which also marks the birth of AMAN. For them, the categorization as remote *adat* community suddenly offered the chance to join AMAN and to transform this derogatory national categorization into a global category of rights. The acknowledgement as 'indigenous people' marked the Orang Rimba, as Tyson (2011) called it, different and 'special'. While they still formed a constitutional other, discriminating national laws and politics could be challenged by referring to international rights and regulations that often overlapped with national legal orders. This also applies for endeavors of indigenous land titling, as one of AMAN's central fields of activity. The Orang Rimba can now reclaim their customary forest area as *hutan adat*, as they can easily be identified as indigenous people by the forestry department. (Campbell, 2002, p. 114)

Ironically, the Orang Rimba and sedentary Melayu villagers formulate the same historically rooted land claims in the Bukit Duabelas area. Both relate themselves to each other as sisters and brothers. Yet, during Dutch colonial rule, they were separated into different ethnic groups and assigned different administrative territories. After independence and under the Suharto regime, the Orang Rimba were turned into remote non-citizens, without any rights. They were left to live according to their customary *adat*. The Melayu villagers, in contrast, were forced into the category of citizens and their *adat* structures were forcefully replaced by new state-defined socio-political structures. Now after the end of the Suharto regime, due to their 'customary' lifestyle, formerly neglected Orang Rimba were rehabilitated with the support of global indigenous rights discourses and meet the criteria to be identified as indigenous people by the forestry department. Even though the Melayu village communities would fulfil the criteria of indigenous peoples according to the ILO convention, due to the transformation of socio-political structures and the setting of territorial

boundaries by the Suharto regime, the government institutions do not acknowledge their claims. The village communities in Air Hitam cannot formulate claims to *hutan adat* despite their pre-colonial existence. The contradictions between territorial policies of the nation state and the local histories of the people become clear in a statement of Orang Rimba political leader Tenganai Lengkap:

Yes, the border is now called national park. But we are having a border since former times – this border follows the river Berenai and comes from Sultan Taha, in former times. This is the case, since mankind walks on two legs. The borderline [between the Orang Rimba and the villagers and the national park borders] are not the same. Our borders have existed since ages, since the colonial times. I will say, since the colonial time, this has been a bordered area. In history, the elites used to be the rulers over the territory. This means, the law of the government has not grown in this area, but the law lies within the hands of the people that hold the history. From the beginning until today. This territory lies within the Indonesian state. The history is until today in the hands of the *jenang* local elites. (Tengannai Lengkap, 23 December 2014)

CONCLUSION

The case study in this article presented a situation where the complex interaction of global discourses, international regulations, and national legislations shape local realities and identities that restrict and enlarge people's agency at the same time. The global category of 'indigenous peoples' touches upon political and social dimensions of power relations between citizens and the state. It can be understood as a dispute over the legitimacy of alternative forms of land tenure, and over the value of alternative notions of property tied to local identities and agro-ecological regimes, and finally over who should have privileged access to local resources. To understand land tenure, it is indispensable to fully understand the political and historical context that has shaped it. Cultural differences have been highlighted while territorialized and historical ties with the sedentary population have been erased and replaced by antagonisms of 'specialness' and 'citizenship'. Notably, both categories define relations of local communities to the nation state: either as citizen and therefore the central subject of the state or as constituting 'special' or 'other'. Our case shows that whether a group is defined as one or the other – as citizens or indigenous – is an act of arbitrariness pushed by colonial and postcolonial policy-makers in relation to land use. In effect, state policies not only determine communities' territorial rights but also transform communities' identities and relations among each other. Thus, while indigenous land titling may indeed be seen as an act of justice, if viewed from the perspective of community rights and long neglected communal claims against the state, on the horizontal level – the level of community relations – it can also create social injustice. In our case study, an act of justice from a global perspective creates injustice on the local level as it separates sisters from brothers and produces winners and losers with respect to historically equally rooted land tenure.



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