

DISPUTED NORMATIVITIES AND THE LOGGING BOOM
IN KUTAI BARAT

Local dynamics during the initial phase of regional autonomy
in East Kalimantan, Indonesia

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ABSTRACT. When Indonesia implemented one of the most rigorous decentralisation reforms throughout Asia in 1999, hopes were high that this would improve the well-being of the local population and promote sustainable resource use. In the district of Kutai Barat, unclear task-sharing and the overlapping authorities of central and district government triggered a logging boom that, on the contrary, increased inequality and furthered deforestation. During this phase of legal uncertainty, ad hoc arrangements between local actors became the central determinants for access to forests and the distribution of benefits. Taking the ethnographic example of two Dayak Benuaq villages, I show that these ad hoc arrangements have to be understood as the outcomes of processes of dispute and negotiation over normative orders at the village level. My case studies show that the specific situation during the initial phase of decentralisation provided local actors with manifold chances to challenge and change existing normative orders that regulate access to forests in Kutai Barat, as well as to create new ones by conflating state law and customary law in creative ways. The case studies further demonstrate that the respective power relations between different actors crucially influenced the form and quality of these ad hoc arrangements and thus largely determined the actual outcomes of decentralisation.

INTRODUCTION

When Indonesia implemented one of the most rigorous decentralisation reforms throughout Asia in 1999, hopes were high that this would improve the well-being of the local population by changing existing power relations in favour of the poor and improving access to and rights over natural resources. However, economic insecurity and legal uncertainty created a situation which accelerated the extraction of natural resources and produced new inequalities in many regions.¹

In East Kalimantan, in the district of Kutai Barat unclear task-sharing and overlapping authorities of central and district government triggered a logging boom that continued until new forest policies and the new decentralisation legislation of 2004 restored authority to central government and intensified the control of illegal logging. The initial phase of regional autonomy in Kutai Barat was thus characterised by short-lived

¹ Rhee (2000), Barr *et al.* (2001), Warren and McCarthy (2002), McCarthy (2004)

economic benefits for local communities, an increase in inter- and intra-village conflicts, increasing inequality and further deforestation.²

During this phase of extreme uncertainty, local agency was very important in shaping the actual social arrangements that governed communities and regulated the distribution of benefits from new economic opportunities. Likewise, new patterns of resource exploitation were often determined by '*ad hoc* local accommodations between parallel property systems and institutional arrangements' (Warren and McCarthy 2009:7; *italics in the original*). I thus want to focus here on the process of how local actors have disputed, challenged, changed and created normative orders that regulate access to forests in Kutai Barat. Taking the ethnographic example of two Dayak Benuaq villages, I describe how tensions between central and local authorities during the initial phase of decentralisation led to processes of negotiations over normative orders and rights to natural resources on the village level, as they provided local actors with manifold chances to interpret, use, and circumvent existing rules as well as to create new ones.

In taking this perspective, I am pursuing three aims. First, I follow the call to understand indigenous forms of resource management as the outcomes of specific social, economic, political, historical and environmental contexts (Eghenter 2000, 2003). Secondly, my case studies contribute to a better understanding of communities as sites of heterogeneous and conflicting interests (Agrawal 1999). Thirdly, they contribute to a better understanding of how power relations between local actors shaped the *ad hoc* arrangements that determined the actual outcomes of decentralisation (Warren and McCarthy 2009).

THE LOCAL SETTING

Kutai Barat became a district (*kabupaten*) in October 1999, when the former district of Kutai was split into three parts: Kutai Barat, Kutai Timur and Kutai Kartanegara. It stretches along the Mahakam River, including the lowland areas around the Mahakam lakes, the highland regions of the Middle Mahakam with the new district centre of Sendawar and the upstream areas of the Mahakam headwaters. The infrastructure of the district is very limited, as most of the physical and industrial facilities of the former district of Kutai are located in Kutai Kartanegara. With a territory of 31,628 square kilometres and almost 150,000 inhabitants, Kutai Barat is sparsely populated (Kutai Barat 2003).

The population of Kutai Barat is characterised by great ethnic variety comprising of several Dayak groups, such as the Tunjung (Tonyoi), Benuaq, Bahau and Kenyah or Bentian, which together form the majority of the population. The district is also

² Gönner *et al.* (2007), Haug 2010, Bullinger and Haug (2012)

home to Malay groups like the Banjar and Kutai, as well as migrant groups from other Indonesian islands, like Javanese, Bugis and Batak. With regional autonomy, political leadership changed as the influence and representation of the various Dayak groups (mainly Benuaq, Tunjung and Bahau) within local government substantially increased. This strong representation marked a major step forward for the formerly marginalised indigenous population and contributed to a hopeful atmosphere at the outset of decentralisation.

The district possesses rich forest resources, with a state forest area of 2.3 million hectares (KK-PKD 2001:6). The most important economic sectors of the district are timber and mining, with in the latter case the decreasing importance of gold and the increasing importance of coal.³ The development of oil-palm estates in the sub-district of Jempang looks back over a long history of conflict and controversy (Casson 2001a, Gönner 2002, Haug 2010) and has so far only played a minor role in Kutai Barat. The smallholder economy of the district is characterised by swidden agriculture, animal husbandry (mainly pigs and chicken), market gardening and small-scale estate crop production of, for example, coconut, coffee, pepper, cocoa and most importantly rubber. For a previously rather isolated and forested district like Kutai Barat, decentralisation was – and continues to be – a challenging endeavour, as well as a great opportunity for self-driven development with significant potential gains.

LEGAL PLURALISM AND LEGAL UNCERTAINTY

The legal culture of Indonesia includes three parallel and in parts contradictory normative orders: state law, which is built on Dutch civil law, Islamic law and customary law, which is embedded in local *adat*.⁴ While early scholars of legal pluralism tended to view all different normative orders as located within the framework of state law, current scholars tend to focus rather on the interrelations between diverse legal orders (Lukito 2013:11). The existing legal pluralism in Indonesia is thus '[...] viewed not as a system in which each tradition is compartmentalised and separated from others but one in which the entirety of the normative traditions existing therein are essentially correlated [...]' (Lukito 2013:8). Especially the comprehensive work of Keebet and Franz van Benda-Beckmann has contributed to a more detailed understanding of the interrela-

³ PT Kelian Equatorial Mining (KEM) has operated one of the world's largest gold plants in the sub-district of Long Iram. After twelve years of production PT KEM was preparing the closure of the mine during the time of my fieldwork which took place between 2004 and 2007.

⁴ *Adat* can be best understood as a dynamic system which controls all aspects of human life and which varies among the different regions of Indonesia. *Adat* is often translated as 'tradition' or 'traditional culture' while that part of *adat* which constitutes traditional law has often been termed '*adat law*'.

tions between state law, religious law and *adat* law.⁵ They have also shown how people in Indonesia make creative use of plural normative orders (K. v. Benda-Beckmann 1981) and how decentralisation was used by local communities to renew traditional forms of social organisation (K. v. Benda-Beckmann and F. v. Benda-Beckmann 2001).

Access to land and forests in Indonesia is mainly based on the dominant state law and the by comparison relatively weak customary law. The most important regulations under national legislation are the Basic Agrarian Law (BAL) of 1960 (Undang Undang 1960) and the Basic Forestry Law (BFL) of 1999 (Undang Undang 1999a), which respectively govern land and forest areas. *Adat* rights are acknowledged by both laws as long as *adat* still exists and is not contrary to national interests or to superior national legislation. However, most land and forest areas owned by indigenous communities according to *adat* are officially classified as state land or state forest.⁶ Local communities thus have very limited ability to claim official rights to land or forest resources (Bakker and Moniaga 2010:189).

Despite this lack of official acknowledgement, *adat* rights determine the everyday practices of resource use in villages throughout Kutai Barat. When legal uncertainty during the initial phase of regional autonomy enabled local people with new chances to circumvent existing rules and create new ones, customary law and state law were both heavily disputed, being partly changed and even conflated in new, creative ways. To understand how the actual outcomes of regional autonomy have been shaped, it is thus illuminating to look at local processes of negotiating normative orders as

[...] de facto arrangements determining resource outcomes [which] tend to be deeply embedded in social relations where there is often a great deal of ambiguity regarding rights of access and compliance with rules. Here outcomes occur through continuous processes of dispute [...] (Warren and McCarthy 2009:15–16).

During the initial phase of decentralisation, the existing legal pluralism became more complex through new regulations concerning forest management at both the district and village levels. The disorderly and sudden nature of the changes brought about by regional autonomy has thus been very apparent in the forestry sector.⁷ In parts contradictory legislation and inconsistent decentralisation policies led to conflicts between central and local government authorities. The resulting legal uncertainty was one of the

⁵ F. v. Benda-Beckmann (1979), K. v. Benda-Beckmann (1984), F. v. Benda-Beckmann and K. v. Benda-Beckmann (2005)

⁶ In May 2013 the Indonesian Constitutional Court issued a decision (Decision No. 35/PUU-X/2012) which confirms that customary forests are forests located in indigenous territories, and should no longer be considered as state forests. However, so far the decision has not been followed up by implementing regulations.

⁷ See Barr and Resosudarmo (2002) who provide a synopsis of fieldwork conducted by the Center for International Forestry Research (CIFOR). See also McCarthy (2001a, b), Barr *et al.* (2001), Casson (2001a, b), Potter and Badcock (2001), Soetarto, Sitorius and Napiri (2001) and Obidzinski and Barr (2003).

major drivers behind the logging boom, during which district governments took actual control over forest governance, and local communities enjoyed largely free access to their forests.

Regional Autonomy was outlined by Law 22 and Law 25 of 1999 (Undang Undang 1999b, c). Law 25 on fiscal balance set out a new system of financial arrangements between the centre and the regions under which districts received a much larger share of the revenues generated within their borders and in addition were allowed to generate their own revenues. Law 22 regulated the devolution of political authority to local governments. Central government retained authority over foreign policy, defence and security, monetary policy, the legal system and religious affairs, while it ceded authority over all other fields to local governments. These gained therewith, among other things, the full responsibility for natural resource management, including forests.

Law 22 of 1999 also significantly changed the position of villages, as it viewed them as autonomous levels of government and legal communities (*kesatuan masyarakat hukum*) with the rights to raise funds, pass village regulations and reject projects from other levels of government. Further, the powerless village assembly (*lembaga musyawarah desa*) was replaced with new democratic and downwardly accountable village councils (*badan perwakilan desa*).

The decentralisation of forest management was further strengthened through a new forestry legislature, which, as part of the 'reformasi package', devolved power to lower levels of government (Resosudarmo 2004:118). Most important for the logging boom in Kutai Barat was Government Regulation No. 6/1999 (Peraturan Pemerintah 1999) concerning forest exploitation and its implementing regulation by the Ministry of Forestry (Keputusan Menteri Kehutanan 1999), which empowered districts to issue small-scale timber concession licences for areas of up to a hundred hectares. However, the exact extent of the district government's new authority over natural resources remained vague, as Law 22 contained several ambiguities which allowed multiple interpretations (Resosudarmo 2004:114). Further inconsistencies arose between Law 22 and the above-mentioned forestry law of 1999. In contrast to the Ministry's own *reformasi* legislation, it did not mention the transfer of forestry authority to the regions and retained the notion of central control (McCarthy 2004:10).

Eager to increase local revenues, district governments interpreted Law 22 in their own favour and allocated large numbers of small-scale logging licenses. In Kutai Barat the issuing of these licences was regulated through District Head Decree No. 4/2000 on Procedures for Granting Forest Product Harvest Concessions (Hak Pemungutan Hasil Hutan [HPHH]). By the end of 2000, district government had already granted hundreds of such licenses.⁸ The HPHH licences were granted to individuals, groups or cooperatives, who then mainly worked together with logging companies as contractors

⁸ The actual number of HPHH licenses varied between 622, according to KK-PKD Kutai Barat (2001:43), and 223, according to Demarwan, Komarudin, and Mcgarth (2006:7).

to exploit the forest. Negotiations between logging companies and villagers determined the fee that contractors would have to pay to the traditional owners of the forest. These fees varied between 50,000 and 150,000 rupiah (Rp) per cubic meter of timber.⁹ This new arrangement strengthened customary rights and provided a much appreciated new income opportunity for local people. However, communities remained relatively powerless compared to local elites and (international) companies.¹⁰

As most districts lacked the capacity to monitor the implementation of these small-scale licenses, they resulted in various inappropriate assignments and dubious practices (Barr *et al.* 2001). In Kutai Barat many logging activities took place outside the actual areas delineated by the permits, and loggers returned to the designated areas only when rare field inspections took place. It was also common for small-scale licenses to provide documentation for the transport and trade of logs which had been cut down in neighbouring areas, claiming that the logs originated from within the concession area.¹¹

However, by the time the small-scale licenses had been issued in Kutai Barat, 1.6 million hectares of forest were already being held by twenty-seven centrally issued forest concessions (Hak Pengusahaan Hutan [HPH]) (KK-PKD 2001:36). The new HPHs were thus an unwelcome rival, especially as some of the HPHs were handed out for plots lying within the area of existing HPHs, threatening their logging operations. Large Timber Concession Holders also disliked the new small-scale licenses for encouraging local people to demand higher fees and to engage in disputes with the logging companies (Casson 2001a:16, KK-PKD Kutai Barat 2001:48).

The Ministry of Forestry thus came under increasing pressure to halt the extensive allocation of these small-scale permits and requested local governors to assist in suspending their further issuing (Resosudarmo 2004:121). But district officials did not comply with this request, as they no longer felt subordinate to provincial government. In April 2000, the Ministry of Forestry finally suspended the ministerial decision that had given district governments the authority to issue small-scale logging licenses. However, several district governments, including that of Kutai Barat, ignored this decision, arguing that, as long as Government Regulation 6/1999 was still in force, they still had the power to issue the licenses (McCarthy 2001b:10). The district government of Kutai Barat further argued that small-scale logging was an important source of direct benefits to the local population (Casson 2001a:17). In this situation the distinction between 'legal' and 'illegal' logging became blurred, as logging activities could be 'legal' under district government regulations, while they were considered 'illegal' by the central government (Casson and Obizinsky 2002:2134).

⁹ Andrianto (2006: 45). In 2004, Rp 10,000 equalled 0.85 USD.

¹⁰ See Rhee (2000), Barr *et al.* (2001, 2006), Casson (2001a), Barr and Resosudarmo (2002), Gönner *et al.* (2007) and Haug (2010).

¹¹ Similar practices have also been reported from other regions (Resosudarmo 2004:121).

In June 2002 the central government finally issued the regulation implementing the new forestry law. This swung authority over forests back to the centre, providing the Minister of Forestry with the sole authority to issue logging licenses (Resosudarmo 2004:125). Laws 22 and 25 of 1999 were also replaced by Laws 32 and 33 of 2004, which retained regional autonomy but recentralised many fields of authority to higher levels of government. The short period of decentralisation in the forestry sector thus came to an end in 2002 (Demarwan, Komarudin and Mcgarth 2006:5). However, de facto decentralisation, as Steve Rhee (2000) and Christopher Barr *et al.* (2006) call it, continued until late 2004, when control over illegal logging increased significantly as part of the newly elected Indonesian President Susilo Bambang Yudhoyono's ambitious plans to tackle Indonesia's most serious problems within the first one hundred days of his presidency. The villagers then did not dare to work in the forest any longer, and traders were too afraid to transport timber, as the road was lined with police posts the whole way down to Samarinda.

THE DAYAK BENUAQ

Comprising almost twenty percent of the population, the Benuaq are the second largest ethnic group in Kutai Barat. They are classified as a subgroup of the Luangan Dayak (Sillander 1995:71), but most Benuaq hardly ever use this term and mainly refer to themselves either as Dayak, in contrast to the Muslim population, or as Benuaq, in contrast to other Dayak groups in Kutai Barat.

The Benuaq belong to the Dayak groups who were previously divided into three social strata. The highest stratum was called 'mantiiq' and referred to the community leaders and their families. The vast majority of the population belonged to the middle stratum of commoners, the *merentika* or *angee*. The lowest stratum consisted of slaves or bondsmen and bondswomen (*ripatn*). With the official abolition of slavery after Indonesian independence, the social stratification of Benuaq society was abandoned. Their increasing integration into the national administration and a monetary market economy led to a new dispersal of power and prestige, with the earlier stratification becoming practically invisible (Gönner 2002:51). However, among themselves villagers still remember their respective social backgrounds, which still play a role in some places, especially when it comes to questions of political power.

Since the establishment of the village administration law in 1979, the political organisation of Benuaq villages has been characterised by a dual leadership system, with the village head (*kepala kampung*) and the *adat*-elder (*kepala adat*) being the joint heads of the community. With decentralisation a new community council has been introduced (called 'Badan Perwakilan Kampung' [BPK] in Kutai Barat), whose members are elected by the villagers. Therewith village leadership has now become tripartite.

The Dayak Benuaq practice an extended subsistence economy, which is characterised by a combination of subsistence strategies and a variety of other economic activities that are integrated into the surrounding market economy (Gönner 2001:171). Historically, this combined economic strategy has grown out of the trade in forest products, which linked the Benuaq to international trade for several centuries. The most important market products are rattan (*sokaq* [Calamus caesius]) and rubber, which are sometimes collected in the forest, but mainly grown in rattan and rubber gardens. Additionally, the Benuaq produce a variety of other forest products which are grown in forest gardens (*simpukng*).

The traditional land rights system of the Benuaq usually distinguishes between individual ownership, descent group ownership (*rempuuq*) and communal ownership. Through the clearing of a piece of primary forest, individual ownership rights are established which then extend to the further use of the subsequent fallow, including the establishing of forest gardens. When these rights are inherited by the next generation, they either become the common property of all the children of the initial owner, or else several gardens are divided among the children and become their respective individual properties. Fields, gardens and areas of secondary growth are thus mainly owned individually or in the form of *rempuuq*. Forest areas that have not yet been cleared by anyone are considered to be the common property of all villagers. Resources that are growing wild can usually be harvested by anyone. Fruits from forest gardens are also open to everyone as long as they are collected for personal and not for commercial use (Haug 2002).

ENGKUNI PASEK

Engkuni Pasek lies eleven kilometres away from the new district capital, on the shore of the Idaatn River in the western part of the sub-district of Barong Tongkok. The village area comprises 32.77 square kilometres, and has a total of 362 inhabitants (Kecamatan Barong Tongkok 2000). The villagers practice an extended subsistence economy with minor attention being given to subsistence and a stronger orientation towards earning a monetary income. The most important sources of income are rubber-tapping and salaries, the latter mainly as teachers or civil servants. The largest proportion of the village area, approximately fifty-five percent,¹² is used for agriculture, including rice fields, fallow fields and rattan, as well as rubber and forest gardens. Forest makes up thirty-five percent of the village area and consists mainly of secondary growth, with some small patches of old forest. The remaining ten percent consists of an area of fallow fields and forest patches destroyed by forest fires in 1982/83 and 1997/98. Commercial logging

¹² As the village area has not yet been measured, this percentage is based on the estimates of key informants.

played an important role in Engkuni Pasek in the form of 'log flood' enterprises (*banjir kap*) along the Lungau River during the late 1960s and early 1970s.¹³ Since then no noteworthy logging activities have taken place in the village area.

When I first stayed in Engkuni Pasek in 2001, a forest area called Brasaatn was introduced to me as village forest, falling largely into the category of common property, as vast parts of it had not been opened up yet by anyone, and only some old fallows were located there. When I came back in 2004, some people were cutting timber in the Brasaatn forest, a matter of controversy for the villagers.

After the issuing of the new District Head Decree No. 4/2000, a timber company had approached the villagers and suggested they apply together for a small-scale logging licence. However, the people of Engkuni Pasek declined this suggestion. They feared that logging activities would not be preceded by a clear demarcation of their fallows and forest gardens and that they could thus cause more trouble than profit. Instead of working together with a company, they decided to manage their forest on their own.

With the aim of providing a new income opportunity for the villagers and village government, the village council, the village head and the *adat* elder together passed a village regulation in early 2003 which allowed commercial logging in the village forest (Peraturan Kampung 2003). This village regulation was based on District Regulations Nos. 19, 20 and 21 of 2001 (Peraturan Daerah 2001a, b, c), which allowed village government to generate revenues from local assets, including village forests (No. 19), provided the village head and the BPK with the authority to create village regulations (No. 20) and determined how this was to be done (No. 21).

The new village regulation allowed the owner of a rice field or fallow to cut timber within a radius of three hundred meters around his field or fallow. For each cubic meter of timber sold, the owner was supposed to pay a fee of between Rp 50,000 and 75,000 (depending on the type of wood) to the village government. Of this fee, forty percent was for the village government, ten percent for the people who oversaw the logging activities and fifty percent to be divided among all village households. The area beyond the three hundred meter radius was still considered commonly owned forest and should not be logged. This village regulation was largely based on an *adat* rule, which allows the owner of a rice field to cut trees around his field within the distance of a tree-length (*erai umaakng*), as long as the area is not currently owned or claimed by someone else. However, the ownership rights he establishes by opening the field only concern the field and not the surrounding forest.

Logging activities advanced quickly in the Brasaatn area, as they were also supported by the road-building activities of the local government. Physical access to the forest improved through the construction of an asphalted road from Engkuni Pasek to Sendawar, two new bridges, and a dirt road from Pasek into the area of the Brasaatn for-

¹³ Logs are cut by hand and floated out of the forest on swollen rivers during the rainy season.

est, which had originally been constructed with the aim of facilitating better transport of field and garden products to the village.

More and more villagers took their chainsaws and went into the forest to fell trees and cut them immediately into square blocks (*blambangan*) or shelves. Timber traders came regularly to the Brasaatn forest and paid between Rp 300,000 and Rp 700,000 per cubic meter depending on the shape and the type of wood. How much money a chainsaw operator makes depends on the amount of timber he cuts. How much he can cut again depends on the position of the timber, the condition of the tree, his experience and the quality of the chainsaw. The villagers told me that under good conditions a skilled person can cut on average between one and two cubic meters of *blambangan* per day, while cutting shelves takes longer. The actual income depends on the number of people involved and the location. If someone is working with one or two helpers, he can cut more timber, but has to pay them a share. If someone is working in an old fallow belonging to someone else, he also has to pay Rp 50,000 per cubic meter to the owner. In one week, an experienced chainsaw operator could thus make a profit of between Rp 1 to 3 million. This was a profitable sum seen in comparison to a minimum average financial requirement of approximately Rp 700,000 per household per month or a teacher's salary, which varies depending on the grade between Rp 800,000 and 1.3 million per month.

The economic situation in Engkuni Pasek had already improved after decentralisation due to increasing rubber prices and new job opportunities at the nearby district centre. But the new income through logging provided the highest sums in the shortest amount of time. Most people invested their increased income in the purchase of motor bikes, TVs, satellite dishes, VCD players and generators. Several families also used the improved access to timber to build a new house or undertake necessary renovations or extensions. However, as the logging money was mainly received by men, large proportions of it were also spent on gambling and in the so-called 'cafes' which sprung up like mushrooms in Kutai Barat offering karaoke, alcohol and prostitution.

Although logging was greatly appreciated as a new lucrative source of income, frustration grew quickly among the villagers, as things did not go according to plan. First, not all villagers became involved in the logging. Some could not join because they couldn't operate a chainsaw or, most importantly, because they did not have the necessary capital. Taman Anewa explained:

One new income option is logging after the forest has been opened now. But that opportunity can only be used by people who have assets. People who have no assets or few funds cannot take part [in the logging activities]. What you need is a chainsaw,¹⁴ fuel and rice;

¹⁴ A good chainsaw costs approximately Rp 8 million, while its regular servicing costs between Rp 200,000 and 300,000.

you have to make a hut in the forest and need money to hire people. That only benefits people who are already half-wealthy (Engkuni Pasek, 9 May 2004).¹⁵

Secondly, those who became involved in logging did not follow the new village regulation but cut timber far beyond the permitted three hundred meter radius around their fields or old fallows and did not pay the required fee to the village government. The village head, the *kepala adat* and the members of the village council thus felt very disappointed and angry that their regulation was not being respected. Villagers not engaged in logging felt that they didn't gain anything, since without fees no share could be distributed among the households. Tinen Sugap complained about the situation:

People are rowdy and not obedient anymore; they don't want to follow any rules anymore. Whoever has the opportunity goes for it, and we who do not own a chainsaw or don't have the capital go away empty-handed. The village community is not co-operating well, and only certain people benefit (Engkui Pasek, 8 May 2004).

These logging activities therefore became a hotly debated issue among the villagers, as this form of uncontrolled logging not only violated the newly created village regulation and the underlying *adat* rule, it was also considered a gesture of disrespect for the common good. Thus some people refused to become involved for 'moral' reasons, like Taman Ito: 'Whether one gets involved in logging also depends on one's personality. The people who cut timber don't know what it means to feel ashamed [...] (Engkuni Pasek, 9 May 2004).

The logging was further criticised for the negative long-term impacts it would have on the village's natural environment. However, some loggers cut timber although they fully realized the damage that was being done to the village forest, as they felt that they had no other chance to keep up with their increasing living costs. When I visited Taman Surdi, for example, he told me that he had just came back from working in the forest. He said he needed money to pay for his house's connection to the electricity network, as he wasn't able to afford the necessary Rp 1.6 million if he hadn't gone logging (Engkuni Pasek, 1 May 2004). Like most people involved in the logging, Taman Surdi viewed the situation as an opportunity which would not last too long and which he did not want to miss.

Some people who were not able to operate a chainsaw started to mark trees in the common forest area as belonging to them, brought in people from outside to fell and cut the trees, and then shared the profits with them.¹⁶ The village regulation actually allowed residents of Engkuni Pasek to hire two chainsaw operators from outside each

¹⁵ All interviews were conducted by myself in Bahasa Indonesia. The names of all informants have been changed to preserve their anonymity, as many interviews include information which could be considered as 'sensitive' during this period of heightened conflicts.

¹⁶ These people were Tunjung or Javanese chainsaw operators who had no family ties in the village and no knowledge of the location.

nuclear family, though they had to obtain an official permit from the village government before they could start working in the village area. However, most people who brought in outsiders viewed it as unnecessary to comply with these requirements. This aroused the resentment of most of the other villagers, as they were not happy about the increasing numbers of 'strangers' in their forest.

The logging also caused a large number of individual conflicts both between and within households. Most of these disputes concerned the unjust distribution of income from timber cut within and around old fallow owned in the form of *rempuuq*. Theoretically the benefits should be shared equally among all family members with rights to the location, but this seldom happened. In most cases one person cut and sold the timber and then paid his relatives what he considered an appropriate amount or, in some cases, nothing at all. As the logging was by no means a transparent business, relatives could only speculate about the actual profits a brother, uncle or nephew had earned by carefully observing the apparently increasing material wealth of his household, which resulted in an atmosphere of jealousy and mistrust.

A couple of village meetings were held in order to bring the logging activities in the Brasaatn forest back under control, but neither the village head nor the BPK were able to enforce the village regulation. The *adat* elder also proved unable to solve the problem, as the parties involved did not want to agree on a common basis for doing so.

Some *adat*-elders demanded the immediate cessation of logging activities. They took the position that the logging activities were not in accordance with *adat* as the new village regulation went beyond the previous *adat* regulation. As common village property, the Brasaatn forest should not be commercially exploited by just some individuals without the consent of the whole community, consent which had never been given. A few people argued that the logging should stop as it was too risky. Although they had no detailed knowledge of national legislation, they felt sure that without an official permit issued by the forestry department, any activities should be considered 'illegal logging'. The village leaders and a large proportion of the villagers did not question the logging but complained that the loggers were greatly exceeding the three hundred meter range and were not paying the obligatory fees. Thus the village government and the majority of the villagers did not gain any share of the benefits from logging at all.

Some of those who were cutting timber in the Brasaatn forest claimed that they were only cutting trees within the three hundred meter radius around their old fallows and that their logging activities were thus in agreement with the new village regulation. Some even opened new fields on their old fallows in the area to strengthen this claim. Another group of loggers did not even try to hide the fact that they were cutting far beyond the three hundred meter range. They openly showed just as much disrespect for the old *adat* rule and the new village regulation. They said that neither had any authority over them and also that they had no fear of any higher authorities: this was now the time of regional autonomy, and the forest was simply theirs. Many villagers were disap-

pointed at the obvious weakness of all three leading village institutions. Some even felt frightened by the strength of the loggers: 'Whoever opposes them will be viewed as their enemy [...] like my husband who was threatened [by them]. Whoever is brave will be viewed as an enemy' (Tinen Ito, Engkuni Pasek 8 May 2004).

The conflict finally continued until logging in the Brasaatn forest was stopped by the strong presence of police patrols in November 2004. The villagers immediately lost their income from logging, and many had to return motorbikes or other luxury goods which they had bought on credit. Most households shifted from timber back to rubber, and those who did not have many rubber gardens yet eagerly started planting rubber trees, hoping that rubber prices would continue to remain strong.

JONTAI

Jontai is located thirty kilometres from Sendawar in the western-most part of Kutai Barat on the shore of the Nyuataatn River. The village area is densely forested and in the north borders directly on to the province of Central Kalimantan. Although the village can still be considered close to the new district centre, it has been quite isolated until the recent infrastructural improvements that followed decentralisation. Numbering 361 inhabitants living in sixty households, its settlement size is similar to that of Engkuni Pasek, while the village area, covering 64.32 square kilometres, is twice as large.¹⁷

The inhabitants of Jontai practice an extended economy with a quite high emphasis on subsistence and a seasonal and situational orientation towards earning a monetary income. Subsistence agriculture thus forms the economic basis of local livelihoods. The largest proportion of the village area (sixty-five percent) consists of old secondary and primary forest, while the remaining thirty-five percent is used for agriculture, including rice fields, fallow fields, rattan and rubber gardens, and *simpukeng*.¹⁸ So far there has been no destruction through forest fires. Commercial logging undertaken by different companies has played a major role in Jontai since the 'log flood' enterprises of the late 1960s. The currently active logging company started its operations in the village area in 2001 when they obtained one of the new small-scale logging licenses in cooperation with the villagers.

The people of Jontai felt empowered by regional autonomy. They realized that rights over the forest had now been returned to them: 'Formerly the forest had been in the grip of the state. Now timber is coming under *adat* rights again. Formerly the people were quiet and did not dare talk. Formerly the state was still in power, but now the for-

¹⁷ The data on Jontai were obtained during an interview with the staff of the sub-district office (Dempar, 27 April 2005).

¹⁸ As the village area has not yet been measured, these percentages are based on the estimates of key informants.

est has been returned from the state to the people' (Taman Usni, Jontai, 10 September 2004).

They also welcomed the new HPHH regulation, as it provided them with a stronger position vis-à-vis the timber company: 'Since the forest has been returned to the people, another company has come in. The people feel independent because they got their rights back. Thus, the company now asks by the village head and the *kepala adat* [for the forest]' (Kakah Ririkng, Jontai, 10 September 2004). Having earned only small profits from previous logging operations in their forest, they were now looking forward to earning greater profits under the new arrangement. Effectively fees in Jontai rose from Rp 3,000 per cubic meter under the previous HPH system to Rp 65,000 per cubic meter under the new HPHH regulation.

Initially the villagers had decided to divide the timber company's fee to the village government equally among all the families in the village. However, when the first payment turned out to be only Rp 48,000 per family head, they felt disappointed and abandoned this method. Taman Dalli explained how this had happened:

Let's take the example of Intu Lingau. The people wanted to share [the fee] equally and use the forest as common resource. But finally the village head started to make individual locations – just the same as in Jontai! In Jontai too the forest was initially viewed as common resource, the revenues of which should be shared equally. Finally the fragmentation started because the village leaders made individual locations first. They taught the people to make individual locations instead of making the forest a common resource (Jontai, 10 September 2004).

The villagers split into groups based on common ownership claims to certain forest areas and divided up the village forest according to different 'locations'. The unopened primary forest belongs to the village community as a whole. However, families claim use rights to certain parts of the forest, which have been exploited by their parents or grandparents to hunt and gather forest products. With the introduction of the HPHH regulation, these regularly used areas have been claimed as 'inheritance right' (*bak warisan*) and termed 'location' (*lokasi*) by the respective families in order to receive fee payments for them.

Each 'location' was formalized by a 'location letter' (*surat lokasi*) setting out the rights of the respective owners. The letter contained a sketch map of the location to document its exact size and position, as well as the signatures of the owners of the neighbouring plots to ensure that the borders were agreed by all the parties involved. The letter was issued by the mayor and the *kepala adat*. Some people even went to the sub-district office to have the letter approved by means of a stamp from the sub-district leader. What had previously been commonly owned forest resources were thus divided between the villagers, and rather loose use rights were converted into descent ownership. The previous village head Kaka Aipa summarized these changes when he said:

'Formerly we had a common forest in Jontai; since the forest has a price, there is no common forest anymore' (Jontai, 29 October 2004).

The sizes of the respective forest locations were dependent on descent, the size of the area which had formerly been used by one's parents or grandparents, the honesty of the people who were involved in the division, and the kind of system used by the different families to divide the area between them. Descent played an important role in the division of the forest, as in the past the nobles (*mantiq*) had authority over vast parts of the village area. Although most villagers in Jontai have grandparents and great-grandparents from different social strata, influential villagers have used their *mantiq* origins to claim their dominance over large parts of the village forest. People whose ancestors have been very actively engaged in the collection of forest products and who strode around regularly could now also claim quite large areas as their inheritance.

However, not all villagers took part in the actual division of the forest, and especially not in the process of drawing the locations on to a map, which became the common point of reference with the timber company. People were thus dependent on the honesty of those who represented their inheritance group. Finally various groups came to different agreements. Most kept together in rather large inheritance groups, while others decided to split their forest area up again into smaller plots, which each person then managed for him- or herself. The latter option was chosen less often because most villagers wanted to avoid direct confrontations with the company.

Each of these larger inheritance groups was represented by a (partly self-appointed) leader who was responsible for the arrangements with the logging company. He controlled the actual amount of timber logged in the groups' area, made sure that the company paid the correct amount and was responsible for the distribution of the fee among the group's members. The leaders themselves received a larger share, as they had the task of dealing with the company.

The people who represent an inheritance group have to be tough, venturous and clever, because the company will try to cheat if they are not controlled. For example they take a hundred cubic meters [of timber], but say that they only took fifty cubic meters and pay a fee for only fifty cubic meters (Indi, Jontai, 14 September 2004).

Spontaneous, self-organised logging by the villagers occurred in Jontai as well. Timber was mainly cut along both new and abandoned logging roads, which meander through vast parts of the village area. People also worked in the area of the HPHH concession, cutting *blambangan* and timber shelves from trees which were considered to be of low quality by the company. The prices paid were more or less the same as those paid in Engkuni Pasek. In one week, an experienced chainsaw operator working on his own location could thus make a profit of up to Rp 3 million. These high profits contributed to an active involvement in logging, although the villagers were aware of the negative long-term effects. But like the loggers in Engkuni Pasek, they viewed logging as a window of opportunity which they did not want to miss: 'If the forest gets closed up again, if it is

given back to the state, we can't manage the forest anymore [...]’ (Kakah Diren, Jontai, 31 August 2004). Furthermore, some villagers perceived it to be their long-term right to cut timber and finally earn a financial profit, as various companies had earned a fortune from their forest over the last decades, while they themselves had remained poor.

Income from fees and logging led to a rise in the material wealth of the village. As in Engkuni Pasek, most people invested their increasing incomes in house-building activities and the purchase of machines and luxury items. Only a few households used it for long-term investments or education. Temporarily the villagers did not even have to go far to shop, as during the logging boom traders brought not only food but also clothes, furniture, kitchen utensils, toys, electronic equipment and even false teeth into the village. Large proportions of the new high cash incomes were also spent on alcohol, gambling and prostitution. Resa, one of the young men who was managing the fee payments of a quite large inheritance group, told me, for example, that he had sometimes spent between Rp 5 and 10 million in one evening together with his friends in one of the ‘cafés’ (Jontai, 19 January 2005).

As people benefited differently from fee payments and logging, inequality within the village increased sharply. While, for example, forty-seven percent of households had purchased five or more machines or luxury items during the last five years, seventeen percent bought none at all (Haug 2010:195). As in Engkuni Pasek, not all villagers could take advantage of the opportunities to cut timber, as not all possessed the necessary capital, equipment or skills to operate a chainsaw.

However, the most significant cause of the increasing inequality was the unequal distribution of fee payments. Although seventy-three percent of households reported that they had received fees in the form of several cash payments, the respective amounts varied between Rp 200,000 and 15 million (Haug 2010:196). The actual amount depended on the honesty of the group leader, the size of the respective location and the number of people in the inheritance group. Single children had a definite advantage, as they did not have to share their fee payments with siblings. The fees were received irregularly and often only paid out ‘on demand’. It occurred repeatedly, for example, that members of an inheritance group asked their representative for money in situations of need, which contributed to the development of patron-client relationships. One woman, Tinen Lurih, who had not received any fee payment, complained: ‘We, who do not know *usur bataknng* do not receive any revenues and no share’ (Jontai, 6 September 2004).¹⁹ Another villager, Taman Usni, drew the following conclusion: ‘The ones who are strong remain strong, and those who are weak remain weak’ (Jontai, 10 September 2004).

Many conflicts arose among the villagers and within families concerning the size of their different ‘locations’, as well as the distribution and use of fee payments. Several

¹⁹ The term ‘*bataknng*’ refers to the local history including family genealogies and the exact distribution of property rights within the area.

disputes also occurred because someone had cut timber within someone else's area, hoping that the owner of the location would not learn of the logging activities before the timber had successfully been sold.

Traditional conflict resolution mechanisms in Jontai were effectively solving conflicts over forest tenure at the village level, but they increasingly faced difficulties in solving conflicts that involved outsiders. A key informant told me in September 2004 that they already had five cases this year that had had to be taken to the police because they involved people who were not from Jontai. All these cases had been related to logging issues, as people from other villages were attracted by the new opportunities. Most of these 'outsiders', however, were distant relatives from other villages who felt that they also had some rights to forest locations in Jontai. Without asking the respective inheritance group for permission, they often just started their own logging operations or instructed hired chainsaw operators to cut timber in that particular area. As soon as a member of the inheritance group found out, arguments arose about ownership rights, family relations and the dimensions of the respective *rempuuq*. As traditional conflict resolution mechanisms depend very much on the willingness of the parties involved to find a compromise, they failed in cases where both sides were obstinate and high profits were at stake.

Finally logging activities in Jontai came to a halt with the expiration of the HPHH concession and the increased controls over illegal logging in late 2004. After a short while the logging company obtained a new concession licence (IUPHHK) directly from the Ministry of Forestry and continued its operations. Under this new arrangement, the company was no longer the contractor of the villagers, as it had been under the HPHH regulation. This changed position immediately led to a decline in fee payments, as the bargaining power of the villagers had been reduced. Fees fell with the new IUPHHK, and between 2005 and 2007 they have varied between Rp 25,000 and 45,000 per cubic meter, depending on personal bargaining positions and the location of the forest plot involved. For some families, fee payments also stopped because their location had been logged out. The positive effect of the declining fee payments was that the number of conflicts within the village declined. As it also became increasingly obvious that most of those who had received large fee payments had not re-invested their money, I often heard remarks like that of Ibu Kira: 'Now at least we are all the same again' (Jontai, 25 November 2005).

However, most villagers felt very disappointed about the recentralisation of the forestry sector, as they lacked alternative sources of income. They compared the current condition to their situation under the New Order,²⁰ when too they had not been allowed to cut timber in their own forest. As in Engkuni Pasek, some people had to hand back

²⁰ The Indonesian President Suharto coined this term when he came to power to contrast his leadership with that of his predecessor Sukarno. Meanwhile, the term is often used synonymously for the time of Suharto's rule (1966–1998).

items bought on credit. In 2005 most households in Jontai shifted back to subsistence strategies, earning cash through the selling of agricultural products (thirty-three percent) and rattan (thirty-three percent) (Haug 2010:241), while the remaining households were seeking daily wage labour. Some households also sold a certain kind of grass (*kapilongan*) to the coal-mining area downriver, where it was planted along the sides of the mining roads. However, rattan prices remained low at Rp 800 per kilogram, while the grass could be sold at Rp 5,000 for a bunch of one hundred blades. In comparison to logging, cutting and selling rattan or grass was perceived as hard and unsatisfying work, and the villagers started to express hopes that a coal mine would soon open in their area, so they could profit from compensation payments.

CONCLUSION

The initial phase of decentralisation provided local actors with novel chances to interpret exiting normative orders in their favour, to ignore those they viewed as unfavourable and to produce new ones. The government of Kutai Barat, for example, interpreted Law 22 of 1999 to its own advantage, took control of forest governance within the district and made eager use of the new regulation allowing district governments to issue small-scale logging licenses. Feeling empowered by decentralisation legislation and Government Regulation No.6/1999, the local government ignored the suspension of the implementing regulation by the Ministry of Forestry (Keputusan Menteri Kehutanan 1999), mainly arguing that the new HPHs offered an important income opportunity for the local population. Local actors on the village level have also been eager to exploit the new opportunities to benefit from forest resources which had been under strict centralised control during the New Order period. Villagers felt empowered by the spirit of *reformasi* and strengthened by the increased political acceptance of their traditional rights. Although their traditional land and forest areas officially remained state land and state forest, they felt that the forest had been returned to them and took control of natural resource management within their village boundaries.

This well exemplifies the observation of Carol Warren and John McCarthy that those with local interests did not wait to see how far official implementation of the regional autonomy policy would actually be taken by the state, but rather 'took matters into their own hands' (2009:6). The dynamics in Kutai Barat can be seen as part of a more general trend:

Land occupations, 'wild' logging and mining, people's 'justice', largely outside formal legal frameworks, became the primary avenue of public 'participation' in many parts of post-New Order Indonesia. This was especially apparent in regions where development of lucrative forest, mining and plantation sectors had dispossessed local communities in the long and vexed history of state and private 'enclosure' of traditional commons (Warren and McCarthy 2009:7).

The examples of Engkuni Pasek and Jontai have illustrated how local people used the legal uncertainties during the initial phase of regional autonomy in creative ways to circumvent and change existing rules as well as to create new ones. In general, customary law embedded in Benuaq *adat* was strengthened, but also challenged and changed. In Engkuni Pasek, a new village regulation allowed commercial logging while the underlying *adat* rule had the intention to secure subsistence needs. In Jontai, use rights over rather vaguely defined forest areas have been converted into ownership rights over forest locations with as exact borders as possible in order to receive fee payments.

In Engkuni Pasek and Jontai, new normative orders have been created by conflating elements of state law and *adat* law. These new rules have further been formalised in – seen from the state’s perspective – legally ambiguous ways.²¹ The village regulation of Engkuni Pasek, although based on district regulations, assumed, for example, an authority over forest management which was not congruent with higher levels of forestry legislation. The location letters which formalised the division of the forest in Jontai resemble an intermediate step which is necessary to obtain a land ownership certificate at the local branch of the National Land Agency (Badan Pertanahan National [BPN]). But in this case, the map of the plot (*gambar lokasi*) is produced by BPN staff. However, as the area of Jontai is classified as state forest it does not fall under the jurisdiction of the BPN, so that no ownership rights could be registered anyway. But despite their legally ambiguous character, the location letters became key documents of reference in negotiations over fee payments with the local logging company.

Local actors in both villages ignored existing legal orders, partly intentionally and partly unwittingly. The villagers of Jontai, for example, did not know that the ministerial decision which had given district governments the authority to issue small-scale logging licenses had already been suspended in April 2000. In contrast, the loggers in Engkuni Pasek knew very well that their activities violated the newly established village regulation, as well as the underlying *adat* rule. But they felt so empowered by the spirit of *reformasi* and regional autonomy that they dared to defy village government. Finally, in both villages traditional conflict resolution mechanisms faced severe difficulties in resolving conflicts due to an increasing amalgamation of claims based on *adat*, new local regulations and national law.

The initial phase of decentralisation in Kutai Barat was characterized by intense power struggles between local actors over access to forests and the benefits of forest resources. The case studies presented here show that access to and rights over forest resources were disputed strongly even on the village level. The resulting arrangements differed significantly from each other, remained highly contested and were partly of short duration. The de facto practices of forest exploitation in both Dayak Benuaq villages can thus be understood as the outcomes of ‘specific social, economic, historical

²¹ Similar processes, in which custom and state law have been mixed have been observed in several other regions of Indonesia (Bakker and Moniaga 2010).

and environmental contexts', as Christina Eghenter has argued for the forest management practices of the Dayak Kenyah (2000:353).

Legal insecurity and a lack of law enforcement provided local actors with new opportunities to regulate matters on their own, and the spirit of *reformasi* contributed to a daring emotional atmosphere. Previous patterns of forest use formed the basis for new normative orders in both places. Economic insecurity, rising living costs and the feeling of having been excluded from lucrative forest exploitation during the New Order encouraged the wish (finally) to obtain some benefits as well. Most villagers viewed the situation of de facto free access to the forest as a window of opportunity which they did not want to miss, and most Dayak Benuaq involved in self-organised logging operations were convinced that others would sooner or later cut their forest anyway.

Social relationships and power asymmetries between different parties and individual actors have played a crucial role in shaping new ad hoc arrangements. The two case studies show that the power of village communities as a whole increased momentarily through the initial phase of decentralisation. The people of Engkuni Pasek were able to refuse the request of a logging company to apply for a small-scale logging licence in their village area. Instead they tried to manage their forest alone. Although this finally led to severe conflicts, it has to be viewed as a creditable attempt to exercise their new authority over natural resources. In Jontai, the bargaining power of the community vis-à-vis the local logging company was strengthened under the new HPHH arrangement, which resulted in higher fee payments. However, with the recentralisation of the forestry sector this new power was quickly lost.

Arun Agrawal reminds us that communities are characterized by difference and hierarchy (1999:104). This becomes obvious in Jontai, where the powerful village elite shaped new patterns of resource allocation in their favour. It was their decision to divide up the forest that largely determined how fee payments were arranged and distributed among the population. The strategies of each inheritance group and the individual agency of their representatives who bargained with the company further determined the level of their fee payments. As a result, the largest proportions of the fee payments were acquired by the village elite, as well as by 'young and tough' men who dared to confront the company management and thus became inheritance group leaders. In Engkuni Pasek, on the other hand, the village leaders and official village institutions proved relatively weak. They lacked the power to enforce the newly created village regulation, with the result that the most money was made by those who 'dared most' and who most blatantly transgressed the existing regulations.

During the logging boom, ad hoc arrangements between local actors became the central determinants for access to forests and the distribution of benefits. I have shown that these ad hoc arrangements have to be understood as the outcome of processes of dispute and negotiation over normative orders on the village level. As such they are deeply embedded in social relations. Power inequalities inherent in these social

relations shape the form and quality of these ad hoc arrangements and therewith crucially influence the actual outcomes of decentralisation.

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