

3 FIELD RESULTS: EMPIRICAL ANALYSIS OF SOCIAL DYNAMICS

3.1 Ecological degradation and restoration mechanisms through a land access analysis

Prior to our field visit, we made a scientific literature review addressing land access dynamics in Indonesia. On the strength of several research papers, we drew hypotheses both on the logics of concessions which extract natural resources and extend their operational areas, and on the logics of local communities. Considering it as a fruitful perspective, we decided to focus on the way the arrival of concessions on inhabited areas, which could be claimed as customary areas, could reshape effective land use and the way inhabitants value natural resources. We suggest here to analyse how the intertwining of these two logics may result in ecological degradation or restoration mechanisms. We must present first the historical background of land ownership dynamics and the hypotheses we drew from it, before detailing in the following part those processes and their environmental consequences for our three case studies.

The historical background of land ownership dynamics

The present land ownership scenario that prevails in Borneo as well as in the rest of the Indonesian archipelago, results of a juxtaposition between customary, colonial and postcolonial dynamics. Even though today legal frameworks of land ownership are formally prescribed, this wasn't the case until the last decades of the 20th century.

Land attribution in Indonesia changed substantially during the colonial period, traditional schemes were substituted by a territorial division that responded effectively to the extraction of natural resources. Despite eventual changes that Portuguese, Dutch, French or British forces implemented in their respective mandate since the 16th century until Indonesia's independence, an extractivist logic has permeated both land distribution and forests ownership. However, the question remained about the recognition or not of the Native land rights (Li, 2007). The Agrarian Law passed in 1870 was hence "a compromise that recognized some Native rights but declared the state to be the owner of forests and any other "wasteland" not under permanent cultivation" (Ibid).

Yet this recognition remained ambiguous. First, the conceptual translation made by scholars and administrators of local practices and institutional arrangements as a coherent system and form, designated as Adat (see the box 1 below), is inspired by a western problematic conception of communities (Li, 2007). Second, it was used by Dutch administrators as a useful template to manage the new territories outside Java they acquired after 1900. They created "traditional" authorities, offices and courts to rule indirectly (Ibid). Third, it required an interpretation made by the legal authority about what could be recognized or not as customary, leaving a large room for state authorities to decide what could be opened to industrial extraction or exploitation. Indeed, in practice, officials ruled that the category wasteland included managed forests and the fallow land Native farmers used for rotational or swidden cultivation (see the box 2 below). In the meantime, swidden cultivation was prohibited in Java by an ordinance of 1874, compelling the villagers to obtain official permission before clearing the forest. This removed areas of land from Native control and made it available for agricultural plantations (Ibid).

Box 1: Hak ulayat: the collective “right of allocation”. Assault on the Commons (FPP, 2014)

A key concept in the legal discussion of Indonesian tenure is the concept of *hak ulayat* (customary rights) and *tanah adat* (territories under customary rights). The term was translated by the Dutch legal scholars Van Vollenhoven as meaning the ‘right of disposal’ and Ter Haar as ‘sovereignty’. It has also been translated by colonial legal experts as meaning ‘customary rights of avail’ (Colchester, 2014), while Burns has translated it as meaning the ‘right of allocation’. The truth is that *adat* regimes generically known as *hak ulayat* probably imply all these things in different contexts and the difficulties in translation of the term reflect the difference there is between indigenous customary law concepts and western law. Like the English Common law concept of ‘Aboriginal Title’, *hak ulayat* derives from custom and precedes any act of the State.

Under very many of the customary regimes prevalent throughout the Indonesian archipelago, land is considered to ‘belong’ to the community as a collective, though it may not be ‘owned’ by it in accordance with western ideas of land as an alienable, private property. The community enjoys the right, subject to its customary rules, to ‘allocate’ land within the collective territory to members of the group for their long-term stewardship, or to outsiders for their temporary use. Lands allocated to community members are, in many societies, heritable and even alienable within the group but most commonly may not be alienated to outsiders. When such lands are abandoned, remain unclaimed, or have no heirs, they revert to the collective. *Hak ulayat* can also be seen as a bundle of rights and, besides implying rights of access to and to use natural resources, also confers rights to regulate land for use and conservation, supervise the relationships between persons and the land, regulate transfers and the inheritance of land and other resources, as well as the right of representation of the community in relations with outsiders. *Hak ulayat* thus implies a much greater proprietary relationship with the land than the western concept of ‘ownership’, but in modern international law usage corresponds to a substantial degree with such concepts as ‘Aboriginal title’, or an inalienable, freehold, or the collective right to territory. As Wright notes: ‘*Hak ulayat* is the historical and philosophical cradle of adat land rights...’

Box 2: the swidden cultivation

“Throughout the archipelago, managed forests are deliberately enhanced with fruit, rubber, resin, sago, sugar palm, building poles, rattan, and other useful crops. Swidden cultivation, also known as shifting cultivation or “slash and burn”, is the preferred farming technique wherever land is relatively abundant, labour scarcity, and the field unsuitable for intensive use (Dove, 1985). A forest plot is cleared, farmed, then left fallow areas, clearing a plot in primary forest bestows private rights on the land pioneer and his descendants; in others, pioneer’s rights revert to community control if the land is not reused within a certain period.” (Li, 2007)

The independent state, under the Soekarno era, inherited the legislative framework left by the Dutch. Even if it tried to unify the administrative structure and to reinforce the philosophy of state ownership of land, in practice, it maintained the dual legal system (Lund and Rachman, 2018). Indeed, even if the Constitution of 1945 (Article 33), which is still nowadays the general legal framework for land-use, planning, and allocation, stipulates that land, water, air and the natural riches contained therein should be under control of the state and used for the maximum well-being of the people, customary land is still acknowledged by the state (Durand, 2008). This duality remains in the Undang-Undang Pokok Agraria No. 5/1960, the Basic Agrarian Law (BAL). This first national law on land to be enacted after independence in 1945, which remains the framing law on land to this day, stipulates a clear separation between state and private ownership and considers unregistered private land as owned by the state. But, despite adopting the clear separation between state and private properties, BAL recognizes

customary land law concepts and institutions, locally referred to as *Adat*, at a limited extent, so long as “not conflicting with national and state interest” (Romero, 2015).

The New Order era, with Suharto, is characterized by the will to ensure an economic development based on the extension and the intensification of extraction to the Outer Islands. Therefore, its government enacted new laws that centralized the management of natural resources and weakened the potential customary land claims. Indeed, in 1967 the Suharto Government promulgated Act No 5, *Undang-Undang Pokok tentang Kehutanan*, the Basic Forestry Law (BFL). The BFL radically redefined the property rights of millions of people living in areas that were to be classified as ‘State Forest’ with the aim of promoting a rapid process of national development based on the exploitation of natural resources by facilitating the access of large companies to forests. It also means that local communities don’t have any more claim to their lands. In the end, 75% of the terrestrial area of the country is designed as forest (Brockhaus, 2012). During the 1970s, an administrative convention established that all lands classified as forests would be administered by the Ministry of Forestry according to the BFL, while all other lands would be subjected to the BAL and administered by National Land Administration and the Department of Agriculture (Lund and Rachman, 2018). Following the Consensus-Based Forest Land Use Planning (Tata Guna Hutan Kesepakatan : TGHK) in 1982, “the first TGHK mapping program classified [in 1983] forest land (kawasan hutan) by functions: (1) protection forest for watershed protection; (2) conservation forest for protected areas; (3) limited production forest, where logging was to be accompanied by measures to reduce impact on soil erosion; (4) production forest for commercial logging; and (5) conversion forest for conversion of degraded production forest to agriculture or other uses.” (Brockhaus, 2012) (see table and box 3).

Box 3: Definition of the five forest categories depending on their function

The protected areas (*Kawasan Konservasi*) are strictly protected. They include strict nature reserves, wildlife refuges, national parks, nature parks, forest parks and game parks. These protected areas are managed directly by the central national government, and more specifically by the General Directorate of Forest Protection and Nature Conservation within the Ministry of Forests, with the exception of the forest parks, managed by the provincial offices of the district offices.

The protected forests (*Hutan Lindung*) where exploitation is limited to the extraction of some natural products (such as honey, fruits, nuts), but where it is not possible to cut trees. These forests are managed by the provincial or district offices of the Ministry of Forests.

Production forests (*Hutan Produksi*) are forests for timber production, which are themselves divided into permanent production forests and limited production forests where timber extraction is more controlled. Forest concessions or logging licenses are granted for these two categories by the General Directorate of Forest Production and Planting of the Ministry of Forests at the national level, on the recommendation of the provincial and district authorities.

Conversion forests (*Hutan yang dapat dikonversi*) can be converted to non-forest use, such as agriculture and human settlement. In conversion forests, the Minister of Forests has endorsed the actual shift to non-forest use. After these lands are removed from the "State forest", the Ministry of Forests loses control on these areas. All these forests are then generally called "**areas for other uses**" (Areal Penggunaan Lain - **APL**).

There are also **privately managed forests**, which are not part of the "State forest": they are village forests (*Hutan Desa*), municipal forests (*Hutan Kota*) or privately owned forests (*Hutan Milik*).

Source: Ruysschaert (2013)

The mapping of the different forest categories and their delimitation as State forest resulted in numerous conflicts between the central state and the local communities. The central state assumes the right of ownership over land that does not have clearly identified landowners. It accounts for more than 140 million hectares, or three-quarters of the Indonesian land area, of which about 90% is Outer Islands – all islands except Java, arguing that these lands are "free" or "wasted". This territorialisation of the state is accompanied by administrative regionalisation, extending the central power on the local level. The 1974 Regional Governance Act and the 1979 Village Administration Act weakened traditional power by failing to recognize governance based on customary laws and the leadership of elders (Ruyschaert, 2013). Forestry laws promulgated under the Suharto regime criminalized unauthorized occupation or working of official forest areas and prohibit the unauthorized cutting or harvesting of forest products (Lund and Rachman, 2018). The centralization of the state forest is accompanied by its redistribution for the economic development of the country. Thus, two-thirds of this forest is redistributed for industrial plantations (45% for forest concessions each of more than 10,000 hectares and 21% for palm oil plantations each of several thousand hectares) (Casson, 2001). Until the late 1990s, people were no longer able to claim their traditional rights to the woodlands where they engaged in activities such as slash-and-burn agriculture, agroforestry and non-timber harvesting. At the same time, the area under concession has steadily increased (Durand and Pirard, 2008).

But the incomplete delineation of land and the many categories of "state forest" in use involving different government agencies, produced also legal uncertainty and overlapping areas of responsibility between state authorities (Lund and Rachman, 2018). Around the year 2000, nearly 90% of Indonesia's State Forest lands had still uncertain legality (Ibid). Furthermore, there is an overall overlapping of juridical responsibilities over the official recognition of land use, administration, management and ownership that comes from the government itself. Sectoral laws regarding, mining, resettlement, transmigration, natural gas, etc., are considered to contradict the spirit and premises of BFL; numerous mining companies operated in protected and conservation areas where such activities are prohibited (Contreras-Hermosilla and Fay, 2005) and resettlement and transmigration programs also used forested areas (Romero 2015).

The decentralisation and the complex legal framework of land allocation and spatial planning

Under the regime of Suharto, the management of natural resources was under the authority of the central government, despite the attempt to decentralize the system in 1974. The exploitation system of forest resources was exclusively assigned to large private concessions, known in the Indonesian system as HPH (*Hak Pengusahaan Hutan*). After the fall of the economy in 1997 and the forced departure of Suharto, the new President Habibie implemented a wide decentralization reform, as a way to calm down the separatist movements and to comply with the International donors' requirements (McCarthy, 2006).

The Law of regional autonomy adopted in 1999 transfers the responsibility and the authority on natural resources management towards the province governments and districts. It must be highlighted that the content of this law is subject to various interpretations, conducting to conflict of interest on forest management and land allocation. For example, the article 7 of Law 22 gives the responsibility of conservation and natural resources utilization to the central authority while the article 10 assigns the management of natural resources to the region (Casson, 2001). Moreover, it seems that governors and ministers have the right to override land use decisions made by the district due to the government regulation No. 26/2008, implementing the Law No 26/2007, re-enacting the national spatial plan of 2007. (Brockhaus, 2012). In the meantime, the political rupture gave also room for political claims to resources and indigenous sovereignty. Indigenous peoples' movements compelled the Indonesian government to make steps for the recognition of communal rights of ownership to forest (Lund and Rachman, 2018). It led to the creation of a federation of indigenous peoples' movements federated in the *Alliansi*

Masyarakat Adat Nusantara (Alliance of Indigenous Peoples of Indonesia's Archipelago, AMAN). The Law on plantations in 2004 compelled the private companies willing to develop a palm oil plantation to obtain the consent of local communities, leading to negotiation over the use of their land. Following the same idea about local communities, there is a true effort from the government to take into account traditional land rights with the Medium Term National Development Plan 2010-2014 (Durand, 2008).

Nevertheless, above all, this decentralization process gave the opportunity for regional and district authorities to deliver licences for logging and palm oil concessions. Connected with the development of the palm oil industry supported by the central government, it boosted the land acquisition by palm oil companies. The executive chief of the district, the bupati, can deliver licences for small forest concessions (100 hectares) (Gnych and Paoli, 2015). In theory, these concessions known as HPHH (*Hak Pemungutan Hasil Hutan*) could only be delivered for conversion and production forests. In reality, it occurred that some bupati do not respects the requirements of the central government and deliver licences in protected zones (Casson, 2001). In the meantime, even if the notion of adat became a political resource at national level, its recognition in local everyday politics at local level is far to be effective (Lund and Rachman, 2018).

In the meantime, the Forestry Law in 1999, which replaced the Basic Forestry Law, established a new framework for the regulation of forests: Forests Management Units (FMU). Legislators aimed at tackling the remaining high rate of deforestation and forest degradation in state forest and the increasingly legal and social complex situation (the weak definition over rights to forest areas, the overlapping claims and the many conflicts between people, companies and state, etc.). In addition to that, they acknowledged that forest are managed by permit holders. After the expiration of the permit, the remaining forest becomes an opened access. The area is no more under any authority rule, leading to large-scale destruction and preventing the central and local government to reallocate forest utilisation.

Thus, they wished to overcome the absence of management institutions on site by establishing a new administrative area and corps. State forest is divided in units, encompassing different kind of administrative forests. It could be a Conservation Forest Management Unit (KPHK), Protection Forest Management Units (KPHL), and Production Forest Management Units (KPHP) depending on the dominant forest function contained therein. A management institution shall be established under the supervision of the appropriate Ministry (Forestry for KPHK, Home Affairs for KPHL and KPHP) and shall be responsible to the Provincial Governor or the Regent (for KPHL and KPHP). FMU heads are funded by Central Government, Provincial Government and Regency/Municipal Government. A FMU's long-term plan is elaborated for an area subdividing into blocks and compartments, including forest inventory, silvicultural treatments, etc., but also any other activities related to common needs of all parties within the FMU (independent companies, community groups, etc.).

Among the role attributed to the FMU's agents, they shall maintain social peace "in determining how communities can be ready to accept and implement the permits or how concessionaires can safely operate their businesses after receiving the permit" (Kartodihardjo and al, 2011) For certain areas no covered by third party interests (*wilayah tertentu*), "the Minister may [also] assign the FMU head to organise forest utilisation, including to sell stands. Such organisation should apply the management system of a public service agency (BLU). In addition, the Minister will allocate and stipulate certain areas for developing Community Plantation Forests (HTR), Community Forests (HKm) and Village Forests (HD) based on a proposal from the FMU" (Ibid).

The logics of concessions: creating frontiers within the social life of communities

The appropriation of a large area by a concession after acquiring a land use permit contributes to a shift in the social organization of local communities where the concession operates. This shift is defined by Lund and Rachman as frontier dynamics that « dissolve existing social orders — property systems, political jurisdictions, rights, and social contracts » (Lund and Rachman, 2018), leading to new property regimes and new patterns of authority. The occurring of these dynamics is concomitant with the territorialization of resources. Territorialization must be understood, here, as a strategy of using bounded spaces for the control of resources. This strategy involves the classification of particular areas in order to regulate people and resources. In response, local communities redefine their legitimacy over their territory and their use of resources.

In Indonesia, these frontier dynamics are particularly connected with the movement of decentralization. In 1998, the *reformasi* in the forest sector aspired to a fairer redistribution of the forest resources. In spirit, the decree intended to legalize the access to non-timber forest products for local populations. Nonetheless, after 30 years of rights deprivation for the benefit of large concessions, local communities started claiming their traditional rights on what they consider their forest as well as the right to exploit the whole forest resources. Moreover, these land rights claims were encouraged by the transfer of the authority from the central government towards the provinces and the districts.

The creation of a new permit for small concessions of less than 100 hectares, the HPHH (*Hak Pemungutan Hasil Hutan*), was a pivotal moment for the management of natural resources, notably in Kalimantan and Sumatra. The decree implementing the HPHH entitled the *bupati* (chief of district) for their attribution and specified that these small concessions could only be attributed on production and conversion forests (cf. Focus on the different forest statuses), but certainly not lands where permits for big concessions — HPH *Hak Pengusahaan Hutan* — had already been attributed. *Bupati* did not really take this requirement into account and offered HPHH over the operational areas of large concessions (Levang et al. 2005), which compels them to interact with both, the local authorities and the local communities. Thus, the decentralization movement compounded the frontier dynamics and the territorialization of the use of natural resources, leading to various forms of composition and interactions between the concessions and the local communities.

The interactions between the concessions and local communities

The process of territorialization occurs in several steps. It has been observed that a first step of territorialization happens when a logging concession appropriates an area overlapping on the area of several villages. Overtime, the forestland is being cleared by the construction of logging paths and roads, facilitating the access for local populations into remote lands. Consequently, the logging activities of concessions on the area considered as theirs by the community tend to change the way they perceive the forestlands and the way they use natural resources. From a source of subsistence, the forest resources abruptly became an additional source of income. In parallel with the capitalization of lands, local communities developed diverse strategies to gain legitimacy on their territory.

As a way of illustration, local communities claimed what they consider their forest as a customary forest (*hutan adat*). These forest could be exploited by the community with no regard from the authority since they escape the national law on natural resources uses. This legal deficiency was also appealing to concessions. Subsequently, in the 2000's, private investors showed their interest on the timber logged from *hutan adat* (Levang et al. 2005). They would pay royalties to the village for resource use. The concessions would also commit to prioritize the employment of the villagers in their workforce. Public figures of villages took advantage of this economic opportunity to develop infrastructures (schools, roads, transportation equipment, etc.).

Regarding natural resource management, these informal arrangements between the population, the authorities and the companies resulted in the intensification of forest clearing and looting of forest resources (Levang et al, 2005). Furthermore, the conversion of forestlands into plantations for the villagers contributed to the capitalization of lands and prompted the communities to accumulate more lands to generate income, besides their subsistence income. The opening of forestlands paved the way for the further steps of territorialization and frontier dynamics, occurring with the arrival of an agricultural concession, in most cases, palm oil and pulpwood.

The interactions between the concessions and the communities could also give rise to tensions and conflict over lands and the use of resources. In response, the villagers would try to demonstrate their ownership from various informal manners. For instance, they would prove their presence over long time by showing maps, surveys, tax receipt, customary written settlements, etc., serving as potent proves for the rightfulness of land claims to the authorities (Lund and Rachman, 2017).

As a result, different forms of compositions between communities and concessions intervene. Indeed, the villagers could be opportunistic and make arrangements with the concession so they could obtain benefits from each other. The communities could also ignore the presence of the concession as long as the concession's activities do not encroach on their territory, in which case, a conflict emerges. In this case, the community would develop a political strategy to claim their land rights.

The preparatory research on land dynamics was an indispensable step of our field work. As a matter of fact, it steered us towards the appropriate questionings on the field. It was fundamental for the observation of the role play of stakeholders and the landscape analysis, that we could connect with frontier dynamics and territorialization, previously studied.

In each case studied, we identify common dynamics. We identify the intensification or the extension of concession in the area. In the meantime, the arrival of logging and palm oil companies induce new ways for people to value resources and new livelihood systems. We observed a change in livelihood systems consisting in two processes linked with each other:

- Within the combination of subsistence and cash crop activities for a household, the development of new activities for generating cash
- The development of land accumulation strategies

At a more collective and politic level, we observed also different strategies for claiming local sovereignty for land access and use. This implies specific ecological degradation and restoration mechanisms. We would like now to describe in more depth these processes for each case.