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**Changing to Gray:
Decentralization and the Emergence of
Volatile Socio-legal Configurations in
Central Kalimantan, Indonesia.**

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INTRODUCTIONⁱ

Donor and development organizations have prescribed decentralization to promote accountability and transparency, public participation in policy making and democratization. The donor agency and development administration literature considers the types of decentralization, the dynamics leading governments to embark on decentralization programs, the set of programmatic objectives that these reforms seek to address, and the associated problems that emerge as state administrations attempt to implement their decentralization blueprints. By taking such a global comparative perspective and attempting to locate patterns among diverse variables, development agencies and practitioners have developed a broad set of explanatory narratives concerning decentralization policy design and implementation (cf Roe 1991; Roe 1995). In contrast, a social scientist attempting to understand how decentralization is affecting a specific local context is likely to come across a muddled and rather chaotic state of affairs that hardly seems to resemble the scenario described in the decentralization policy narratives. Decentralization tends to be just one element in wider processes of socio-economic and political transformation, and it is difficult to isolate this process from wider changes. In remote districts of Indonesia, decentralization involves a dynamic and highly uneven process of change that is generating quite specific local socio-legal configurations.

Here I will consider how decentralization policy narratives have coalesced with domestic dynamics to inspire a decentralization process that helps generate particular socio-legal configurations in the districts of Kapuas and South Barito within the Indonesian province of Central Kalimantan. I am concerned with how the international decentralization policy narratives – interpenetrating with national and district legal processes – affect administrative practices and local social fields governing access to and use of forest resources. This discussion necessarily focuses on the productive role of the decentralisation laws, considering how these laws and the various legal innovations that follow, reflect and have the power to structure the discourse within which issues and conflicts are framed.ⁱⁱ I examine how, as actors interact in a dynamic situation, emergent socio-legal configurations develop as increasingly heterogeneous national and district legal regimes interact, conforming with and/or opposing each other as well as volatile district social fields and re-assertive customary normative orders.

This article analyzes the overlapping socio-legal configurations arising from parallel developments at the national, district and village levels to advance three arguments. First, in complex polities like Indonesia, after decades of authoritarian rule, corruption and clientelist networks predominate. Actors at every level have sought to affect the outcome, supporting their interests by advancing their own interpretations of an inconsistent legal framework. During the ensuing uncertainty, the fragmentation of state arrangements has worked to the advantage of entrenched regional elites. Second, in remote provinces, infrastructure and government services are extremely limited, and most of the population is distant from centers of power. As electoral laws have empowered political party leaders rather than rural constituencies, accountability mechanisms and community participation in decision-making remain poor. Third, despite the range of legal initiatives developed following the inception of decentralization, up to now the legal changes have yet to provide transparent and accountable mechanisms at the village and district levels for recognizing customary (*adat*) rights, contributing to an environment of distrust, competition and violence where there is a lack of the institutional fora required for handling conflicts and enforcing agreements between parties. Taken together, these dynamics are contributing to the emergence of highly volatile socio-legal configurations that create insecurity and heighten resource conflicts. The article concludes that decentralization has opened space for positive change, which might be significant if political actors such as indigenous groups and NGOs could organize themselves to take advantage of these new openings. Nonetheless, to date, the politics surrounding decentralization have occurred under the shade of the New Order's authoritarian heritage. As these politics work out at different levels, circumstances remain precariously distant from the objectives of good governance.

The study is based on initial research during 2000 and 2002, supplemented with interviews with policy makers in Jakarta during July-August 2001. It considers how the decentralization process involves legal and institutional changes that encompass a wide array of actors, institutions and levels of government. It necessarily raises issues of coordination, negotiation and conflict across multiple levels and jurisdictions. While decentralization policies initially derive from the administrative center, during the implementation of decentralization programs regional actors also take initiatives. As a result, decentralization is not an even,

homogeneous process: as it plays out, decentralization and associated socio-legal transformations have highly differentiated effects at national, district and village scales. In this paper I will consider the effects of decentralization within Indonesia through discussing developments at four different scales. The first section concerns the prevailing policy narratives that set out a scenario that links the implementation of decentralization policies with a set of desired outcomes. It considers how, in a specific political context, these policy narratives have converged with a particular set of domestic political agendas to inspire a national process of administrative reform. Second, I consider the struggle over the direction of the decentralization reforms and its effect upon the relationship between emergent district socio-legal regimes and state attempts to retain some control over the decentralization process. This serves as the background for the third section, an analysis of how – within these emergent district regimes in Central Kalimantan – different actors engage in struggles over forest property. Fourth, I consider the reassertion of the customary normative field, its effect on patterns of resource use, and its relationship to the other normative fields. Finally, I will discuss the particular socio-legal configuration that has emerged at the intersection of processes occurring at parallel national, district and local scales.

TRANSNATIONAL AND LOCAL INSPIRATIONS

As described by Roe (1991; 1995), policy narratives set out scenarios, explaining what will happen if a policy process is implemented as described. Seen in this way, policy narratives constitute “stories” that function “to stabilize and underwrite the assumptions needed for decision-making” in the face of highly complex and uncertain situations (Roe 1991). These narratives serve a programmatic function, having the objective of getting their addressees to believe in supporting a particular course of action.

By presenting decentralization as a solution to a range of problems bedeviling developing countries, the literature surrounding “democratic decentralization” comes to constitute a set of related policy narratives. For instance, the World Bank has argued that, “under appropriate conditions” decentralization has helped alleviate the administrative bottlenecks in decision-making, increased the efficiency of government and its responsiveness to local needs, enhanced the accountability of public institutions and improved service delivery, and allowed greater political representation and participation of diverse groups in decision making (World Bank

2001).ⁱⁱⁱ A body of literature has also suggested that decentralization may improve the management of natural resources. If decisions are made within or overseen by locally constituted representative assemblies, ideally decision-making processes will take into account local histories and traditions of resource management. If local populations – including disadvantaged local groups – can more readily influence decisions made in this fashion, they are more likely to benefit. Moreover, in as far as local people may be concerned with the viability of their area over the long term, they may be more inclined to consider the long term consequences of their acts.^{iv}

Yet significant problems have dogged decentralization programs. Typically these have involved the capture of benefits by local elites, the failure of central governments to transfer substantial powers or sufficient funding, problems with accountability, lack of resources and expertise at lower planning levels, and poor coordination in planning and implementation (Frerks and Otto 1996; Larson 2003). Studies from Latin America have also suggested that decentralization raises particular challenges for natural resource management (Kaimowitz, Vallejos et al. 1998). In particular, the economic importance of forests as sources of wealth increases the likelihood that those who held power under previous regimes will resist change or that conflict will emerge during a reform process. Moreover, legal frameworks for natural resource management involve nesting local rules within larger scales, and this complexity heightens the likelihood that legal arrangements will be contradictory (Larson, 2003). Forests can be directly exploited for revenue generation and rent seeking, and this raises the danger of government actors empowered through decentralization allowing unsustainable forest exploitation to support district expenditures and pursue clientelist objectives (Kaimowitz, Pacheco et al. 1999).

If this recent wave of decentralization is clearly "transnational in inspiration", as in other instances, this inspiration has drawn from multiple sources (cf Merry 1992). Since the late 1970s dominant neo-liberal ideological prescriptions have attested to the efficacy of markets and promoted internally and externally decentralized forms of production. Managerial experts have imported these radically decentralized methods into state administration (Burns, Hambleton et al. 1994: p84). With the collapse of communism, critiques of highly centralized state regulation gained currency (Meenakshisundaram 1999). As multilateral agencies began to hold poor governance in the recipient countries responsible for the failure of structural

adjustment programs, they became interested in institutional reform. The “revitalization of civil society” through “democratic decentralization” came to be seen as a solution to the social and political side of the same set of problems to be addressed by market reforms and downsizing the state. (Jayasuriya 1999: 445).

These decentralization policy narratives resonate with a wider political discourse that establishes a seemingly self-evident set of political aims and objectives (Walters 2002). This involves achieving policy aims by mobilizing and enhancing the trust, norms and horizontal networks of civic engagement – the “social capital” – that are thought to facilitate coordinated social action (Putman 1993). This entails imagining a social space – with its own processes and dynamics – that can be tapped and harnessed for governmental projects (Walters 2002). In focusing on collective existence and self-government as means to address policy issues, decentralization policy narratives envisage delivering development through civil society, relegating the central state to more of a standard-setting, monitoring and evaluation role (Contreras 2000). It is asserted that desired policy outcomes will follow if government decision-making authorities are devolved to a place “where civil society can work its magic better” (Tendler 1997). For if local government is closer to its client-citizens, it will be more vulnerable to citizen pressures, especially if compared to the rigidity of far off centralized governmental decision-making. Accordingly, for this to work, successful decentralization requires developing enhanced participation in decision-making which requires the devolution of significant powers to actors who can be held accountable downwards. Consequently, decentralization programs aim to increase the ability of local government to collect taxes locally and deliver services while at the same time strengthening the capacity of local civil society to monitor and pressure local government.^v

In the wake of the East Asia economic crisis, Indonesia's financial and state administrative systems fell into disarray. In line with the key policy prescriptions of the Washington Consensus, the IMF offered a rescue package conditional on the implementation of various reform measures aimed at deregulating markets, privatizing state sectors and imposing fiscal austerity. Beyond the reform of markets, this reform agenda also sought to bring about fundamental transformations in systems of state power and governance, marking an attempt to shift away from a developmental state to a more regulatory neo-liberal model of the state (Robison,

Rodan, Hewison, 2002). As in other East Asian countries, multilateral and other donor agencies tied lending to the implementation of governance programs that support “institutional strengthening” and “capacity building” (Jayasuriya 1999: 445). During this period both internal and external critics in Indonesia focused on the highly centralized state. As one commentator noted, “the crisis laid bare the poor capabilities of a centralized bureaucracy in organizing and managing the national economy” (Tambunan 2000). The recipe of decentralized state management appeared to be an appropriate remedy to decades of highly authoritarian centralized state management. At the same time, faced with being reproached for their uncritical lending policies and accused of complicity with the excesses of the Suharto regime, the IMF and the World Bank now recognized that they had neglected governance issues. As the IMF bailed out the country’s economy, the IMF, the World Bank and other donors bankrolled market reforms along with a governance program that included decentralization reforms.^{vi}

Yet, in Indonesia, as in other cases, the logic driving decentralization reforms was clearly over-determined: Indonesia’s shift towards decentralization can also be understood as occurring at the meeting point of several national and local forces (Manor 1999; Ribot 2001). National legal change took place in a particular political context: the economic crisis of 1997 also constituted a crisis of legitimacy for state institutions. In Jakarta, after student demonstrations led to the resignation of Suharto, reform focused on the formation of new political parties, the rewriting of key political laws and investigating the Suharto family wealth. In the regions more remote from Jakarta, the fervor for *reformasi* had a different emphasis. The New Order left a heritage of bitterness towards Jakarta and the Javanese dominated bureaucracy, and the way that centralized decision-making had enabled politico-business interests with influence in Jakarta to become rich while local communities had been deprived of land and livelihood opportunities. During 1998, district and provincial actors demanded a greater role in running their own affairs and a greater proportion of the profits generated from local natural resources. Regional communities began taking direct action to redress these grievances. Villagers began to reclaim land and demand compensation from companies which had logged or mined their traditional lands.^{vii} As the clamor for reform gathered momentum, some provincial figures called for immediate autonomy. In the disenchanting provinces of Papua, Aceh, Riau and East

Kalimantan, some even discussed ceding from the unitary republic of Indonesia. Press articles began to discuss the fear of national disintegration.^{viii} Under the pressure of unfolding events the Habibie transitional government drafted new laws to address the most salient issues, including a new decentralization law (Warren and McCarthy 2002). State decrees and policy documents from this period convey this context and point to the avowed intent of these laws. The State Planning Guidelines (GBHN 1994-2004) and decrees of the national legislature (e.g. TAP MPR IV/2000) repeatedly emphasize the need for a system of regional government that provides for authority and the allocation of resources to be built upon the main concerns of regional communities.^{ix}

As in other cases of rapid reform, an important element here was the existence of state actors with the willingness and capacity to initiate and pursue their own interests in reform together with a national political equation where the decentralization program fitted into the short-term political calculations of the key politicians (Fox 1993; Eaton 2001). The reforms tied in with the political ambitions of the ruling party Golkar, and it is possible to see the laws as part of an effort to increase the appeal of Golkar in regional electorates (Forrester 2001). The team within the Ministry of Internal Affairs (*Tim Tujuh*) that has been identified with pushing the new law included key Golkar figures from the outer island of Sulawesi, an area with long-held ambitions for more autonomy. As *tim tujuh* comprised of a number of U.S. trained political scientists schooled in contemporary political and administrative theory, it proved capable of mediating the international decentralization narratives with local agendas. The team was reported to be motivated by an interest in modernizing and reforming Indonesia's government structures, and improving the effectiveness and responsiveness of government in order to help Indonesia to face the challenges of globalization (Forrester 2001). In contrast to the previous round of decentralization reform which emphasized deconcentration (Niessen 1999), this major new law (Law 22/1999) aimed to delegate several key decision-making powers to district and municipality administrations who – via newly provided mechanisms of accountability – were to be held accountable to local constituencies. The intent of the law remained consistent with the concept of "democratic decentralization" which entails the devolution of powers and resources to lower level authorities who are to varying degrees independent of higher levels of

government and who are held accountable downwards to local populations (Agrawal and Ribot 1999; Manor 1999). Yet, the model also contained a political strategy to buttress the authority of the central government. The government planners who delegated authority over key areas of government to the districts and municipalities rather than provinces perceived that the districts were too small for separatist or federalist aspirations to take root (Niessen, 1999). Moreover, the Central government would have more “influence over relatively weak districts compared with strong provinces” (Ahmad and Mansoor 2000). For implementing decentralization at this level would foster competition between districts and provinces, and the central government would be able to act as an arbitrator.

Consequently, in Indonesia domestic pressures for decentralization developed from frustrations generated by decades of central control of resources in ethnically and geographically distinct areas of the country. Yet clearly transnational decentralization policy narratives helped inspire it: in providing ready-made recipes and solutions for particular national problems, decentralization policy narratives articulated with a domestic logic of state transformation, allowing policy makers to choose an alternative between the undesirable options of federalism or retaining the existing centralized system with slight modifications (Rasyid 2003). Indonesian policy makers decided to give away key powers to the regions to reassert the legitimacy of a national polity fraying at both the edges and in the center. While *Bahasa Indonesia* (the national language) lacked a term for “governance” as well as for the “four pillars” of governance (accountability, transparency, predictability in the enforcement of laws and regulations, and public participation), Indonesia’s decentralization laws (Laws 22 & 25/1999) reflected these policy concerns (Tambunan, 2000). The implementation of the decentralization reforms might be discussed as a technical exercise in administrative reform. However, law has a productive role, and it is important to bear in mind how it both reflects and has the power to structure the discourse within which an issue is framed (Merry 1995). Consequently, decentralization programs involve much more than technically rational and abstracted processes of policy design and administrative implementation. As I will discuss in the next section, politics transformed the decentralization process, particularly as Indonesian politicians and policy makers have found it expedient to depart from the design set out in the framework laws, pursuing pressing political

goals, in the process largely disregarding the technical advice of foreign advisors (Ahmad and Mansoor, 2000).

IMPLEMENTATION: DECENTRALIZATION AND INTERNAL PLURALISM.

If the central agencies of the state wished to retain some control in the regions, central actors needed to carefully organize the process of decentering the state. This would involve finding some delicate balance between self-government by locally accountable district and municipal administrations and central government management of the process. Yet, for a number of reasons, the central government had trouble using the monitoring and supervisory mechanisms set out in the framework law.

The lack of clarity in the framework legislation (Law 22/1999) pointed to a first set of problems. In part this seems to be a natural consequence of the fact that the framework laws bear the traces of a political compromise. The advocates of decentralization within the transitional Habibie presidency had a limited opportunity and needed to pass the decentralization laws quickly before the imminent 1999 election. Through complex formulations legislators managed to accommodate the views of a range of actors. This was only at the price of precision: the framework law created by the legislature left many issues outstanding for determination by lower regulations which would be drafted by the executive branch of government who were entrusted with implementing decentralization. As an official within the Department of Home Affairs noted in an interview during 2001, umbrella acts are painted gray and regulations and decrees drafted within the bureaucracy "change what is gray into black and white".^x

The second set of problems emerged because, as described in the literature, decentralization is a highly contested political process. This is particularly so because higher level politicians and bureaucrats tend to be antagonistic to decentralization processes that involve curtailing their powers over lower levels of government (Manor 1999; Eaton 2001). In the case of Indonesia, the transition between three presidents and several cabinets marked the period of 1999-2002. As political actors and state institutions engaged in a struggle over the stewardship and direction of the regional autonomy process, the architects of the decentralization law within the transitional

Habibie presidency were swept aside (Tajuk 14 December 2000). In the absence of an effective coalition supporting regional autonomy and other reforms, the ensemble of power relations that benefited from the old system had remained intact (Robison, Rodan, Hewison, 2002). Under the Megawati presidency more conservative forces within the bureaucracy who were resistant to reform supported by re-assertive political coalitions in Jakarta have favored more centralist control and have re-emerged to pursue this interest.^{xi} While these more conservative bureaucrats have controlled the implementation process, at the time of writing they have yet to replace the framework law (Law 22/1999).^{xii} However, they have gained primary authorial control over the formulation of important implementing regulations and this has had a significant impact on the consistency of the legal framework.^{xiii}

With respect to the legal framework governing natural resource management, it has long been observed that the Ministry of Forestry has a vested interest in the centralized control of the nation's vast forestry estate (Barber, Johnson et al. 1994). Accordingly, it is hardly surprising that the laws crafted under the influence of this Ministry failed to harmonize with the regional autonomy act. The decentralization law (Law 22/1999) worked on the assumption that district and municipal governments would attain extensive discretionary powers, with the central government only retaining powers over setting policy guidelines and standards. In contrast a new basic forestry law (Law 41/1999) passed in the same year as the regional autonomy act retained the notion of central control of the forest estate and kept the assumption of a hierarchical relationship between levels of government.^{xiv} The forestry law failed to detail the specific government agencies or levels of government that had responsibility for particular administrative functions, and allowed the Forestry Ministry to retain decision-making powers over large-scale decisions regarding the forestry estate. Subsequent implementing regulations in the forestry sector accentuated this trend, with the Forestry Ministry attempting to leave only operational matters in the hands of the districts and municipalities (Menteri Kehutanan 2002).

When the government proclaimed the key implementing regulation (PP25/2000) for the decentralization act, this only specified areas of responsibility of provincial and central governments. By implication, all remaining responsibilities were left in the hands of district and municipal governments. This approach left room for district and municipal governments to continue with policy initiatives that went

against the wishes of particular central government departments, finding support for such initiatives within the contradictory ensemble of higher regulations. This was exacerbated because, during 1999 the national People's Assembly (MPR) had passed a decree that allowed regional governments to establish their own regional regulations (*perda*) for matters that were yet to be regulated by implementing regulations issued by the central government.^{xv} As a result, individual regions had already begun to establish regulations that ran counter to decisions prepared by other levels of administration, including those relating to the forestry sector. Therefore, "many regulations concerning implementing authority regulating forest were overlapping and contradictory, with the result that responsibilities for regulating the forest became unclear" (Menteri Kehutanan 2002). Conflicts emerged over the resolution of these ambiguities, and the resultant uncertainty left district agencies with significant discretion over the allocation of access rights in the field.^{xvi}

During this period, the central government was yet to develop an effective administrative apparatus for monitoring and supervising districts and municipalities, and the Ministry of Internal Affairs was slow to operationalize effectively powers granted in the framework law. This has hampered the process of delivering timely policy guidance, and efforts to monitor and to supervise the process (Nicol and McCarthy 2001). Moreover, under the decentralization model that provided for district based forms of service delivery, the central government faced the problem of developing new ways of implementing its policies in the regions, particularly since the central government departments no longer had line agency offices (*kanwil*) in the regions. Despite the ideology of a unitary Indonesian legal order, the state legal system remained heterogeneous and far from coherent, and the judiciary continued to be incapable of resolving contradictions. Even when state laws were clear, with the retreat of monitoring and sanctioning agencies of the central government and the absence of directives (*pedoman*) from the centre, district agencies have increased discretion over how they seek to implement them.^{xvii} Furthermore, especially during the decentralization process, within the state there have been competing and seemingly uncoordinated processes of rule formation leading to contradictions between different regulations created in the centre. When district government agencies used their enhanced discretionary powers under decentralization to create district regulatory regimes, they ignored some laws and chose to base district

regulations only on those higher laws that suited their agenda. There was also the problem of consistency over time: laws have been changing and a district needed to make a political decision over which ones it wished to implement.^{xviii} After making use of the widened opportunities to make choices in deciding how to proceed, district governments explained their decisions as though they followed inevitably from the existence of the higher laws cited in the district regulation or policy.

Some authors have argued "that effective decentralization requires a strong and confident centre" (Burns, Hambleton et al. 1994: p83). The capacity of central government actors to play "their roles of delivering timely and accurate policy guidance, monitoring, mentoring, compliance verification and so forth" can significantly improve local government performance (Ribot 2001: 32). Moreover, if a confident central government can clearly define the responsibilities of all actors involved, this can significantly support a decentralization process (Manor 1999). For the reasons discussed above, the central government agencies have yet to manage this job effectively. As different state actors and levels of administration create laws and administrative rules according to local or agency specific aims and agendas, we see the coexistence of different logics of regulation. This makes more explicit what De Sousa Santos (1992: 134) has described as the "internal pluralism" of the state institutional order. As we will see, this heterogeneity has had significant implications for the development of local socio-legal configurations in Central Kalimantan.

DIVERGING INTERPRETATIONS: DISTRICT RESPONSES IN CENTRAL KALIMANTAN.

When, during 1999, district governments reacted rapidly to the decentralization legislation, they embarked on their own legislative programs. Clearly several dynamics shaped district responses. During the New Order, those with the capital and connections necessary to open and operate timber concessions tended to be Javanese and ethnic Chinese politico-business elites in Jakarta. Undoubtedly a Dayak elite enjoyed benefits under this system, finding privileged positions in the New Order power structure.^{xix} Yet, for most rural people, the centrally controlled process of resource exploitation left them bearing the environmental consequences, marginalized and resentful. Post-Suharto, Dayak elites mobilized this resentment, pointing to the ethnic and social division between the outsiders who profited under the previous

system and the marginal "children of the region" (*putra daerah*). What might be called the *putra daerah* discourse served to strengthen the sense of entitlement of local ethnic groups in many areas of provincial life. Dayak organizations and individuals who associated themselves with the Dayak cause agitated for promoting *putra daerah* into key positions in administration. *Putra daerah* resentment helped mobilize rural Dayak in the ethnic cleansing of Madurese populations during 2001 (ICG 2001a; van Klinken 2002). And the *putra daerah* discourse naturalized forest exploitation by actors with a regional identity, shaping emerging patterns of access by allowing for particular "Dayak" patterns of resource use and undermining the legitimacy of others. This regional discourse has found expression in district regulations, helping to support district laws that contradict aspects of higher regulations.^{xx}

Of course district governments did face pressing problems, including the challenge of coping with urgent fiscal problems that in part derived from the budgetary constraints facing a heavily indebted central government beholden to international donors. With low amounts of self-generated revenue, districts now had to fund an increased range of devolved functions as well as the salaries of staff transferred from central government.^{xxi} In Central Kalimantan, officials complained that, given the budgetary constraints facing them, the already weak capacity of district governments to deliver services had been reduced after decentralization.^{xxii} In addition, district heads (*bupati*) needed to find revenue to support their political machines, and to pay for the political support of key factions in the district legislature.

Under the decentralization laws, districts gained limited powers over forest administration, such as the authority to issue small-scale concession permits (HPHH or IPHHK) to log production forest, the power to issue licenses to transport timber as well as the power to issue annual timber cutting plans (RKT) of large-scale concessions.^{xxiii} The Forestry Ministry and provincial authorities retained authority over a range of other areas, including concession licenses and spatial planning. Yet, significant powers in specific areas have flow-on affects, impinging on other domains of action of local bodies that may be restricted by law (Agrawal and Ribot 1999). These discretionary powers create opportunities for regional government innovation beyond those suggested by a reading of formal laws.^{xxiv} District governments could work around legal or administrative obstacles or justify their actions within the

labyrinth of conflicting regulations.^{xxv} As noted earlier, in drafting their own regulations, districts could selectively invoke areas of legislation to be found in overlapping and contradictory laws and government regulations that supported their particular policy. Officials who moved forward quickly and energetically would make the most of the opportunity to shape the future and establish a reputation for successfully managing the district for local interests. Where the legal situation was subject to different interpretations, district actors who could establish an interpretation of higher laws on the ground would help "bind the future", making it more difficult for a weak central government to undo what had already been done (Benda-Beckmann 2002: 31). As much as anywhere else this applied to establishing patterns of resource access. In addition, the monitoring and the enforcing of higher government regulations at the local level were in the hands of decentralized administrations, and district governments retained some powers over the way rules – which they have no power to alter – were being implemented. Each district embarked on its own particular strategies, making use of delegated powers, including extended powers to create their own legal regimes through district regulations (*perda*), as well as discretionary powers over raising revenue and spending district budgets, and powers to develop their own administrative arrangements.^{xxvi} As in the past, these policies generally served the twin objectives of capital accumulation for local actors tied into local networks of accommodation and exchange as well as raising revenue for the district government (McCarthy, 2002b).

In Kapuas, district policy concentrated on controlling access to local timber reserves by using the limited authority districts enjoyed to issue small-scale timber exploitation licenses. In 1999, Kapuas district government passed five district regulations (*perda*) relating to forestry issues, setting up a regulatory regime that would enable the district to raise district income (PAD) from the forestry sector.^{xxvii} By July 2000 there were more than 150 small-scale concession licenses in process. The Ministry of Forestry resisted this policy, both because the Ministry of Forestry did not wish to lose control of the forestry estate and because, it was argued, while district governments were concentrating on raising revenue, the policy was leading to deforestation.^{xxviii} Despite Ministry of Forestry letters rescinding the power to issue these licenses, the district continued with the policy.

Along with other districts, Kapuas no longer felt obliged to fall into line with a ministerial decree that suspended the authority to grant small concessions (HPHHs). A supreme national parliament (MPR) decree issued in 2000 supported this position by changing the hierarchy of laws, ensuring that ministerial decrees were now guidelines and had a lower status than district regulations.^{xxix} The district could argue that it needed to proceed with existing requests because they were already in process under earlier regulations. While the district subsequently slowed down the process, it continued with earlier HPHH requests while "waiting for clarification". By July 2002, the administration had granted some 200 HPHH. As a result policy making at the provincial/central levels remained at odds with the districts, leading to conflicts over who exactly had rights in a particular area.^{xxx} Provincial and central government authorities failed to notify district administration before issuing timber concessions (HPH). At times the district issued small HPHH concessions inside the boundaries of large HPH. In some cases these overlapping conflicts led to protracted disputes.

While the Kapuas administration set about controlling access by granting exploitation permits, initially policy in the neighboring district of South Barito concentrated on controlling access to the market. Given the large amount of logs shipped down the Barito River both from the district itself and from upstream areas, district policy paid attention to the control of timber exports from the region: under a new regulation the district focused on generating as much revenue as possible from levies on timber. The regulation allowed timber to be exported from the district on the understanding that those involved would pay taxes due to the central government as well as a newly created district levy on forest products. In other words, attention would focus on whether the timber had been subject to taxes rather than whether it had been harvested in concession areas according to national law.^{xxxi}

In South Barito significant difficulties emerged during the implementation of this policy, generating horizontal and vertical conflicts within that local state, and exacerbating the heterogeneity of the state at the local level. Acting under national laws, the police possessed the authority to sanction those infringing regulations of the central government under the penal code, including those relating to timber. For instance, the police could arrest illegal timber operators and confiscate timber harvested outside the national legal framework and auction it. According to a military official, district police liked this system "because for sure there were a few open

doors.’^{xxxii} For example, it was an open secret that they could profit by underestimating the amount of timber confiscated or by selling it on at lower than the market price. Or perhaps they could enter into arrangements with loggers, allowing them to obtain permits for illegal timber by buying it back “at auction”, or allowing illegal timber to pass after payment of extra-legal fees.^{xxxiii}

To pursue its objectives, the district government employed district forestry and taxation agencies under their control. Consequently, these actors began to compete with the local police to gain the benefits from discretionary control over the implementation of forestry regulations. With competing institutional agendas and interests in rent seeking, different lines of accountability, and a view that the different agencies had duties under different bodies of law, the police and the forestry agency at the district level vied for control of the benefits to be derived from the local timber industry. Similarly, in neighboring Kapuas, at times the police acted at odds with entrenched district interests. For instance, a figure involved in the timber sector in Kapuas noted that a timber operator might make arrangements with district authorities to facilitate taking timber out of the district – for instance, by obtaining some documentation in return for requisite payments. However, an entrepreneur could never be assured that the police would not suddenly come down, thoroughly check the documentation, and even confiscate the timber.

While the vertical allegiance of the police upwards to the president gave the police independence at the district level, it also clearly suited central or provincial government interests who could utilize the police to try to apply national laws.^{xxxiv} For instance, higher levels of government could use the police against timber operators who – although having found a way to operate in the district – actually extracted timber against national laws. In one operation, the national police headquarters in coordination with the Ministry of Forestry and the Military Headquarters in Jakarta sent a team to Central Kalimantan to clamp down on timber extraction which – although permitted by the district – the Central Government considered to be illegal logging.^{xxxv} However, in most cases, provincial police operated teams directly against district timber entrepreneurs. On several occasions, this has led to disputes between police and other district government agencies.

As far as decentralization altered the authority of different levels of administration to issue licenses or enforce laws, it changed the capacity of actors

occupying positions in the administration to mediate others' access or exert power over their ability to enjoy benefits.^{xxxvi} But decentralization did not convert into a simple transfer of powers, for legal change left the respective legal and administrative roles and areas of responsibility of different levels of government rather ambiguous. This ambiguity allowed state actors in the regions greater discretion in the allocation of access rights, enabling them to invoke various laws to assert the legitimacy of their position. Actors occupying positions in various levels of administration competed to control access either by granting permits or by the threat to apply sanctions. The struggles that emerged between different agencies were at once about power and jurisdiction, and the interpretation of different laws, as well as over the capacity to extract benefits from controlling others' access to resources. As discussed elsewhere, the strategies local politico-bureaucratic actors use to extend their environmental entitlements need to be understood in terms of their political and economic interests (McCarthy 2002a; McCarthy 2002b). Dependent as they are on subjective interpretations of laws, these strategies involve attempting to shape the socio-legal configuration with which other actors have to contend.

The processes meant that actors in the field had to face a dynamic and heterogeneous socio-legal reality encompassing both the district and village levels. The re-assertive *adat* order increased this complexity.

REASSERTING THE ADAT ORDER.

The village domain evolved in parallel and somewhat at odds with developments at the central and district levels. As noted earlier, the *reformasi* period has seen the eruption of previously latent conflicts and the reassertion of the *adat* customary orders across Indonesia (Acciaioli 2000; Benda-Beckmann and Benda-Beckmann 2002). In Central Kalimantan during 1999-2000 villages made claims against timber concessionaires (HPH) who had operated over enormous areas of the province, ignoring the customary property rights of surrounding Dayaks. This had led to resource scarcity and left a heritage of bitterness, ultimately leading to widespread and protracted conflicts as villagers took actions to redress past injustices and gain a greater share of local forest resources. In some incidents confrontations with logging companies culminated in the destruction of company property or even the burning

down of a company's base camp. These actions increased the difficulty and the expense of concession operations, in some cases ultimately helping to compel some companies to leave the area. During 2000-2, the tensions associated with unjust patterns of resource use continued to animate village actors in most parts of the province. During the "ethnic cleansing" of the Madurese population heavily involved in the exploitation of natural resources, remote villagers in the hinterland mobilized around traditionalist *kaharingan* beliefs.^{xxxvii} At the same time, villagers continued to reassert customary claims over surrounding areas. As we will see, these dynamics created new village level controls over surrounding forest resources.^{xxxviii}

Before proceeding further, it is important to discuss local property rights. As in other parts of rural Kalimantan, the signs of former habitation and cultivation mark the landscape, indicating the territorial rights of villages and the tenurial rights of villagers. Former longhouses (*rumah betang*), sacred forest areas and the burial grounds of villages denote the common property rights of villages (Peluso 1996). Among the Ma'anyan and other ethnic groups of the South Barito area, villagers recognize the rights of the first person to cultivate in an area. An *adat* right known as a *jungungan* encompasses the former swidden areas (*ladang*) and surrounding areas planted with fruit or rubber trees by the ancestors and dead relatives of current villagers. The boundaries of a *jungungan* are usually marked by a rubber or fruit tree and generally extend over 300 to 500 meters from a cultivated area. Under the *adat* rules governing swidden agriculture, if someone wishes to open a plot (*ladang*) in this area, they need to ask permission of whoever has a *jungungan* there.

Interviews with village leaders in the Kahayan and Barito estuaries during 2000 and 2002 revealed that in some long established settlements, in the process of creating territorial units of administration, colonial administrators established villages with clear boundaries. In other places state administrators or outside project interventions have only recently mapped village boundaries, while in many areas these village boundaries still remain imprecise. During the New Order timber concessions not only systematically ignored *adat* rights within their concession areas, in many cases they even logged inside village boundaries. In many areas the borders between timber concessions and village lands were left vague, and this enabled concessions to log extensive areas from which they might otherwise have been excluded. Since 1999 these boundaries have become increasingly important as

villages have corporately laid claim to village territories under various terms for village inherited rights (*hak desa* or *hak luhur*). Other *adat* terms have also served to support claims by villagers. In South Barito, for instance, under the unwritten rules that have emerged, the *jungungan* concept has been extended and applied to logging operations. Those wishing to extract timber – either companies or logging teams – have to negotiate first with village leaders, those living close by, and especially those with *jungungan* rights. In July 2002 the going rate was 50,000 rupiah per cubic meter in areas where someone had a *jungungan*.^{xxxix}

According to an official from the district land agency, the system has arisen spontaneously. As villagers watched timber being extracted, they felt left behind and impoverished as outsiders profited from the exploitation of surrounding forests. The days of relative passivity were over, and now they were engaged in a struggle to extend their environmental entitlements. Even if a local entrepreneur obtained a small-scale concession (IPHHK) from the district administration, they now needed to negotiate access from local landholders. Yet, the state law had failed to keep up with these developments. The assertion of *adat* rights depended on negotiations in the field rather than on a process framed by the national agrarian or forestry law or by a district regulation (*perda*), or on an agreement with the company or the government over where the boundaries of *adat* lands lay.^{x1}

As far as the activities of autonomous indigenous groups did not affect commercial or state interests, during the colonial period these “customary law communities” were allowed space within a colonial state formation that relied upon a system of indirect rule (Sonus 1981). Post Independence, especially under Suharto, commercial and state interests together with state policies increasingly narrowed or even denied this space. The current changes have created room for village actors in Central Kalimantan to pursue local agendas, to some extent allowing them to re-impose or re-create their own orders, extending the benefits that derive from resource exploitation. To an extent this is supported in law. For the decentralization law (Law No. 22/1999) granted that villages have the right to become autonomous legal units empowered to manage their own affairs. The law also provided for the creation of downwardly accountable village assemblies (*Badan Perwakilan Desa*) which could operate as legislative bodies, produce their own rules and regulations, and oversee the implementation of village regulations, village budgets and decisions of the village

head. Yet, discussions in villages in Central Kalimantan demonstrated that the law had as yet failed to fulfill expectations. In these remote villages, village elites continued to dominate business, and villagers could not yet distinguish these assemblies from the executive dominated system of village government that operated previously. As the decentralization law delegated the task of implementing these changes to district governments, district assemblies might take the initiative. This clearly opened opportunities for new proposals by NGOs and traditional leaders (Fauzi and Zakaria 2002). As in other areas of Indonesia, some in Central Kalimantan argued that (in theory) these powers could be used to create district and village regulations providing for more accountable and transparent mechanisms to recognize *adat* rights, resolve conflicts and enforce agreements. These could include rules relating to access and use of forest resources found within village territories. However, reforms in this area have been constrained by the principle of state control of forests that is enshrined in the constitution and the umbrella forestry act, and the forestry department's continued authority over a range of areas, including spatial planning (Down to Earth 2002). Even for areas outside the forestry estate the basis for *adat* rights within state law remains constrained. While the regional autonomy law granted authority to the districts and municipalities over land affairs, in 2001 a presidential decree (Keppres 62/2001) re-centralized this authority. While recently there have been some signs of legal innovations in this area, in the absence of substantive national or district legal initiatives to deal with *adat* customary laws, villagers could only exert control according to a resurgent *adat* "legal order" without obtaining recognition under state law.^{xli} As they have to defend their rights without any forms of legal redress under the state law, as we will see, villages had to depend on "people's justice" (*keadilan rakyat*).

Under this emergent system, access to the forest could be negotiated: as an official from the land agency noted, "Dayak like to compromise", and actors with concessions have developed ways of gaining access. For instance, an actor with a small scale (IPHHK) concession obtained from the district government could use a broker with inside connections to negotiate a fee with the village and with local landholders. To gain access to forest areas between villages involving numerous *jungungan*, brokers needed to participate in long, complex negotiations. An alternative was to pay villagers to take timber from their own lands. Villagers

extracting the timber then entered into negotiations with other villagers with *jungungan*. In these ways large concessions gained access to timber in village areas, between cultivated areas (*ladang*), and outside their concession areas.

In Central Kalimantan local villagers have often described how logging concessions fail to meet agreements for compensation (McCarthy 2001a; McCarthy 2001b). There was clearly a lack of functioning institutional arrangements and dispute resolution mechanisms pertaining to access by actors from outside the villages. In this situation, rather than giving way to timber concessionaires as they had in the past, villagers have learnt that, only through demonstrations, blockades and other actions can villagers enforce agreements, improve their bargaining position and otherwise ensure that they can gain a (short term) share of the benefits from the extraction of timber. For instance, as a local official described, if a problem emerged with a logging company, the villagers concerned would place a string across the road, blocking access to the area. Five or six people would stand by this improvised roadblock preventing access to the area until an agreement was reached. In other cases, if someone exploited an area without negotiations, or without an agreement, this led to conflict. If a problem was not resolved in a manner which villagers perceived as just, at times villagers have mobilized family and friends, descended on a base camp and burnt it down. Conflict could also occur if a company or a broker failed to involve everyone with rights in an area in negotiations over access, or if villagers felt the survey was manipulated, or if thugs (*preman*) were used to impose an agreement. These problems could escalate into violent conflicts in which people could get killed. He described how, “if someone is not there when the timber is extracted close to a *jungungan*, the person goes looking for the party involved, carrying his machete (*parang*) to defend his rights”. In other cases the leader of a logging team might become a victim. If, for instance, the person concerned “entered with workers from outside, ignoring existing *jungungan*, thinking, ‘I’m strong, I’ve got backing’ (from *preman*). This could lead to a camp being burnt down or broker attacked (*dibacok*)”. However, conflicts within the village over access were often solved by customary mediation processes (*musyawarah adat*). On rare occasions, when villagers did not include other villagers in negotiations, this led to intra-village conflict.^{xlii} By these means villagers forced outside concession holders to negotiate access to areas subject to *adat* or village claims. An observer in South Barito

described how, in one case a HPH was forced to access timber in a way that allocated at least some benefits to villagers. At an early stage, the village threatened violence against the company which wanted to take timber without taking their claims into account. Later the company set about entering into arrangements with villagers brokered by a local figure who organized timber shipments (*expedisi*) down river. Finally the company came to an arrangement whereby villagers extracted the timber and sold it on to the company. The company agreed to pay a 25% down payment, and the remainder after the logs reached the company's log pond. Yet, in other cases, outsiders still attempted to impose their will in the field, for instance by deploying thugs (*preman*). At the same time village actors defended their interests by resorting to intimidation and force. Given the uncertain consequences, it was hardly surprising that disputes often ended in violence.

While this situation clearly made business both more difficult, uncertain and even less profitable for Jakarta timber interests, for several reasons more powerful actors still acted to ensure that circumstances worked to their advantage. When timber interests obtained licenses for exploiting forest-lands under district government regulations, there was a lack of transparency and accountability concerning how these exploitation rights were negotiated or allocated. The district forest agency issued exploitation permits without conducting a field survey and based on an agreement signed by some villagers, usually well connected figures in the village elite or those with relationships with the broker concerned. The role of elites in some villages – where key village leaders remained beyond village control – clearly affected the situation. With villages claiming corporate customary rights over lands found in village administrative boundaries, village heads and the village apparatus found themselves in a profitable gate-keeping role. In interviews conducted in South Barito during November 2002, some villagers complained that timber concession operators were approaching village heads and village assemblies who colluded with company operators, taking “contributions” in return for written agreements that granted access to village lands in the name of the village. In some cases deal-making that only involved some members of the village elite manipulated and divided villages, leading to conflicts both within villages and between villagers and timber brokers, entrepreneurs and concession holders. After obtaining an official permit in collusion with village elites, timber operators and their brokers then only needed to obtain *ad*

hoc permission from villagers in the field. At the point of exploitation villagers faced the choice of making a deal or else losing out altogether. In one village, farmers protested that in competitive negotiations over access, poor and less assertive villagers were unable to establish their *jungungan* rights, while those few villagers prepared to “make a row” were having their claims respected. Therefore, as villagers claiming equivalent rights benefited in dissimilar ways, such developments heightened jealousies and disputes within the village and undermined the likelihood of collective action by villagers. In discussing this problem, one villager observed that the “law of the jungle” (*hukum rimba*) was taking over.

Lacking recognized legal rights in state law, let alone processes that would recognize and enforce such rights, ordinary villagers could make deals at the point of exploitation. Alternatively, as in the past, they could gain some benefits from arrangements brokered between village elites and extra-village timber networks and concessionaires (McCarthy 2002b). Given that the capacity of actors to secure environmental entitlements under the emergent socio-legal configuration was proportional to the capacity of actors to draw on a wide repertoire of social, economic, and legal rights or resources, the ability of village actors to enjoy the benefits of resource extraction still remained limited.^{xliii} As before, actors outside the village controlled a variety of assets – such as transportation, machinery, capital, permits, and access to market. Given that the value of forest resources jumps in economic value at points of control that involve access to such resources, even when local villagers sold timber to outside actors, as in the past they reaped only marginal benefits.^{xliv} In the course of changing social relations and legal frameworks, and in the interactions of district brokers, local government officials and outside entrepreneurs, to a limited degree the benefits of unsustainable forest exploitation were being redistributed. After regional autonomy, to a limited extent villagers had been able to extend their environmental entitlements.

EMERGENT SOCIO-LEGAL CONFIGURATIONS.

Clearly the various categories of actors with interests in political control or in benefiting from resource extraction have specific capacities within different fields of control. After having considered the unfolding developments in these different

national, regional and local scales, in this section I will discuss how, as different actors seek to pursue their interests or to benefit under these shifting circumstances, the four parallel processes discussed so far interpenetrate to generate particularly volatile socio-legal configurations.

After the economic and political crisis that began in 1998 the policy makers ascendant at this time turned to foreign-trained political scientists in *Tim Tujuh* who helped craft decentralization laws that, by mediating pressing domestic political agendas with a transnational policy narrative, were able both to attract foreign aid for state reform and to help the state find a new legitimating discourse. In organizing its own decentering, state agencies at the center had to perform the rather paradoxical act of devolving areas of responsibility while retaining some control over the decentralization process that allowed for the emergence of district legal regimes. The struggle that emerged within Jakarta bureaucracies over policy during a period of political transition compounded the contradictions inherent in this process and led to the fragmentation of state legal and administrative arrangements. For instance, a politico-bureaucratic elite – encompassing forestry interests close to and inside the Ministry of Forestry – retained their aspirations of retaining bureaucratic controls over the state forestry estate. This involved retaining the primacy of national forestry laws set out on a nation-wide scale. To the extent that these actors worked in contradiction to the umbrella decentralization law, they undermined the coherence of state action.

Before regional autonomy, politico-business interests in Jakarta integrated into the New Order regime obtained large timber concession licenses and used this power to guarantee their access to regional forests (Barr 1998). Under regional autonomy those actors that survived the transition retain the connections in Jakarta which enable them to obtain timber licenses, and to control capital, machinery and access to markets. For even after regional autonomy the Ministry of Forestry, with a recommendation from the provincial administration, retained the power to issue large scale (HPH) concessions. Over recent years, many of these permits had either expired or were still “in process” with the administration, and the legal status of many areas of the forest estate was now undecided. At the same time, regional autonomy provided actors with more district legal/administrative routes to access local timber resources. For instance, in addition to the small scale licenses (HPHH and IPHHK) issued by district governments, following regional autonomy local forestry offices gained the

authority over transport permits (SKSSH) and annual cutting schedules (RKT), as well as permits for operating sawmills.^{xlv} When national corporate interests faced problems in their concessions, they increasingly depended on local collaborators in district government or business, who could legitimize and even legalize their activities by applying for district permits on their behalf. As they adjusted, they have increasingly decentralized their business model, outsourcing their local operations to local actors and employing thugs (*preman*) for protection as well as brokers with the contacts and the connections to facilitate access in villages. In general these changes in the distribution of benefits favor the position of district officials, entrepreneurs and brokers (McCarthy 2001a; McCarthy 2001b).

An earlier study revealed that during the New Order accommodations and exchanges involving a web of entrepreneurs and district officials informally dominated district government decision-making with respect to natural resource use. With local “taxes” – both official and otherwise – levied on logging operations, district level logging operations supported the diverse needs of district politico-bureaucrats. (McCarthy, 2002a) Under regional autonomy, these district politico-bureaucrats have gained extended discretionary powers. As noted earlier, these actors have to a greater extent used these powers to generate revenue to support their political machines, and to pay for the political support of key factions in the district legislature. For instance, according to a number of accounts from Central Kalimantan, while they have needed to buy votes at election time, at key moments district heads have also needed to dispense favors and money to members of regional parliament (DPRD), for example, to ensure the acceptance of budgets and annual accountability reports. Lower level district officials also occupy strategic positions and have gained from the increased standing of the localized system of exchange and accommodation that determines forest access. Besides helping other actors process a permit, in exchange for payments or favors these agents have helped actors find a way around problems, provided information regarding opportunities and strategies, and access to the person who can grant a particular document. Alternatively, these state agents have been able to put an operator in touch with another entrepreneur who might have the license that an actor needed to operate. In this context, as national business interests and local entrepreneurs invested in personal and economic relations at the district level and reaching down to the village level, well established clientelist networks of

exchange and accommodation surrounding district business have grown increasingly prominent.

Given their connections and on-going investment in district networks of power and accommodation, district entrepreneurs have significant advantages under regional autonomy. In Central Kalimantan district regulations (*perda*) pertaining to small-scale concessions typically only allowed people indigenous to the area (*putra daerah*) to obtain exploitation licenses from the district government. Such regulations assisted district entrepreneurs who already had the capacity to negotiate access to sources of timber using existing social relationships to reach across the district and down into villages. This has redistributive implications: with the reduced capacity of elites to use the decentralized state system as an apparatus to facilitate the extraction of rents from natural resources, local elites – many with kinship ties, commitments and responsibilities with ordinary villagers – have increased their capacity to act as patrons, entrepreneurs and brokers. However, village and district elites often lack the kind of capital required to work on their own. For, even after decentralization, obtaining a permit still required considerable capital. For instance, counting both official and “unofficial payments”, a sawmill operator paid 700 million rupiah to obtain a timber export license (RPBI).^{xlvi} In another case, an entrepreneur paid 10 million for recommendation for a small (HPHH) district concession area from the district forestry office as well as incurring other expenses, including procuring an aerial photograph of the area and paying for forest surveys together with other operational expenses, including the cost of obtaining labour and procuring machinery.^{xlvii} To overcome these obstacles, those with connections entered into partnerships with national politico-bureaucrats and concession operators, either borrowing working capital from larger operators to whom they sold on the timber they obtained under local regulations, or they merely acted as a local broker for the outside operation. Some brokers were local employees of timber factories down river, or agents of large scale concessions searching for extra timber to meet their production targets or perhaps working without an annual cutting schedule (RKT) while their large scale HPH concession was "in process" with the Ministry of Forestry. Some local entrepreneurs and district officials also used villagers who had recently moved into the towns and retained the village connections that enabled them to broker access up-river. District businesses, officials and politicians – who had the connections or the

capital and machinery to work on their own – preferred to disguise the extent of their operations by operating behind a co-operative functioning in the name of villagers.^{xlviii} Although the name of the local broker or village co-operative might appear on the permit, village actors only gained a small share of the benefits. As a local observer noted, the permit holder "could be a *putra daerah* who needs to hire the motorcycle (*ojek*) that takes him to the office where he applied for the permit".^{xlix}

To date the decentralization process has also failed to help village actors gain more secure rights over areas subject to village and *adat* property rights. Unless they were to remain passive subjects of outside strategies, villagers have had to mobilize and to apply "community justice" initiatives to assert their positions and to ensure their livelihood needs. In many cases villagers have only been able to defend their interests by the threat of violence. While threats have forced other actors into negotiating with villagers, it has also heightened the possibility of open conflict when timber operators employed thugs (*preman*). Yet, as in some Bolivian municipalities after decentralization reforms, these changes had weakened the influence of national elites controlling concession licenses who no longer had a monopoly on violence: these previously marginalized groups had now strengthened their territorial claims and this was affecting negotiations over forest management (Kaimowitz et al, 1998).

The literature places particular emphasis on the need for downward accountability in ensuring the success of decentralization (Manor, 1999; Agrawal and Ribot, 1999). The decentralization laws have taken steps towards promoting downwards accountability, in the process weakening the accountability of the district governments upward. For instance, the key framework law (Law 22/1999) provided for heads of districts to be elected without interference from above and that districts would have autonomy in formulating their own programs and budgets.¹ Yet, the accountability of the local assemblies to local communities has remained a problem. Under the existing electoral model, voters chose a party and the party committee then selected the candidates, and this has usually secured parliamentarians predominantly loyal to the party. With widespread money politics, where cash has been exchanged for favors, accountability and transparency remained distant ideals. Of course elections are not the only mechanism for ensuring accountability: effective democratic accountability involves the operation of both formal and informal accountability mechanisms to tie local government decision-making to the preferences of the

citizenry. Yet, "the rural poor face particular internal and external obstacles when they attempt to hold the state accountable for its actions" (Fox 1990: 1). A diverse range of geographical, economic and socio-political factors makes the costs of participating in political action beyond the community excessive. At the same time, the entrenched power of public and private sector actors in rural areas – where the media and political and legal information are limited – renders local organizations particularly vulnerable to coercion. The districts of Central Kalimantan remain predominately rural societies where remotely situated and impoverished communities can rarely affect district policy making. In rural areas such as Central Kalimantan these factors have further undermined the capacity of village actors to use accountability mechanisms provided by newly introduced legal initiatives as a “countervailing power” in opposition to networks of exchange and accommodation that integrate village and district elites (Agrawal and Ribot 1999). Village actors have little influence on district decision-making processes and have few means of affecting developments other than by the use of what *de facto* power they can wield in the field.

As I have noted earlier, the legal and administrative uncertainty has also affected this context. As regulations together with the areas of responsibility and authority of different agencies have remained somewhat ambiguous, conflicting and in a state of flux, agencies at each level have competed for control over access and the entitlements that come with such control. As in other transitional situations, the messy legal situation in which no-one had a complete picture of which law still applied “worked to the advantage of the powerful, allowing them to pick out from often contradictory laws those that fortified their position”. For district actors could accept, reject or redefine legal categories in line with local values and interests (cf Oomen 2002: 282). But this situation also led to considerable competition and discord as, in addition to administrators, other actors including NGOs, journalists, and gangsters (*preman*) also attempted to extract benefits from the system. In this situation, some actors, such as those occupying the strategic position in the commodity chain that linked the networks of district-based timber operators with the main market in Banjarmasin, could extract considerable profits. But to do this they needed to be able to straddle several levels of the socio-legal formation. In achieving this, such actors needed to command multiple rights, resources and opportunities,

including access to officials and permits, capital, and the capacity to impose their will in the field, for instance by deploying their own *preman*.

Consequently, in this heterogeneous situation, the degree to which a particular actor could benefit depended upon their capacity to deploy rights and resources at a specific level. These included the capacity to invoke the appropriate national, district, customary or socio-legal orders to support their interests, the capacity to form alliances, employ brokers, employ capital, machinery and access permits and licenses, deploy law enforcement agencies against rivals, and gain admission into outside markets, or the ability to threaten violence.^{li} In other words, to enjoy the benefits of resource extraction under the emergent socio-legal configuration, as far as possible such actors needed to draw on a wide repertoire of social, economic, and legal endowments, deploying the appropriate right or resource in the appropriate field at the appropriate time.

While successful actors needed to develop the capacity to negotiate across these several domains of control at once, given the difficulty of doing so, most actors have been left competing and insecure. As brokers and entrepreneurs interviewed in the provincial capital of Palangkaraya noted, even if they sorted out permits and access to the community, there were always “extra factors” beyond their control that could confound their operations. For instance, one businessman described how at considerable effort he obtained a concession area rich in the valuable timber, *ramin* (*Gonystylus bancanus*), in the swamps of Kapuas district. Subsequently, after he made the investment, under international pressure resulting from the felling of national park forests in a neighboring area, the government in Jakarta changed the law, banning the export of *ramin* and confounding his investment. In other cases, the central government changed laws, such as that pertaining to small-scale concessions, just when the district administration was beginning to implement them. But clearly there were other contiguous factors. For many years villagers experienced the contrariness of timber operators who failed to live by agreements that village heads had made in good faith. Complaining of this lack of consistency, villagers were learning how to assert their rights, and increasingly take direct action. A businessman in the provincial capital described how, despite all the negotiations undertaken and permits obtained, his logging operations were hampered when a band of villagers who felt left out turned up with machetes (*parang*) to demand work in the logging

operation. In other cases, brokers could make a deal with villagers, only to return to the village to find that a competitor had made a better deal. Or, if villagers heard that others were getting higher payments, jealousy could lead them to renege on a deal. In response, to improve their security and enforce agreements, timber operators usually have employed their own teams of bodyguards and thugs (*preman*). Or, they have used their connections within the state to employ law enforcement agencies against their opponents. Even so, an investor or broker sometimes failed to guarantee continued access.

A case in the neighboring province of East Kalimantan illustrated how, as this has typically been beyond the capacity of most actors, it has led to particularly unstable outcomes. Here, a retired lieutenant general who happened to head the national intelligence agency (Badan Intelijen Negara or BIN) obtained a concession license from the provincial government. At the same time two district entrepreneurs had obtained small concessions in the same area from the district government. They had also entered into an agreement with local villagers whereby villagers obtained payments in return for guaranteeing access to areas subject to customary claims. When the intelligence head realized that local entrepreneurs were logging “his area” he contacted his police counterparts in Jakarta. Subsequently, the provincial police arrested the district entrepreneurs for “illegal logging”. However, the retired general’s control over the area remained insecure: newspaper reporters who visited the area now found that the villagers were angry because the head of the national intelligence agency had not negotiated access at the village level.^{lii}

CONCLUSION

This article has described how, following decentralization, various actors have adjusted to regional autonomy. As they have sought to secure their various interests – whether to redress past grievances, seek rent, raise revenue, extract timber for profit, or merely subsist – they have developed new strategies or adjusted old ones. In the course of a highly politicized implementation process, the state legal system has become increasingly heterogeneous, with competing national and district forms of legality interacting and interpenetrating with the reassertion of customary normative orders and the more visible operation of district networks of exchange and

accommodation. At the one time actors can invoke rules associated with the various shifting national, district, and localized socio-legal orders to support their positions in struggles, which are at once conflicts over power and over access to resources. Given the precarious interconnections between these multiple coexisting legal and normative systems, the institutional arrangements determining access and use of resources at the village and district level remain shifting and uncertain. As this leads to particularly volatile socio-legal configurations, those engaged in extracting timber or merely subsisting from the region's once abundant resources perceive a high degree of risk. As competing actors race to make the most of current opportunities without regard to future operations, this generates a set of incentives that favor the rapid liquidation of forests.^{liii}

In contrast to this untidy reality, decentralization policy narratives suggest that successful democratic decentralization – were it to occur – might alleviate the administrative bottlenecks associated with centralized decision-making processes. If policy is increasingly developed and implemented by a local state accountable to local civil society, decentralization policy narratives envisage that government might be made more responsive to local needs. As public institutions become more accountable, service delivery might improve, and diverse groups find better representation and more fully participate in decision-making.

Is the discrepancy between the objectives of this policy narrative and outcomes in Indonesia derived from the inadequacy of the decentralization concept itself or from its implementation? To be sure, by separating out the concept of “democratic decentralization” from the design, politics and conditions affecting its implementation in Indonesia, the decentralization policy narrative can be protected from reproach.^{liv} Yet, the effects of decentralization can be assessed in terms of how it changes the ability of local groups to advance their interests, to secure local property rights, to control resource access and otherwise benefit from patterns of resource use (Lutz and Caldecott 1996). Moreover, we need to consider whether the incipient decentralized system – with all its faults – is worse than the highly centralized bureaucratic system that existed in the past.

Under the New Order powerful politico-bureaucratic actors at the center had a considerable effect on resource regimes in many areas of Indonesia. In the forestry sector, concessionaries run by powerful timber tycoons close to Suharto accumulated

capital from forest rents, the regime amassed the largesse necessary to run its clientelist system, and the state obtained significant surplus for its development programs. With structural inequalities inherent in legal definitions of tenure and resource use, the *adat* rights of villagers living in areas subject to concession licenses were thoroughly ignored. With the systematic involvement of the state security apparatus in suppressing dissent, the system worked against local people. At the same time a highly localized system of resource extraction operated which to some extent accommodated local interests (McCarthy forthcoming). As long as those who benefited from the system stayed faithful to the regime and made contributions to colleagues and managers within party and state, this system allowed rent seeking by district elites who operated with a significant degree of independence (Obidzinski 2002). This system worked at odds with official regulations and policy, leading to outcomes that were antithetical to effective environmental governance.

After decentralization the clientelist arrangements which shaped access to and use of natural resources to a significant extent have taken a more visible form. Decentralization enhanced the opportunities of existing district elites to use district regulations to extract resources and extend their businesses under the umbrella of district “legality”. In this sense, rather than establishing a new system, the implementation of regional autonomy extends the well-established district modes of clientelism. While previously this system was embedded within the wider New Order regime, given the transition at the national level, now the links between national coalitions and regional networks of exchange and accommodation are contested and fragmentary. While networks of exchange and accommodation may have crystallized in some districts, in many other areas diffuse and mutually competing networks of patronage continue to vie for dominance (cf Hadiz 2003).

In other countries decentralization has led to some similar outcomes. In Thailand, with decentralization, local elites – particularly town-based entrepreneurs – seeking to gain access to power still found within the state have emerged to monopolize representative positions in decentralized authorities (Arghiros 2001). In the Philippines, decentralization has seen the demise of the centralized state system that amounted to an apparatus that facilitated the extraction of surplus by military and civil elites. Subsequently, the same elites have “realized that surplus extraction will be facilitated more by privately initiated and decentralized structures” (Contreras

2000). Consequently, according to Contreras (2000: 148), a discourse of “people empowerment” has ironically contributed to the “continuous erosion of state power vis-à-vis the strengthening of local elites in command of decentralized development activities”. In a similar fashion, in some areas of Bolivia local elites – taking advantage of decentralization reforms – have used forest exploitation for district revenue generation and personal enrichment (Kaimowitz, Vallejos et al. 1998).

In these cases, the axis of centralization-decentralization presents a dilemma. The excesses of a regime that concentrated power in the hands of an unaccountable politico-bureaucratic elite provided the reason for moving towards a more locally accountable system of governance. Yet, devolving power to local government bodies presents a particular predicament: in the absence of a strong independent civil society that can be counterpoised to the local state, there is a danger that decentralization reforms will be captured by powerful local elites (cf Arghiros 2001; McCarthy 2002a).

Yet, while bearing in mind the problems associated with decentralization, regional autonomy also raises possibilities. In Bolivia, decentralization reforms weakened the influence of national elites controlling concession licenses in some municipalities, opening up opportunities for previously marginalized groups to strengthen their territorial claims and affect negotiations over forest management (Kaimowitz et al, 1998). In Indonesia decentralization has also undermined the power of timber concessions and mining interests. While previously they could obtain permits from the center and disregard villagers and even local government, now they have to negotiate access to resources at every level. The disarray in administrative arrangements and the highly contested politics associated with decentralization have provided space for village actors to assert claims over areas subject to *adat* property claims. As the state apparatus no longer has a monopoly on violence, local actors can take direct action to protect their rights. Consequently, concessionaires and timber brokers have to allow for the *de facto* existence of *adat* property rights. In the absence of formal recognition of *adat* rights and effective forms of accountability, local people are significantly disadvantaged: villagers and *adat* authorities are vulnerable to coercion and cooption. Nonetheless, compared to the previous situation, villagers may be able to assert *adat* claims and gain at least some benefit from resource extraction. If villagers can maintain these claims, and if they can gain some

official recognition for them at some point in the future under district regulations, decentralization may yet present the possibility of overcoming some of the structural inequalities inherent in legal definitions of tenure and resource use which have long worked against villagers.

With actors competing for access and control, conditions may be more open now than under the repressive, bureaucratic New Order regime. As far as the corrupt actions of legislators, entrepreneurs and rogue officials are more frequently exposed, this may gradually affect patterns of governance. If political actors such as indigenous groups and NGOs can organize themselves, sometimes with outside support, decentralization and associated reforms offer a new space to carry out advocacy, negotiation, lobbying, and coalition-building.^{lv}

In Thailand decentralization lessened the importance of local bureaucrats, with local politicians increasingly emerging as the new patrons. While these local politicians are integrated into local circles of exchange and accommodation, nevertheless they do mediate the space between the central state and villagers better than the closed bureaucracy of the past. To a limited extent these local patrons are beginning to serve the needs of their rural clients (Arghiros 2001).

Moreover, decentralization inevitably broadens the penetration of the state into remote areas. There is always the possibility that local people can capture decision-making power and use the symbolic power of state law for local purposes, slowly turning around the state to serve village interests (Arghiros 2001; Li 2002). While in many remote areas of Indonesia village actors remain unable to access the accountability mechanisms provided by law, the decentralization reforms could provide a more polycentric form of government. As Ribot has noted, “the balance of powers” is an important structural aspect of accountability. This is because “a balance of powers in which there are counter powers to the central government can increase accountability by increasing the number of actors with a voice in politics and the ability of non-central actors to scrutinize central institutions” (Ribot 2001). Yet, if such a balance of powers is to be achieved, higher levels of government also need to be effectively engaged, for instance in providing technical skills, adjudication and conflict resolution mechanisms, and in supporting local actors in addressing problems of corruption and gross inefficiency.^{lvi} Paradoxically, to avoid shifting a set of problems along a centralized-decentralized axis, decentralization needs to be balanced

with centralization, and this necessarily involves the application of political skill locally by a strong central government (Tendler 1997).^{lvii}

In Indonesia institutional arrangements have become increasingly fragmented and contested post-decentralization, and as district elites have adjusted, they have been able to make the most of the opportunities. Yet, decentralization has also opened the possibility for learning: villagers now have greater opportunities to pursue their interests, and as the system evolves, they may yet find better means of securing their welfare than under the closed bureaucratic system of the past. Ultimately, the conclusion remains equivocal: alongside the compound problems it affords, the shift toward a decentralized system presents advances on the New Order period, when so often policies were pursued that worked against the interests of remote villagers.

To sum up, the Indonesian case suggests several lessons. First, while decentralization policy narratives are often dressed up in the clothes of technical governance issues, decentralization is a highly political process: complex political processes affected by multiple struggles between diverse social interests across various socio-legal scales primarily determine outcomes. Second, the elaborating logic of state pluralism reflects the reality that decentralization has been implemented in the absence of a pro-reform coalition able to straddle multiple political levels, with a central government unable to develop a whole of government approach to decentralization or effectively coordinate across sectors, and without a judiciary able to iron out legal contradictions. Third, as other cases suggest, a primary challenge facing decentralization remains entrenched clientelist networks capable of occupying the space opened by reforms. Project interventions and legal initiatives might provide “countervailing powers” that would enable social actors to countercheck the danger of elite capture (Agrawal and Ribot 1999). Yet, policy initiatives can do little to call into being the type of social actors who might make the most of these openings or to overcome the structural violence which inhibits their emergence. Fourth, this case points to an enduring deficiency: the lack of effective institutional arrangements and dispute resolution mechanisms with respect to customary property rights under official law. As actors from outside the village attempt to impose their will in the field through stratagem, intimidation and violence, villagers increasingly defend their interests by resorting to direct action. Consequently, the insecurity and uncertainty of institutional arrangements leads to the widespread resource conflicts in many areas of

Indonesia. To overcome this, reforms are needed to provide for secure *adat* rights and effective forms of adjudication and dispute resolution. Finally, this case demonstrates how, irrespective of whether it delivers on the promises set out in policy narratives, decentralization can serve other purposes. In this case the shift to decentralization also reflects the need for a new legitimizing discourse for the state and its need to withdraw from discredited unitary ambitions of an unaccountable centralized state power.

REFERENCES

- Acciaoli, G. (2000). *The re-emergence of customary claims to land among the To Lindu of Central Sulawesi: The revitalisation of Adat in the era of Reformasi in Indonesia*. Paper presented at the Annual Conference of the Australian Anthropological Society, 19-23 September 2000, The University of Western Australia, Perth.
- Agrawal, A. and Ribot J. C. (1999). "Accountability in decentralization: a framework with south asian and african cases." *Journal of developing areas* 33(Summer 1999): 473-502.
- Ahmad, E. and Mansoor A. (2000). *Indonesia: managing decentralization*. Conference on Fiscal Decentralization, Fiscal Affairs Department, World Bank.
- Arghiros, D. (2001). *Democracy, development and decentralization in provincial thailand*, Curzon.
- Barber, C. V., Johnson N. C. and Hafild E. (1994). *Breaking the logjam: obstacles to forest policy reform in Indonesia and the United States*. Washington DC, World Resources Institute.
- Barr, C. (1998). "Bob Hasan, The Rise of apkindo, and the shifting dynamics of control in Indonesia's timber sector." *Indonesia* 65: 1-36.
- Barr, C., Wollenberg, E., Limberg, G., Anau, N., Iwan, R., Sudana, I.M., Moeliono, M., and Djogo, T. (2002). The impacts of decentralisation on forests and forest-dependent communities in Malinau District, East Kalimantan. (Case Study 3). Bogor, CIFOR. <http://www.cifor.cgiar.org/publications>
- Benda-Beckmann, von, Franz and Keebet (2002). *Recreating the nagari: decentralisation in West Sumatra*, Max Planck Institute for Social Anthropology Working Paper No 31.
- Burns, D, Hambleton, R and Höggett, P. (1994). *The politics of decentralization. Revitalising local democracy*. Houndmills, Macmillan.
- Casson, A. (2002). Decentralisation of policies affecting forests and estate crops in Kotawaringin Timur District, Central Kalimantan. Bogor, CIFOR. <http://www.cifor.cgiar.org/publications>

- Colfer, C. J. P. and Resosudarmo, I. A. P. Eds. (2002). *Which Way forward? people, forests, and policymaking in Indonesia*, Resources for the Future, Washington, DC.
- Contreras, A. P. (2000). *Rethinking participation and empowerment in the uplands. forest policy and politics in the Philippines*. P. Utting. Manila, Ateneo de Manila University Press.
- De Sousa Santos, B. (1992). "State, law and community in the world system: an introduction." *Social and legal studies* 1: 131-42.
- Down to Earth (1999). "Forests: New act thwarts reformers." *Quarterly Newsletter of the International Campaign for Ecological Justice in Indonesia* (43).
- Down to Earth (2002). *Forests, people and rights, a dte special report*. London, Down to Earth, International campaign for ecological justice in Indonesia.
- Eaton, K. (2001). "Political obstacles to decentralization: evidence from Argentina and the Philippines." *Development and Change* 32: 101-127.
- Fauzi, N. and Zakaria, R. Y. (2002). *Democratizing decentralization: Local initiatives from Indonesia*. International Association for the Study of Common Property, 9th Biennial Conference, Victoria Falls, Zimbabwe.
- Fitzpatrick, D. (1997). "Disputes and pluralism in modern Indonesian land law." *Yale Journal of International Law* 22(1): 170-204.
- Forrester, G. (2001). *Decentralization in Indonesia. Options for Australian Aid*, Unpublished report
- Fox, J. (1990). "The challenges of rural democratisation in Latin America and the Philippines." *Journal of Development Studies* 26(4): 1-18.
- Fox, J. (1993). *The politics of food in Mexico: state power and social mobilization*. Ithaca NY, Cornell University Press.
- Frerks, G. and Otto J. M. (1996). *Decentralization and development: A review of development administration literature*, Van Vollenhoven Institute for Law and Administration in Non-Western Countries, Leiden University.
- GTZ (2001). *Donor activities related to decentralisation and local governance capacity building in Indonesia*. Jakarta, Kerjasama Indonesia - Jerman Departmen Dalam Negeri dan Otonomi Daerah RI - Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ) GmbH

- Hadiz, V. (2003). *Local power: Decentralisation and political reorganisation in Indonesia*. Paper Presented at the conference "Globalisation, Conflict and Political Regimes in East and Southeast Asia", Fremantle, August 2003.
- ICG (2001a). Communal violence in Indonesia: lessons from Kalimantan. Jakarta/Brussels, International Crisis Group
- ICG (2001b). Indonesia: National police reform. Jakarta/Brussels, International Crisis Group.
- Jayasuriya, K. (1999). "Globalization, law and the transformation of sovereignty: The emergence of global regulatory governance." *Indiana Journal of Global Legal Studies* 6(2): 425-455.
- Kaimowitz, D, Pacheco, P. B. , Johnson, J., Pavez, I., Vallejos, C., and Velez, R. (1999). Local governments and forests in the Bolivian lowlands. London, Rural Development Forestry Network, Overseas Development Institute.
- Kaimowitz, D., Vallejos, C., Pacheco, P. B and Lopez, R. (1998). "Municipal governments and forest management in lowland Bolivia." *Journal of Environment and Development* 7(1): 45-60.
- Larson, A. M. (2003). "Decentralization and forest management in Latin America: Toward a working model." *Public Administration and Development* 23(3).
- Leach, M., Mearns, R. and Scoones, I. (1999). "Environmental entitlements: Dynamics and institutions in community-based natural resource management." *World Development* 27 (2): 225-47.
- Lewis, B. (2002) Revenue-Sharing and Grant-Making in Indonesia: The First Two Years of Fiscal Decentralisation. http://www.gtzsfdm.or.id/dec_in_ind.htm
- Li, T. (2002). "Engaging simplifications: community-based resource management, market processes and state agendas in upland southeast Asia." *World Development* 30(2): 265-283.
- Low, B., Ostrom, E., Simon, C. and Watson J. (2003). Redundancy and diversity: Do they influence optimal management? *Navigating social-economic systems. Building resilience for complexity and change*. J. C. Fikret Berkes, and Carl Folke. New York, Cambridge University Press: 83-114.
- Lutz, E. and Caldecott, J. Eds. (1996). *Decentralization and biodiversity conservation*. Washington, D.C, World Bank.
- Manor, J. (1999). *The Political economy of democratic decentralization*. Washington, D.C., The World Bank.

- McCarthy, J. F. (2001a). Decentralization and forest management in Kapuas District, Centre for International Forestry Research. <http://www.cifor.cgiar.org/publications>
- McCarthy, J. F. (2001b). Decentralization, local communities and forest management in Barito Selatan, Centre for International Forestry Research. <http://www.cifor.cgiar.org/publications>
- McCarthy, J. F. (2002a). "Power and interest on Sumatra's rainforest frontier: Clientelist coalitions, illegal logging and conservation in the Alas Valley." *Journal of Southeast Asian Studies* 33(1): 77-105.
- McCarthy, J. F. (2002b). "Turning in circles: District governance, illegal logging and environmental decline in Sumatra, Indonesia." *Society and Natural Resources* 15(10): 867 - 886.
- McCarthy, J. F. (forthcoming). *The fourth circle. A political ecology of Sumatra's rainforest frontier*, Stanford University Press.
- Meenakshisundaram, S. S. (1999). Decentralization in developing countries. *Decentralization and local politics*. S. N. Jha and P. C. Mathur. New Delhi, Sage Publications India: 54-69.
- Menteri Kehutanan (2002). Revitalisasi kebijakan Pembangunan Kehutanan untuk Mensukseskan Pelaksanaan Otonomi Daerah. Arahan Menteri Kehutanan dalam rapat kerja kepala daerah seluruh Indonesia Department Dalam Negeri.
- Merry, S. E. (1992). "Anthropology, law and transnational processes." *Annual Review of Anthropology*. 21: 357-79.
- Merry, S. E. (1995). "Resistance and the cultural power of law." *Law & Society Review* 29(1): 11-26.
- Morris, N. (2002). Fiscal capacity and expenditures at different levels of government, Asian Development Bank TA No: 3777-INO, <http://www.djpkpd.go.id/publikasi/>
- Nicol, B. and McCarthy, J. (2001). Strengthening and promoting the democratization and unity of Indonesia through best practice in regional governance. Jakarta, TAMF. Unpublished Report.
- Niessen, N. (1999). *Municipal government in Indonesia: Policy, law and practice of decentralization and urban spatial planning*. Leiden, Leiden University: CNWS Publications.

- Obidzinski, K. (2002). Logging in East Kalimantan, Indonesia. the historical expedience of illegality, PhD Thesis, University of Amsterdam.
- Oomen, B. (2002). Chiefs! Law, power and culture in contemporary South Africa. PhD Thesis, Universiteit Leiden.
- Peluso, N. L. (1996). "Fruit trees and family trees in an anthropogenic forest: ethics of access, property zones, and environment change in Indonesia." *Comparative studies in society and history* 38(3): 510-548.
- Putman, R. (1993). *Making democracy work: civic traditions in modern Italy*. Princeton, Princeton University Press.
- Rasyid, M. R. (2003). Regional autonomy and local politics in Indonesia. *Local power and politics in indonesia. decentralisation and democratisation*. E. Aspinall and G. Fealy. Singapore, ISAS: 63-71.
- Ribot, J. (2001). Local actors, powers and accountability in African decentralizations: A Review of Issues, Paper Prepared for International Development Research Centre of Canada Assessment of Social Policy Reforms Initiative, To be published by United Nations Research Institute for Social Development (UNRISD).
- Ribot, J. C. (2000). Rebellion, representation, and enfranchisement in the forest villages of Makacoulibantang, Eastern Senegal. *People, Plants, & Justice*. C. Zerner. New York, Columbia University Press. 28: 134-158.
- Ribot, J. C. and Peluso N. L. (2002). "A theory of access." *Rural Sociology* 62(2): 153-181.
- Robison, R., Rodan G. and Hewison K. (2002). Transplanting the regulatory state in southeast asia: A pathology of rejection, Southeast Asia Research Centre, City University of Hong Kong, Working Paper No 33.
- Roe, E. M. (1991). "Development narratives, or making the best of blueprint development." *World Development* 19(4): 287-300.
- Roe, E. M. (1995). "Except-africa: postscript to a special section on development narratives." *World Development* 23(6): 1065-1069.
- Rohdewohld, R. (2003). Decentralisation and the Indonesian bureaucracy: Major changes, minor impacts. *Local power and politics in Indonesia. decentralisation and democratisation*. E. Aspinall and G. Fealy. Singapore, ISAS: 259-274.

- Sonius, H. W. J. (1981). Introduction. *Van Vollenhoven on Indonesian Adat Law*. J. F. Holleman. The Hague, Nijhoff: XXIX-LXVII.
- Tajuk (14 December 2000). "Prof. Dr Ryaas Rasyid. Saya Bukan Job Seeker." *Thn* III(21): 68-74.
- Tambunan, M. (2000). "Indonesia's new challenges and opportunities: Blueprint for reform after the economic crisis." *East Asia: An International Quarterly* 18(2): 50.
- Tendler, J. (1997). *Good governance in the tropics*. Baltimore and London, John Hopkins University Press.
- van Klinken, G. (2002). Indonesia's new ethnic elites. *Indonesia: In Search of Transition*. H. S. Nordholt and I. Abdullah. Yogyakarta, Pusaka Pelajar: 67-105.
- Walters, W. (2002). "Social capital and political sociology: re-imagining politics?" *Sociology* 36(2): 377-398.
- Warren, C. and McCarthy J. (2002). Adat regimes and collective goods in the changing political constellation of Indonesia. *Shaping common futures: case studies of collective goods, collective actions in East and Southeast Asia*. S. Sargerson. London, Routledge.
- Wollenberg, E. and Kartodihardjo, H. (2002). Devolution and Indonesia's new forestry law. *Which way forward? People, forests, and policymaking in Indonesia*. C. J. P. Colfer and Resosudarmo, I. A. P. Resources for the Future: 81-95.
- World Bank (2001). What is Decentralization?
<http://www1.worldbank.org/publicsector/decentralization/Different.htm>
- Young, O. R. (2000). *Institutional interplay: The environmental consequences of cross-scale interactions*. Constituting the Commons: Crafting Sustainable Commons in the New Millennium, the Eighth Conference of the International Association for the Study of Common Property, Bloomington, Indiana, USA.
- World Bank, (1998) *Decentralization, fiscal systems, and rural development*,
<http://econ.worldbank.org/view.php?type=20&id=67>;

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ⁱⁱ Cf Merry (1995).

ⁱⁱⁱ See also World Bank, (1998).

^{iv} See Ribot (2001), Larson (2003) for a summary of these arguments.

^v For discussion, Tendler (1997), Agrawal and Ribot (1999), Manor (1999).

^{vi} By 2001 GTZ identified 76 donor activities in the area involving an allocation of \$US 633 million dollars GTZ (2001). This is not to overstate the enthusiasm of donor agencies. In particular, the World Bank and IMF have worried that redistributing resources to the provinces and districts will create pressure on fiscal expenditures (David Kaimowitz, personal communication).

^{vii} *Far Eastern Economic Review*, 21 January 1999.

^{viii} *Suara Pembaruan*, 19 September 1998.

^{ix} State Planning Guidelines (GBHN 1994-2004); Decrees of the supreme national parliament, TAP MPR IV/2000.

^x Interview, Department of Home Affairs, July 3 2001.

^{xi} The (re)surgence of more conservative forces started under the Gus Dur presidency.

^{xii} In late 2003 the process of rewriting Laws 22/1999 and 25/1999 gathered pace, with the government and the legislative setting out to revise these laws before the April 2004 election.

^{xiii} While only the parliament could pass a framework law (*undang-undang*), internal departmental committees generally draft implementing regulations (*peraturan pemerintah* and *keputusan presiden*). This system leaves internal department policy makers the opportunity for watering down the intentions of the original legislation or drafting regulations that contradict other (higher) areas of law. Revision of the framework law would require parliamentary approval, and until at least 2003 support for decentralization in regional areas has made this less attractive for political parties chasing votes in the regions.

^{xiv} The New Order’s Basic Forestry Law (No. 5/1967) allowed the State to take charge of “all forests within the territory of the Republic of Indonesia, including the natural resources they contain” (Law No 5/67) and a state mapping exercise (TGHK) classified approximately 75 per cent of the nation’s land area as “forest estate”, thereby placing it under the jurisdiction of the Ministry of Forestry. In 1999 a new Forestry Law (No. 41) recognized the existence of “adat communities” and “customary forests”, but left customary lands within the state forestry estate with the state to retain control over the allocation of legal rights in these areas. See Down to Earth (1999), Wollenberg and Kartodihardjo (2002).

^{xv} Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor IV/MPR/2000 Tentang Rekomendasi Kebijakan Dalam Penyelenggaraan Otonomi Daerah.

^{xvi} Cf Ribot and Peluso (2002).

^{xvii} In the absence of directives from the center, in some cases agencies have also not known how to implement higher regulations (Adriaan Bedner, personal communication).

^{xviii} Thanks to Keebet Von Benda-Beckmann for this particular point.

^{xix} The term Dayak is here used as a short-hand for the many indigenous ethnic groups found in the interior of Central Kalimantan including the Ot Danum, Ma'anyan and the Ngaju who are linguistically distinct.

^{xx} For examples, see McCarthy (2001a), McCarthy (2001b), Barr (2002), Casson (2002).

^{xxi} Law 25/1999 and Law 34/2000 set out the framework for districts to raise their own revenues from local taxes, local charges and enterprises, and Law 34/2000 set maximum rates for each type of tax. As the central government retained authority over the most important local tax, the property tax, self generated revenues have remained relatively unimportant to district government budgets. While the central government has little capacity to oversee districts in distant Central Kalimantan, and in the absence of effective transparency and accountability mechanisms within the districts, district governments in Central Kalimantan have continued to collect quasi-legal taxes from the forestry sector. For a discussion of this phenomenon, see Cassons (2001), McCarthy (2001a, 2001b).

^{xxii} An analysis of fiscal decentralization is beyond the scope of this paper. Yet, it is worth noting that during the early days of decentralization, many district governments complained that increased central government allocations were merely paying for delegated staff and other expenditures, with a negative effect on development budgets. Transfers from the central government subsequently increased to make up for shortfalls, and inadequacies in the finances of many districts have in many cases been ameliorated. Yet, there have been continuing problems with the distribution mechanism related to the major transfer, and resource poor and relatively under-populated regions have been relatively disadvantaged by the allocation formula. There have also been reports that corruption and contentious budgetary decisions by some district administrations have affected their development budgets. At the same time the transfer of service delivery functions to the regions has not been accompanied by a corresponding fall in central government budgets in these areas, suggesting that the sectoral agencies in Jakarta have managed to maintain their control over significant development budgets. As a consequence, while many districts and municipalities have done well from fiscal decentralization, a number of district governments have been left with insufficient fiscal resources vis-à-vis service responsibilities. For discussion, see Morris (2002), Rohdewohld (2003), Lewis (2002).

^{xxiii} Under succeeding government regulations (PP No.6/1999, UU 44/1999, PP34 /2002 and PP35 /2002) the terms used to refer to these powers have changed over time and the powers devolved to districts have effectively been narrowed.

^{xxiv} Cf Agrawal and Ribot (1999).

^{xxv} see McCarthy 2001a, 2001b. Cf Agrawal and Ribot (1999: 498).

^{xxvi} For a discussion of this phenomena, see Ribot (2002).

^{xxvii} For details, see McCarthy 2001a.

^{xxviii} Izin Pemda Keluarkan HPH Ditinjau Ulang, Tempo Interaktif, 8/2/01.

^{xxix} TAP MPR NO.III/MPR/2000 Tentang Sumber Hukum dan Tata Urutan Peraturan Perundang-undangan.

^{xxx} Interview, Buntok, 22/7/00.

^{xxxi} See also Casson (2002).

^{xxxii} Confidential source, Buntok, 25/7/00.

^{xxxiii} Through their central role in law enforcement with respect to illegal logging, the police service has become a more independent actor following regional autonomy during 2000-2. Although the military retained an interest in the timber business, they seem to have integrated their activities with district policies implemented through the *Muspika*, institutionalized committees that include the sub-district head together with the sub-district military and police chiefs. For further discussion see McCarthy (2001a, 2001b).

^{xxxiv} In July 2000 President Abdurrahman Wahid made the police responsible to the president, with the chief of police in Jakarta responsible for operational matters. Under the hierarchical management structure, provincial and district police are responsible upwards and hence outside the authority of district administrations. See ICG (2001).

^{xxxv} Tim Mages Polri "Obok-Obok" Kobar, Dayak Post, 20 March 2002.

^{xxxvi} Cf Ribot (2002: 11).

^{xxxvii} *Kaharingan* ("power of life") is the term used to refer to the animist beliefs and ritual practices of the Ngaju, Ot Danum, Ma'anyan and other ethnic groups of Central Kalimantan.

^{xxxviii} In attempting to handle resource conflicts, in Central Kalimantan the provincial government has sponsored efforts to begin reviving the role of the *damang*, the primary *adat* head during the colonial period. This institution had fallen into neglect over the previous thirty years, and now proved unable to mediate relations between villages and outside actors.

^{xxxix} In the past *adat* tenurial concepts and state territorial concepts remained distinct categories, with many villagers having *jungungan* rights in neighbouring village territories. The claiming of village territories as *adat* territories involved the interpenetration of *adat* concepts with state territorial concepts.

^{xl} For discussions of possible models for reform here, see Fitzpatrick (1997), Colfer and Resosudarmo (2002).

^{xli} A 2001 decree from the supreme national parliament (*Ketetapan MPR No.IX Tahun 2001 tentang PA dan PSDA*) placed legal reform on the national agenda. During 2003 public discussion has focused on a draft natural resource management law (*RUU PSDA*), a law which, by providing an integrated planning framework for natural resource management, attempts to replace the previous compartmentalised sectoral approach to resource management with a holistic, more democratic, equitable and sustainable approach. When this law is enacted, implementing regulations will still be required, and it remains uncertain how or when later laws will provide for the types of mechanism required to overcome the problems in the field discussed in this article.

^{xlii} Interview, 27/7/00.

^{xliii} This analysis draws on the distinction between "endowments", the rights and resources that social actors have, and "entitlements", understood as "the set of alternative commodity bundles" that an actor can command using "the totality of rights and opportunities they face". See Leach, Mearns and Scoones (1999).

^{xliv} Cf Ribot (2000).

^{xlv} A government regulation (PP34 /2002) took back the power of districts to grant RKT permits in 1992.

^{xlvi} Interview, 27/7/00.

^{xlvii} Interview, 11 August 2002.

^{xlviii} Interview, 11 August 2002.

^{xlix} Interview, Buntok 24/7/02.

¹ One clause in the framework Law 22/1999 (§3) even mentioned that there would be “no hierarchy” in the relations between provincial governments and districts and municipal administrations.

^{li} See Ribot and Peluso (2003); Leach, Mearns and Scoones (1999).

^{lii} *Forum Keadilan*, 19/11/01, “Antara Maling dan Beking”.

^{liii} Brian Belcher, personal communication.

^{liv} As Roe (1991) has argued, policy makers and practioners turn to policy narratives which offer some basis for making decisions in the face of considerable uncertainty. When policy blueprints derived from policy narratives (such as the decentralization narratives) have disappointing results, paradoxically the heightened perception of uncertainty that ensues reinforces the need that policy makers have for the same explanatory scenarios provided by policy narratives.

^{lv} See Fauzi and Zakaria (2002).

^{lvi} See Low, B., Ostrom, E. et al. (2003).

^{lvii} As Young (2000) has argued, given the coexistence and density of institutional arrangements, rather than selecting the proper level of social organization at which to respond to particular problems, solving socio-ecological problems requires dealing with “institutional interplay”. In other words, it is not sufficient to choose between either vesting management authority at local levels of organization or with higher levels. For optimal outcomes require the development of effective procedures for cross scale coordination. For a similar conclusion from a development administration perspective, see Frerks, G. and Otto J.M. (1996).