



Universiteit  
Leiden  
The Netherlands

**Indonesian law and leality in the Delta : a socio-legal inquiry into laws, local bureaucrats and natural resources management in the Mahakam Delta, East Kalimantan**

Simarmata, R.

**Citation**

Simarmata, R. (2012, December 6). *Indonesian law and leality in the Delta : a socio-legal inquiry into laws, local bureaucrats and natural resources management in the Mahakam Delta, East Kalimantan*. Meijers-reeks. Leiden University Press (LUP), Leiden. Retrieved from <https://hdl.handle.net/1887/20256>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/20256>

**Note:** To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/20256> holds various files of this Leiden University dissertation.

**Author:** Simarmata, Rikardo

**Title:** Indonesian law and reality in the Delta : a socio-legal inquiry into laws, local bureaucrats and natural resources management in the Mahakam Delta, East Kalimantan

**Issue Date:** 2012-12-06

*Indonesian Law and Reality in the Delta*



Leiden University Press



# Indonesian Law and Reality in the Delta

A Socio-Legal Inquiry into Laws, Local  
Bureaucrats and Natural Resources Management  
in the Mahakam Delta, East Kalimantan

## PROEFSCHRIFT

ter verkrijging van  
de graad van Doctor aan de Universiteit Leiden,  
op gezag van Rector Magnificus prof. mr. P.F. van der Heijden,  
volgens besluit van het College voor Promoties  
te verdedigen op donderdag 6 december 2012  
klokke 11.15 uur

*door*

**Rikardo Simarmata**

geboren te Sinapuran, Indonesië in 1971

Promotoren: prof. dr. J.M. Otto  
prof. dr. G.A. Persoon

Lay-out: Anne-Marie Krens – Tekstbeeld – Oegstgeest

ISBN	978 90 8728 184 7
e-ISBN	978 94 0060 131 4
e-PUB	978 94 0060 132 1

*Voorzover het maken van reprografische verveelvoudigingen uit deze uitgave is toegestaan op grond van artikel 16h Auteurswet 1912 dient men de daarvoor wettelijk verschuldigde vergoedingen te voldoen aan de Stichting Reprorecht (Postbus 3051, 2130 KB Hoofddorp, [www.reprorecht.nl](http://www.reprorecht.nl)). Voor het overnemen van (een) gedeelte(n) uit deze uitgave in bloemlezingen, readers en andere compilatiewerken (art. 16 Auteurswet 1912) kan men zich wenden tot de Stichting PRO (Stichting Publicatie- en Reproductierechten Organisatie, Postbus 3060, 2130 KB Hoofddorp, [www.cedar.nl/pro](http://www.cedar.nl/pro)).*

*No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission from the publisher.*

*To my parents  
who strongly believe in the importance of education*

## Acknowledgements

I would like to begin these acknowledgements by mentioning the people who greatly helped me with the selection process at the Van Vollenhoven Institute (VVI) and the Institute of Environmental Sciences (CML) of Leiden University in early 2007 for the position of PhD researcher. They are my former colleagues at Huma, a Jakarta-based NGO. I would like to thank them for their generosity to allow me to use some of Huma's office facilities, which enabled me to smoothly pass all steps of the selection process. I would therefore like to thank Asep Yunan, Mak Uci, Siti, Emi, Andiko, Steni, Mas Didin, Nifan, Pak Lando and Pak Leman.

I would also like to express my gratitude to those who have generously helped me with the rewarding and exciting field-work I have undertaken. My early acquaintance with some important regional and local officials would not have been possible without the help from Abrianto Amin and Edy Marbianto.

Also essential for my field-work was the openness of some officials of East Kalimantan and Kutai Kartanegara district government who were willing to be my interviewees and contact persons. To be honest, the openness of some officials of Kutai district government surprised me, for I used to think that few officials would be willing to host researchers. However, I was proven wrong as the majority of Kutai district officials were extremely cooperative and even provided me with important documents.

Some of the officials whom I interviewed were not just interviewees but became counterparts in the project. With them I shared ideas on legal and empirical aspects of natural resource management, and discussed what would be the best method to achieve effective administrative management of natural resources. I would like to thank Abdullah Madjidi, Halid Imran, Erwin Suharno, Muslik, and Nurdin Uha Sadjiru who all work at the Kutai district government. Other interviewees have proven invaluable by becoming my contact persons. They are the field officials who introduced me to new names that were not (yet) on my list. Angga, an official of the local office of the Kutai Fishery Agency, is one person to whom I owe a great deal.

Even though my research did not focus on the village level, I undertook several village visits, which gave me the opportunity to meet local resource users, notably shrimp farmers and fishermen. I would like to thank the villagers and village government officials, who welcomed me warmly during



my visits. Likewise, I was warmly received by the officials of the sub-district offices.

In Samarinda and Balikpapan, two cities where I spent some time during my field-work, I met a number of local researchers and academics. Their broad knowledge about local people of East Kalimantan, local politics and local government policies helped to further understand the information and data I had gathered myself. In this respect I would like to thank Haris Retno, Erwiantono and Iwan Suyatna from the University of Mulawarman, and Muhammad Muhdar and Muhammad Nasir from the University of Balikpapan. I particularly would like to thank Akhmad Wijaya, a research assistant of the East Kalimantan Programme, who has extensive knowledge on the people of East Kalimantan.

During my field-work in Samarinda I was impressed by the outstanding service provided by the local staff of the East Kalimantan Library Office. Their dedication to their job as civil servant enabled me to get some important documents as well as allowed me to use their reading rooms. The staff here showed a rare example of how public services should be delivered.

During my short stay in Jakarta I spent time discussing socio-legal issues with some (former) colleagues at the Faculty of Law of the University of Indonesia. Here I have in mind Ibu Sulis, Ibu Tien, Inge, Tirta, Cindy, Rival and Tita. I owe them for helping me better understand socio-legal studies. I am proud of becoming part of this group, because its members form an epistemic community, which has been promoting the socio-legal perspective in the study of law in Indonesia.

My colleagues at Pusaka, another Jakarta-based NGO, also helped me during my stay in Jakarta. Emil, Angky and Asep invited me to use Pusaka's office facilities. For that generosity, I would like to express my sincere thanks.

During my stay in Netherlands, I experienced a wonderful academic life. I owe thanks to a number of people who helped me benefit from the opportunities available. In the first place I would like to mention my supervisors Jan Michiel Otto and Gerard Persoon. I am greatly indebted to them for teaching me the fundamentals of how to become a good scholar. I would like to thank my former PhD colleagues at the Van Vollenhoven Institute. They became my colleagues as well as friends during the last two years of my PhD scholarship. Their insightful ideas inspired me in writing my thesis. Not only were they partners for discussion, they have also become friends with whom I have shared feelings of happiness and disappointment. On this occasion I would like to thank Sandra Moniaga, Myrna Safitri, Laure d'Hondt, Stijn van Huis, Ling Li, Ken Setiawan, Rili Djohani, Herlambang Wiratraman, Antonius Cahyadi, Henky Widjaja, Loes van Rooijen and Elizabeth Alividza.

I was also inspired by insights from Janine Ubink and Marco Lankhorst and obtained wonderful stories about Dutch culture from Titia van der Maas

and Katrien Bardoel. Adriaan Bedner and Jacqueline Vel, two other VVI colleagues, played a special role challenging my assumptions and observations with critical questions. I should add that the amazing experience of academic life would not have been possible without the professional support of Kari van Weeren, Kora Bentvelsen and Dennis Janssen of the VVI secretariat. On several occasions, they were instrumental to the successful completion of my field-work. Another person I should certainly not forget in relation to the support I was given is Jan van Olden. He set up the earlier arrangements of my PhD scholarship. I should also thank Annelies Oskam who used to be a secretary at CML for her helpful support during my first stay in the Netherlands in 2007.

Beside my colleagues at the VVI, I also received useful help and warm friendships from other people. I enjoyed spending time with Gustaaf, Nadia, Stijn and Dyah. I owe them for helping me relax during the tougher times in the Netherlands. The gatherings with other Indonesian students in the Netherlands also helped in that respect, for example with some refugees who have been granted political asylum in the Netherlands. I would like to thank them for the interesting discussions on social and political issues, and of course for the get-togethers with wonderful Indonesian food.

I am thankful to my former PhD colleagues and researchers of the East Kalimantan Programme who I have worked with for the last five years in carrying out interdisciplinary research. A special thanks goes to the Indonesian PhD students of the East Kalimantan Programme, Duddy, Syarif, Hidayat and Anas. In relation to the East Kalimantan Programme, I would like to thank the Royal Netherlands Academy of Arts and Sciences (KNAW) for the grant awarded to the East Kalimantan Programme. I would also like to thank the Leiden University Fund (LUF), which provided me with a grant for my participation in the Law and Society Annual Meeting in San Francisco, June 2011.

Before turning to my family members, allow me to make a special mention of Hannah Mason, who has done a great job language editing my full thesis. I am also indebted to Jaap Timmer, a former post-doc of the East Kalimantan Programme, who has been such a good colleague and friend during the first two years of my PhD research. I would also like to use this special occasion to offer my deep condolences to the friends and family of two of my former friends of the Public Interest Lawyers Group (popularly known in Bahasa as *Pendamping Hukum Rakyat*). They are Edison Robert Giay and Hedar Laudjeng who passed away earlier this year. During my seven years as an NGO activist, they provided me with important knowledge on the issues of indigenous peoples and natural resource management. They were dedicated NGO activists who gave their full to improving the position of marginalized people.

I strongly believe that my dream to accomplish a PhD program would not have been possible without the attention, support as well as love of my family. My parents, who never themselves graduated from elementary school, taught me the importance of education. I admire them because they believed in something that they never experienced themselves. I am thankful to my brothers Martua, Ediston, Hesron and sisters Osda, Rusmaya and Roida, with whom I shared tough times due to our family's poverty. I would also like to give my special thanks to my parents-in-law as well as brothers and sisters-in-law. I have received wonderful support from them over the last seven years.

I would like to end these acknowledgements by giving my very special thanks to my wife. She is the person closest to me and has been throughout the entire PhD journey. I admire her because she manages to understand me, even though she sometimes struggles with understanding what the PhD programme actually means. For the love, understanding and support she gave me, I think she deserves the strongest words of admiration from me.



## Table of contents

GLOSSARY	XV
ABBREVIATIONS & ACRONYMS	XVII
1 INTRODUCTION	1
1.1 The Delta: vital but vulnerable	1
1.2 The research problem	3
1.3 Conceptual background and specific research questions	4
1.3.1 Bureaucracy's role in the legal processes	4
1.3.2 The quality of legislation	10
1.3.3 Tenure rights	14
1.4 Methods of research	17
1.4.1 Collection of Documents	18
1.4.2 Interviews	19
1.4.3 Observation	21
1.5 Development of the research	22
1.6 Limitations of research	23
1.7 Outline	24
2 THE SETTING	27
2.1 Geography: an inaccessible area	27
2.2 Ecology and natural resources	29
2.3 Human settlements	31
2.4 Social structure	34
2.5 Economic activities and local livelihood strategies	36
2.6 Overview of stakeholders	38
2.7 Concluding remarks	40
3 A SHORT HISTORY OF STATE INTERVENTION IN THE MAHAKAM DELTA	41
3.1 The period of 1945-1970: hardly any intervention	43
3.2 The period of 1970-1998: authoritarian state	50
3.3 Period of 1998-2011: the 'Reformasi' and decentralization	56
3.4 Concluding remarks	61

4	INDONESIA'S GOVERNMENT STRUCTURE AND LEGISLATION SYSTEM	63
4.1	Government structure: horizontal layers	64
4.2	Government structure: vertical or sectoral government	69
4.3	The legislation system	72
4.3.1	Hierarchy of legislation	72
4.3.2	Administrative rules	75
4.4	Regulatory implementation of law	77
4.4.1	Transferred legislative power	77
4.4.2	Policies and Public Services	79
4.5	Government institutions at play in the Mahakam Delta	81
5	A FOREST AREA: THE FATE OF THE MANGROVE FOREST ECOSYSTEM	85
5.1	Introduction	85
5.2	Law making and legislation: main laws and provisions	86
5.2.1	The Forest Designation as an epicentre of law making	86
5.2.2	Forest tenure rights: some main provisions	95
5.3	Implementation of law by regional and local officials	103
5.3.1	Forest delineation	103
5.3.2	Forest protection	108
5.3.3	Explanatory factors	112
5.4	Legislation: identification of some problematic issues	121
5.4.1	Affecting implementation	122
5.4.2	Effect on the resource users	125
5.5	Interaction between state and resource users	128
5.6	Concluding remarks	131
6	THE TREASURE OF OIL AND GAS: OFFSHORE AND ONSHORE MINING	133
6.1	Introduction	133
6.2	Law making and legislation: main laws and provisions	135
6.2.1	The making of a mining zone or work area	136
6.2.2	Some main provisions	140
6.3	Legislation: identification of some problematic issues	144
6.4	Implementation of law by national and regional officials	147
6.5	Concluding remarks	152
7	THE SEA: OPEN OR EXCLUSIVE?	155
7.1	Introduction	155
7.2	Law making and legislation: main laws and provisions	156
7.2.1	Some main provisions	158
7.2.2	Law-Making in Kutai District	164
7.3	Implementation of law by regional and local officials	177
7.3.1	Control	178
7.3.2	Development	182
7.3.3	Explanatory factors	183

7.4	Legislation: identification of some problematic issues	192
7.4.1	Excessive formal control	193
7.4.2	Overlooking non-fishery resource use	193
7.4.3	Internal incompatibility	196
7.5	Interaction between the state and resource users	196
7.6	Concluding remarks	199
8	THE STATUS OF THE FOREST: HOW LEGAL IS FOREST LAND USE?	201
8.1	Introduction	201
8.2	Legislation: main laws and provisions	203
8.2.1	The origin of the recognition of possessory evidence	203
8.2.2	Possessory evidence in Forest Areas	206
8.2.3	What rights does possessory evidence include?	209
8.2.4	Formal local rules on possessory evidence	210
8.3	Legislation: identification of some problematic issues	219
8.4	Implementation of law by regional and local officials	221
8.4.1	Regional and local government officials	222
8.4.2	Legal professionals and private companies	227
8.5	Concluding remarks	231
9	LAW-BASED MANAGEMENT OF SPACE	233
9.1	Introduction	233
9.2	Various spatial planning projects of the Mahakam Delta	234
9.2.1	Officially declared spatial planning	234
9.2.2	Proposed spatial planning	237
9.3	Implementation of the rules regarding spatial plans	242
9.4	Legislation: identification of some problematic issues	244
9.5	Concluding remarks	246
10	ADMINISTRATIVE IMPLEMENTATION OF LAW: A CAUSE FOR CONCERN	249
10.1	Legislative inconsistencies and incoherence	249
10.1.1	Inconsistency	250
10.1.2	Incoherence	251
10.2	Addressing the behaviour of bureaucrats in law-making	252
10.2.1	Reasons for law-making	252
10.2.2	Intra- and inter-agency coordination	253
10.2.3	Public Input	255
10.3	Administrative behaviour in the implementation of law	256
10.3.1	Behaviours that lead to ineffectiveness	256
10.3.2	Behaviours that lead to effectiveness	261
10.4	Theoretical considerations and suggestions for research	261
10.4.1	Theoretical considerations	261
10.4.2	Some suggestions for further research	265

---

SUMMARY	267
SAMENVATTING	273
BIBLIOGRAPHY	281
LIST OF FIGURES, MAPS, TABLES AND PICTURES	301
APPENDIX 1: LIST OF REGULATIONS	303
APPENDIX 2: LIST OF COURT DECISIONS	309
CURRICULUM VITAE	311



## Glossary

Alas hak	Foundation of rights
Alur pelayaran	Public shipping lane
Api-api	A type of mangrove tree which is dominant in the Mahakam Delta. In Latin: <i>avicennia</i>
Badan	Body
Bakau	A type of mangrove tree. In Latin: <i>rhizophora</i>
Banjir kap	Non-mechanized timber extraction
Budidaya tambak tradisional	Traditional shrimp pond
Daerah swapraja	Self-governing territory
Dompeng/ketinting/ces	A small boat for 4-5 people
Ganti rugi merintis/ <i>passelle ma'bela</i>	Payment of compensation for the clearing of forest
Haji	A Muslim title for someone who has made the pilgrimage to the city of Mekkah
Hak garap/hak garapan	Cultivation rights/use rights
Jabatan fungsional	Expertise-based official
Julu	Tidal trap net
Kapersil	Small-scale logging
Kartu keluarga	Family card
Kawasan hutan	Designated forest area
Kelompok tani	Local farmer association
Kepala daerah	Local government head
Komplangan	Local name for silvo-fishery
Konsesi	Large forest or oil and gas work area that is issued by the Central Government
Kontrak kerjasama/ perjanjian karya	Contract of work
Konversi tanah	Land conversion
Kuasa pertambangan	Right to control oil and gas resources
Memakai	To use
Memanfaatkan	To utilize
Memutihkan	To not take any legal action to a past violation of law
Pemegang hak	Rights-holder
Pendatang	Migrant
Pengadaan tanah	Land acquisition
Perambah hutan	Forest squatters
Perjalanan dinas	Work travel

---

Permusyawaratan	Deliberate consultation
Petinggi/demang	Village head during the pre- and Dutch colonial period
Pimpinan	Head
Punggawa	Patrons or heads of complex local networks
Rambu-rambu	Traffic lights
Rukun tetangga	Neighbourhood
Sabuk hijau	Green belt
Surat keterangan	Clarification
Surat pengantar	Letter of introduction
Surat pernyataan	Letter of self-declaration
Surat tanah	Land letter, kind of possessory evidence
Tanah garapan	Cultivation of land
Uang keperdulian/pengganti jasa/pengakuan atas jerih payah	Donation/charity fund
Unit pelaksana teknis	Technical implementation unit
Wilayah hukum pertambangan	Legal administrative mining zone
Wilayah kuasa pertambangan	State mining zone

## Abbreviations & acronyms

ADD	Alokasi Dana Desa (Annual Village Budget)
APL	Area Penggunaan Lain (Area for Non-Forest Use)
APBD	Anggaran Pendapatan dan Belanja Daerah (Annual Regional Budget)
BAL	Basic Agrarian Law
Bappeda	Badan Perencana Pembangunan Daerah (Regional Planning Agency)
BKSDA	Balai Konservasi Sumberdaya Alam (Regional Technical Implementation Unit of Natural Resource Conservation)
BPDAS	Balai Pemangku Daerah Aliran Sungai (Regional Technical Implementation Unit of Watershed Management)
CDK	Cabang Dinas Kehutanan (Local Forestry Office)
CDP	Cabang Dinas Perikanan (Local Fishery Office)
CGS	Community Group for Surveillance
DKSP	Draft Kutai Spatial Plan
DONLA	District Office of the National Land Agency
DPD	Dewan Perwakilan Daerah (Regional Representative Council)
DPR	Dewan Perwakilan Daerah (People's Representative Council)
DSPMD	Detailed Spatial Plan of the Mahakam Delta
EKP	East Kalimantan Program
FBL	Fishery Business License
FL	Fishing License
Gerbang Dayaku	Gerakan Pengembangan Pemberdayaan Kutai (Moving Forwards Kutai's Development Endeavours)
GTS	Gathering and Testing Satellite
HPH	Hak Pengusahaan Hutan (Forest Concession)
HPHH	Hak Pemungutan Hasil Hutan (Forest Product Extraction Permit)
Ind.	Bahasa Indonesia
IPPK	Izin Pemungutan dan Pemanfaatan Kayu (Timber Collection and Utilization Permit)
ITCI	International Timber Corporation Indonesia
Japex	Japan Petroleum Exploration
KBK	Kawasan Budidaya Kehutanan (Forest Cultivation Area)
KKDCCR	Kutai Kartanegara District's Committee on Conflict Resolution
KKLD	Kawasan Konservasi Laut Daerah (Local Protected Marine Area)
KBNK	Kawasan Budidaya Non-Kehutanan (Non-Forest Cultivation Area)

KPH	Kesatuan Pemangkuan Hutan (Local Forest Management Unit)
LPND	Lembaga Pemerintah Non-Departemen (Non-Departmental Ministry)
LRL	Land Reclamation License
Muspika	Musyawarah Pimpinan Kecamatan (Sub-District Leaders Consultation Forum)
NGO	Non-Governmental Organization
NJOP	Nilai Jual Objek Pajak (Land and Building Tax Imposition Base)
PAD	Pendapatan Asli Daerah (Regional Government's Revenue)
Pertamina	Perusahaan Pertambangan Minyak dan Gas Bumi Negara (State-Owned Oil and Gas Company)
POMA	Provincial Office of the Ministry of Agriculture
POMF	Provincial Office of the Ministry of Forestry
PONLA	Provincial Office of the National Land Agency
PPI	Pangkalan Pendaratan Ikan (Fish Port)
PPNS	Pegawai Penyidik Negeri Sipil
PSC	Production Sharing Contract
PSP	Provincial Spatial Plan
RePPProT	Regional Physical Planning Program for Transmigration
UIM	Unit for Inventory and Mapping
UFAE	Unit for Forest Area Establishment
SMZ	State Mining Zone
SPPT	Surat Pemberitahuan Pajak Terutang (Tax Assessment)
SSFRC	Small Scale Fisheries Registration Certificate
TGHK	Tata Guna Hutan Kesepakatan (Agreed Forest Land Use Plan)
TISMMD	Team for Integrated and Sustainable Management of the Mahakam Delta
TPI	Tempat Pelelangan Ikan (Fish Market)
TUFPC	Technical Unit for Forest Product Circulation
TUFPS	Technical Unit for Forest Planning Samarinda
UPTD	Unit Pelaksana Teknis Daerah (Regional Technical Implementation Unit)
UPTD PH3	Unit Pelaksana Teknis Daerah Perlindungan Hutan dan Hasil Hutan (Forest Protection and Forest Product Protection)
Vico	Virginia Indonesia Company