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

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1 Introduction

'Great ancient and current civilizations begin in deltas'
(The Jakarta Post, 6 October 2011).

1.1 The Delta: vital but vulnerable

The last three years have been hectic years for stakeholders who are involved in delta issues. In 2010, the first World Delta Dialogue was held in Louisiana, United States, and in 2011 the first World Delta Summit was held in Jakarta, Indonesia. Alongside these two global events, the Delta Alliance was formed in 2010. The Delta Alliance is an international knowledge-driven organization which currently focuses on eleven deltas worldwide, including the Ciliwung and the Mahakam Delta of Indonesia. The events and the alliance have brought together representatives from government agencies and civil society groups: engineers, academics in 'hard' and social sciences, environmentalists and many others.

What makes the participants with various backgrounds willing to gather and cooperate is that they have all noticed that the vital function of deltas is currently under threat. They realize that the deltas which provide homes to more than half of the world's population, are vulnerable. This vulnerability has increased due to industrialization, population growth and climate change. These three factors have generated environmental problems like congestion, depleted fresh water supply, land subsidence, erosion, saline intrusion, water pollution, increasing temperatures and flooding (Wim, Slingerland and Trajan 2010). In the end, the deterioration gradually weakens the deltas and prevents them from playing their vital role of providing environmental resources and services (Bucx, Marchand, Makaske and Guchte 2010).

For deltas which are situated in rural remote areas and provide rich natural reserves, human rights abuses appear as another important issue besides environmental destruction and poverty. Strong evidence suggests that the deterioration of the environment eventually hampers the majority of the population who inhabit the deltas in securing adequate standards of living, food, water, housing, health and life (United Nations Development Project 2006; Amnesty International 2009, p. 12).

The discussion about the rise of economic and ecological problems of the delta is often associated with ineffective government. An assessment held by

the Delta Alliance on the vulnerability and resilience of ten deltas worldwide discovered that conflicting government layers and agencies, centralization and poor public participation in policy making, are the most common governance issues which eventually lead to ineffective governance of the delta (Bucx, Marchand, Makaske and Guchte 2010). These conflicts between governing institutions are seen as incongruent with the nature of the delta ecosystem which needs an integrated and collaborative management approach. In addition to conflict, weak or inadequate capacity of government officials plays a role too (World Bank 1995; Bucx, Marchand, Makaske and Guchte 2010). In case of the rural remote deltas, they are described as regions which suffer from administrative neglect (UNDP 2006, p. 9; Amnesty International 2009, p. 9). Taking South Aceh of Indonesia as an example, McCarthy (2006, p. 14) said, 'in remote areas power might be highly localized, while the official institutional frameworks of state policy may be weakly established'.

The notion that deltas suffer from administrative neglect is widely accepted. This has led to many promoting the establishment of coordinating forums, and building capacity as solutions to the problem of neglect. A workshop held by the Delta Alliance Indonesia Wing in 2010, attended by representatives of national institutions, regional governments, universities, international institutions and the private sector, recommended a better institutional structure and capacity to cope with the governance problems of Indonesia's deltas.[1] The issue of climate change which is seen to accelerate the vulnerability of the deltas, has made the recommendation more urgent.[2]

Those who point at the abovementioned problem of administrative neglect of the delta and present a number of simple solutions, usually emphasise that the intended goals of planned programmes are usually not (fully) achieved. This view often focuses on the performance of government officials who work at the national, provincial and sub-district offices. Accordingly, this approach has not paid much attention to the factors that influence the local, social realities of policy implementation. The so-called 'compliance' view of administration assumes that once policies are announced they will be implemented by subordinate administrators and that intended results will be achieved in non-political and technically competent ways (Cheema and Rondinelli 1983, p. 26). As a result, the notion overlooks the agency and the field officials who actually attempt to implement law and policy by developing particular behaviours that respond to their social environments. Instead of taking into account the actual implementation, this view is quick to regard such behaviours

1 See 'Scoping Workshop of Delta Alliance International Indonesia Wing', held in Jakarta on 2-3 August 2010, p. 4. www.delta-alliance.nl/nl/25222819 %5Blinkpage%5D.html?...true... (accessed on 23 May 2012).

2 How climate change, vulnerability and recommendations are related can been seen in various documents produced by the Delta Alliance. They can be found on http://promise.klimaatvoorruimte.nl/pro1/publications/publications.aspx.

as illegitimate. It is therefore not surprising that the recommendations that this view proposes neglect the context, including the complex relation between the agency, field officials and local people, and between formal and informal rules.

Focusing on the Mahakam Delta which is situated in the Kutai Kartanegara District of the province East Kalimantan, Indonesia, this book will examine formal and informal rules on resource use, and how these rules have been formed and implemented. It shows how the processes of formation and implementation have been prominently influenced by a context where numerous and complex factors and actors coincide. One of the contextual factors that this book emphasizes is the fact the Mahakam Delta is located in a remote area and is scarcely populated. By paying attention to the local officials, whose work brings them into direct contact with the resource users, this book examines the formation of formal and informal rules and the implementation of law. This book argues that apart from pursuing self-interest, the local officials also seriously and rightly take into account the context. As a result, they do not always implement the formal rules but together with local resource users generate informal or semi-official rules, which legitimize the actual resource use.

1.2 THE RESEARCH PROBLEM

A central question that this book poses is how law regulates resource use in the Mahakam Delta, how it has been implemented and what prominent actors and factors have influenced its making and its implementation. The main question is further elaborated in the following three sub-questions.

How does legislation, including both laws and regulations, regulate natural resources use in the Mahakam Delta?

This sub-question allows for an examination of the legal aspects of public management of natural resources of the Mahakam Delta. Numerous important provisions on forest, oil, gas, fish and land resource use are described and analysed. The provisions do not only concern rules on resource rights, but also on the government institutions which are assigned to implement and enforce the formal rules. Here I define *law* as legislation which is made by the Peoples' Representative Council (national parliament) together with the President; *regulation* should be understood as lower legislation made either by executive organs – national or sub-national – or by sub-national representative councils (see Section 4.3).[3]

3 On the difference definition between 'law' and 'regulation' see for instance Black (2002, p. 29-34).

To which extent and in what way have regional and local bureaucracies implemented these laws and regulations, and which are the key actors and factors which have influenced the implementation of these laws and regulations?

This sub-question examines to which extent the formal rules have been implemented, and the level of (attempted) influence of a number of actors and factors in the implementation process. The sub-question also looks at the actual behaviours of the legal implementers in coping with these actors and factors.

How has the making of some of these regulations been influenced by the administrative and political context?

The third sub-question examines the making of some regional regulations and drafts concerning natural resources management in the Mahakam Delta. It investigates various factors, notably administrative and political factors that prominently influence the making of those regulations.[4] Unlike the first and the second sub-questions which also examine the laws, this sub-question only deals with regulations.

1.3 Conceptual background

1.3.1 Bureaucracy's role in legal processes

Bureaucracy in developing countries is often criticised for impeding the development process as well as public service provision. La Palombara (1963) argued that in developing countries where the bureaucracy is the legacy of the colonial tradition of law and order, the use of bureaucracy is more a tool to control rather than to achieve development. According to Palombara, bureaucracy impedes development and public service delivery due to its simultaneously powerful and powerless position.[5]

In the case of a seemingly powerful bureaucracy, it can become a captive and exclusive institution in which development goals are subject to vested

4 I use the word 'legislation making', and 'law-making' interchangeably. In as far as laws are meant to lay down policies, law-making coincides with policy making. Even though there have been some studies on law-making, yet for the most part, in order to understand the actual processes, we must borrow from studies on policy making to which the study of public administration has paid much attention. Hence, I use certain theories on policy making in explaining law-making.

5 Haque (1997) mentioned many dimensions of incongruities and incompatibilities between the bureaucracy and social reality that subsequently cause the bureaucracy in developing countries to become an impediment to or shortcoming for development. Dube (1969) pointed at the alienation and uprootedness of bureaucracy from society as factors which lead to its shortcoming.

interests, and public services are delivered unjustly and unequally. In that situation, the bureaucracy is not responsive and sensitive to public needs, making it a dead weight on society that eventually hinders development and socio-economic change (Jain 1992, p. 23). Moreover, a powerful position can enable the bureaucrats to anticipate and adapt to any plans or efforts that might jeopardize their comfort zone from which they benefit (Dube 1969, p. 214 and 216; Hirschmann 2000, p. 289). In the situation where the bureaucrats consider themselves as a new class and where their power is not based on ownership of the means of production but on the position in the state apparatus and the level of access to various state agencies that regulate and control resources, they become exclusive, and allocate resources and provide public services on the basis of self-interest (Haque 1997, p. 447).

In the opposite situation, when the bureaucracy is seemingly powerless, it is subject to severe interference from external influences, either from elites, patrons or families, making it dependent and preferential (Dube 1969, p. 216-217; Eisenstadt 1969, p. 370; Haque 1997, p. 437-438; Hyden et al. 2004, p. 137). In Indonesia, since the resignation of President Soeharto (1966-1998), elected politicians have more influence than public administrators as a result of the multiparty democratic system (Hyden et al. 2004, p. 132). Apart from external forces, the decrease in the power of the bureaucracy may also be due to the incompetence and unwillingness of the bureaucrats. It is believed that the dependence on particular external groups leads to an unequal allocation of resources while incompetence and unwillingness hinder the bureaucracy from effectively carrying out policies (Haque 1997, p. 446-447). As Haque (1997, p. 448) points out, the bureaucracy in developing countries in general, instead of being the agent of development and change, has maintained existing structures, benefits from affluent classes and foreign capital and exacerbates the dependence and underdevelopment of poor classes and the nation. Riggs (in Hirschmann 1981, p. 472) even points out that the bureaucracy contributes to negative development, while Harold Laski (in Sayre 1969, p. 342) sees the bureaucracy as a threat to democratic government.

These views on bureaucracy have also been criticized. One argument against this view, for example, is that it is unlikely that the bureaucracy, when they have an interest in ensuring that development is continued is indeed mostly perceived as a development impediment. Moreover, as a result of establishing relations with external groups, the bureaucracy is constantly influenced and therefore adapts to external demands (Eisenstadt 1969).

Rather than regarding bureaucracies in developing countries either as powerful and self-interested, or powerless and ineffective, one could also depart from the assumption that the bureaucrats always have to adapt to the societies in which they live. Firstly, due to a great spread of traditional institutions and practices on one hand and the perception which bureaucrats in developing countries often hold of themselves as the agents of development on the other hand, they often assign themselves the duty to modernize more

traditional, lower-educated people (Dube 1969, p. 213; Asmerom, Hoppe and Jain 1992, p. 23; Kajembe and Monela 2000, p. 381). In that context, the bureaucrats are more required to be pioneers, negotiators and motivators rather than policy implementers (Eisenstadt 1969; Esman 1974, p. 14).

Maintaining a continuous equilibrium between autonomy and responsiveness to external influences is another reason why a bureaucrat is often not willing to be strict about its formal tasks (Eisenstadt 1969). To a large extent, the strategy is needed in the hope that the bureaucracy can still fulfil its formal functions. For the field officials who live in the same community as the affected groups, it is important to be responsive or adaptable to the external influences, not only for ensuring that planned programmes are implemented but also as a survival strategy. As Kajembe and Monela (2000, p. 383) found, forest field officials in Tanzania were unwilling to break the link with the local people who dwelled in state forest, for they perceived the local communities as their living environment. The ability to survive will prevent the bureaucrats from social exclusion (Thompson and McEwen 1958, p. 29). In many occasions they even have to be in favour of the affected community in an effort to obtain social insurance (Milne 1970, p. 61; Gray (1985). In other words, they have to create a credible social relationship to avoid social risk in which the affected communities may resist or even jeopardize them physically (McCarthy 2006, p. 105-106). As one of the forest field officials of the National Gunung Halimun-Salak National Park of West Java, Indonesia, said, 'Without credible relationships with the local community, we cannot work (Kubo 2010, p. 246).

The above refers to ways in which the bureaucracy plays a role in development in general. What role does the bureaucracy play in legal processes, notably law-making and implementation of law? For critics who regard the bureaucracy as an obstacle to development, law-making in non-Western countries is seen as a top-down process in which particular elites or a small group of powerful persons have the main say. As Seidman (1978, p. 454) said, in some African countries feedback institutions in which people can participate in policy formulation favour the local elites over the mass. As Riggs (1964) pointed out, in a society in which family ties and traditional forms of authority are still prevalent, elitist or corporatist groups may dominate the law-making processes.

Not only the domination of the elites influences the formation of law but also the competition among government agencies in pursuing their own agencies' interests (Otto et al. 2008, p. 60). Moreover, when the society has become increasingly complex and heterogeneous, the process of law-making tends to import law through legal transplantation (Seidman and Seidman 1994). The type of law making in which the public hardly participates and in which there is hardly a rational debate and decision making process can jeopardise the quality of the law. Consequently, the pursuit of compliance and enforcement will be more difficult.

Concerning the implementation of law, the bureaucracy is often found to prevent the law from reaching its primary goals by shaping the implementation of the law in favour of its personal interests or the interests of a closely affiliated group. Pursuing personal interests in the implementation of law has led to corrupt behaviour among the bureaucracy. Whilst, when the bureaucracy is captured by the interests of a powerful regulated group, the bureaucrats may be reluctant to implement the law (Riggs 1969, p. 418; Cotterrell 1984). As Seidman and Seidman (1994, p. 139) point out, whereas the bureaucracy is far from favouring the mass, it seems that it systematically implements the law in ways that strengthen the reigning oligarchy. Hauck (2008), for instance, has shown that despite the fact that the Government of South Africa has promulgated democratic fishery laws since 1998 to give small-scale fishermen the opportunity (*bona fide*) to formally obtain access to marine resources, the implementation of the law has not been effective because powerful local elites have hijacked the opportunities.[6]

These point to circumstances, attitudes and practices of administration which may be incongruent with formal arrangements (Riggs 1969, p. 416; Haque 1997, p. 444-445). Obidzinski (2003) has described how a patronage network for illegal logging in the Berau District of East Kalimantan generated a form of informality whereby formal forest rules were denied. McCarthy (2006, p. 170) describes a similar situation in South Aceh where new institutional arrangements or new informal understandings emerged concerning forest resource use in a way to accommodate local demands and corrupt behaviours of the local forest officials at the same time. Furthermore, due to functional pathologies, the bureaucracy is blamed for increasing the gap between planned goals, policies and their actual implementation. In natural resources management, a bureaucracy widely practicing corrupt behaviour, obviously puts the natural resources at risk (Auer, Karr-Colque, McAlpine and Doench 2006; McCarthy 2006).

Apart from such negative assessments, other insights in the literature point to different attitudes, for example that the bureaucracy is continuously seeking ways to make law which has an effect on society on one hand and takes into consideration people's voices on the other hand. The gap between what the law says and what the social reality requires constitutes the main reason for why this balance is needed. There are a number of actual social circumstances that call for more responsive and adaptable laws. Firstly, the diversity and complexity of societies. Secondly, the different abilities of its citizens. Thirdly, the need to provide access to its citizens. Fourthly, the need to avoid unwanted or unexpected situations such as worse local livelihoods, conflict, larger violations of law and a larger workload for the bureaucracy.

6 Similar accounts could be also found in Gezelius and Hauck (2011).

That societies are diverse and complex is an important factor. In a 2000 report the World Bank suggests that when public participation is limited, there are various normative systems, and the enforcement institutions are weak, the bureaucracy needs to apply the law flexibly in an effort to pursue compliance. In such circumstances, the bureaucracy is better off advancing co-operation, maintaining a non-repressive approach in law enforcement, and using strict sanctions and deterrent methods, if the first way of working has failed (Aalders and Wilthagen 1997).

When the bureaucrats try to follow the law but need to take into account the ability of the regulated groups as well, they often make the law compromising whereby they may not impose all necessary legal requirements (Ayres and Braithwaite 1992; Rosenbloom and Schwartz 1994; Baldwin, Cave and Lodge 2012).

Due to the different abilities of citizens to change their behaviours as required by the law, the bureaucracy has to establish dialogues which result in different patterns of service and methods of delivery (Esman 1974, p. 14). The importance of pointing at the factor of ability is that compliance is often influenced by the extent to which the regulated actor has the ability to comply with a certain rule (Kagan and Scholz 1984).[7]

Likewise, an adaptable and responsive law matters when it concerns some unexpected circumstances as mentioned above. When poorly regulated groups violate the law to sustain their livelihood, the bureaucracy is better off neglecting or reinterpreting the law to avoid the livelihood problems getting worse (Kaimowitz 2003). As McCarthy (2006, p. 105) wrote, '…forestry officials were reluctant or afraid to arrest poor villagers with few economic options other than logging the forest'. In cases of forest resource use, when it is clear that illegal forest use is the only source of income for the local users, the forest bureaucrats prefer to only warn rather than punish those breaking the law (Chhteri, et al. 2012). Kubo (2010) found that the field forestry officials of the National Gunung Halimun-Salak National Park preferred to give warnings to the illegal forest occupants and firewood collectors, and sometimes take them to an office to draft a statement about their wrongdoing. The field officials did not punish them according to the formal forestry rules, as they knew that this form of local use would not harm the National Park. The same policy is often followed when bureaucrats expect that the imposition of formal rules could generate conflict or larger violations.

Literature on administrative law, sociology, public administration and regulatory studies have long mentioned discretionary power-based policy and decisions as administrative means to cope with the gap or discrepancy between law-in-the books and law-in action. As what Riggs (1964, p. 183) labelled 'formalism', bureaucrats may produce interpretations of law which permit

7 On factors that influence people to abide by the law see Seidman and Seidman (1994, p. 45-46); Seidman, Seidman and Abeyesekere (2001, p. 16) and Tyler (2006).

them to do what the affected groups find useful, when social behaviour does not confirm to a prescribed norm. Hyden et al. (2004, p. 133) suggest that local bureaucrats often use discretionary powers to twist central government policy in directions other than those originally intended.

In the context of this book it is important to underline that bureaucrats attempting to make the law responsive and adaptable is not always merely driven by the interest of maximizing wealth or maintaining the existence of the bureaucracy, but could also be because of rising social concerns and solidarity among the bureaucrats with the affected groups (Barnard in Milen 1970; North 1990; Dixit 1997). In addition the bureaucracy has to take into account the fact that it often lacks resources (funds, capacity). The field officials of the Federal Ministry of Environment and Rivers of Nigeria, for example, relied on the vehicles and laboratories of the private oil companies to investigate the pollution that, according to the local people, was caused by the oil company alone (UNDP 2006; Amnesty International 2009, p. 44). As said, due to the shortage of resources, the bureaucracy often realizes that they are not able to fulfil the required conditions or be ready for the consequences if they impose the formal rules.

In other words, a situation whereby the bureaucrats are not willing to make the law enforceable may well coincide with them wanting the law to benefit the affected groups. The bureaucracy can have these two seemingly contradictory attitudes simultaneously. As said, sustaining their autonomy whilst responding to external influences means that bureaucrats must strive for a continuous equilibrium (Eisenstadt 1969). Having these attitudes simultaneously, the bureaucracy can appear to be ambivalent in orientation (Riggs 1969, p. 427). Such ambivalence will also follow from a deliberate strategy to set up flexible law enforcement. The flexibility ranges from cooperative to punitive law enforcement. Punitive law enforcement is needed to maintain the credibility of threat (Braithwaite 2002). Moreover, in the case of field officials, the range of options could help them play their role as intermediary agent, subject to administrative duties on one hand but needing to be responsive to the demands of the community on the other hand (Arce 1993).

In the context of decentralization regional and local government officials often cannot effectively implement policy on decentralization due to a number of structural factors, including reluctance and fear of central government officials, competition among different levels of government, and political and social structures.[8] Reluctance and fear eventually lead to a shortage of financial resources at the level of local administration, given that the central government keep the largest proportion of financial resources to themselves (Chemma and Rondinelli 1983, p. 295-314). Regional and local governments in Latin America, for example, can hardly cover their basic operational costs, let alone other

8 For an account of the numerous factors which influence the policy implementation on decentralization see Cheema and Rondenelli (1983).

activities such as expanding the range and quality of public services (Harris 1983, p. 195). The structural factors coincide with behavioural factors, such as a centralist mentality or centralist ideology. Field officials of regional and local governments in many Asian countries are hindered in implementing policies, as central officials often do not trust them and consider them as incompetent and lazy (Mathur 1983, p. 71).

At this point it is useful to elaborate on what is meant by the process of implementing the law. As already mentioned above, this book defines the implementation of law as an effort to ensure that laws have an effect. Regarding the effect, Seidman et al. (2001, p. 10-11) argued that it emerges if the implementation of law can change institutions. It is important to underline that the term 'institution' is here understood in the sociological sense of a repetitive pattern of social behaviour. Thus, it could be argued that law is effective if those who are regulated behave in accordance with prescribed norms. As Aubert (1966, p. 99 and 105) said, law has an impact if the behaviour of affected people is confirmed by the rules laid down in the law.

Effectiveness may also relate to validity and legitimacy (Soeprapto 1998, p. 19). It is presumed that valid and legitimate law will not be resisted by the affected people given it is desirable and useful (Manan 1994, p. 28).

Another point that must be underlined regarding the implementation of law is that 'administrative implementation' can be distinguished from 'regulatory implementation of law'. The former refers to the actual role of public administration in the implementation process, in other words, to law-in-action. The latter refers to 'making lower executive regulations',[9] i.e. it refers to the normative aspects, to the law and regulations which govern the administrative implementation of law. In other words, it could be seen as the promulgation of implementing rules by the government accompanied by mechanisms for monitoring and enforcement (Black 2002, p. 11)

1.3.2 The quality of legislation

This book includes a discussion of the quality of Indonesian legislation with regard to the different expectations that resource users, and regional and local government officials have. The resource users expect legislation to be able to provide certainty about their tenure rights whereas the government officials expect the legislation to be able to inform them on the following two issues: their authority and what constitutes as legal/illegal. The different demands of the two different actors show that the 'quality' of legislation can vary in the eyes of different beholders (Florijn 2008, p. 76-77). In academic discourse, there are at least two strands of thought about the quality of legislation. Firstly,

9 Chen (2002, p. 1) and Otto (2002, p. 23).

there are theories on the rule of law or general jurisprudence. The second strand of thought consists of theories on the relation between the quality of legislation and social change (Van Rooij 2006, p. 33).

Theories on the rule of law discuss the quality of legislation in terms of two substantive elements of the rule of law: formal legality and democracy. It is assumed that legislation will be of good quality if it is clear, certain, consistent, predictable and general in its application (Tamanaha 2004; Bedner 2010). Good legislation should also result in general consent so that legislation can be an instrument for controlling state intervention (Bedner 2010). In practice, democratic law-making can turn into the reverse situation as it can cause unclear law, but at the same time it might enable legislation to fulfil various expectations (Florijn 2008, p. 76). In general, formal legality enables the regulated people to plan their behaviour because they know how the state responds to their actions. In other words, the legislation gives predictability so people know in advance what legislation demands from them, what legislation grants to them, and what sorts of behaviour they can expect from the officials, if they undertake particular actions (Seidman et al 2001, p. 255).

The element of formal legality of the rule of law is actually a primary subject matter of the doctrinal study of law. Doctrinal analysis of law is primarily concerned with the extent to which legal authoritative text (laws, regulations, court decisions) are consistent and coherent so that they are able to bring about certainty as well as equality (Dworkin 1986; Kissam 1988; Hesselink 2009). Consistency and coherence are pursued on the assumption that law has an inner system or logical integrity (Schwartz 1992, p. 181). Consistent legislation means that there are no contradictions, whereas coherency refers to the entirety of legislation (Fuller 1964, p. 66; Ehrlich and Posner 1974; Seidman et al. 2001, p. 262-263; Siems 2008, p. 149). Schrama (2011) suggests that non-contradiction does not only apply to the different pieces of legislation itself (internal consistence), but also when legislation is compatible with the context and culture in which it operates (external consistence). Coherent legislation means that the different pieces of legislation do not logically cancel each other out, but that they fit together. They have to be mutually interdependent (Balkin 1995, p. 116).[10] Another definition of coherence is that there should be as many relations as possible among the different pieces of legislation, where one piece of legislation is a reason for another (Mommers 2002, p. 46 and 48).

It should be underlined that consistency and coherence have a relation. As Balkin (1994, p. 117) argues, legal coherence is possible, if principles that underline law and regulations are consistent with one another. That includes consistency in resolving conflicts among laws and regulations. Hage (2004,

10 Discussions on legal coherence mainly focus on principle, policy and purpose underlining legal rules. Therefore legal coherence is understood as a connection between legal principles and legal rules. See Balkin (1994) and Hage (2001).

p. 90) even suggests that consistency is a dimension of coherence next to comprehensiveness and mutual support.

Theories on how law relates to social change assume that law can be an instrument to generate social change, acknowledging that law can also be a product of social change (Mehren and Sawers 1992; Seidman et al. 2001). To be able to generate social change one may say that law should be implementable. Van Rooij (2006) concisely summarizes four characteristics of good or implementable legislation: adequacy, feasibility, certainty and adaptability. One prominent indicator of adequacy is if compliance with the law by the affected group results in greater benefits than violation of the law. The law is feasible if it takes into consideration the ability of the regulated people to comply with the law and of officials to implement it. The aspect of ability is related to what resources are available to the regulated people and officials. Thus, the aspect of feasibility means that law enforcement is possible (Van Rooij 2006, p. 37).

As already said, certainty concerns clarity and predictability. If a law is clear and free from ambiguity and vagueness, it helps prevent the use of discretion in interpreting the law. Unlike certainty which requires that law is as detailed as possible, adaptability requires the law to be abstract and open. This is to allow the implementation to adapt to a complex reality and to be balanced with regards to the interests of different stakeholders. In developing countries where administrative implementation often lacks resources on one hand and there is often a huge gap between law-in-the books and law-in-action on the other, an adaptable law is needed.

Based on the above accounts, it is clear that the four characteristics of good legislation can contradict each other. It occurs because on one hand the law is concerned with the needs and wishes of the law makers, and on the other hand it needs to take into account the social reality in which the law operates. In this regard, implementable law is law that balances these characteristics (Van Rooij 2006, p. 43).

In Indonesia, law itself has set the standards for how to make good legislation, as can be found in Law No. 12/2011 on the Making of Legislation. It should be noted that this law contains a complete set of indicators of good legislation. Law No. 12/2011 does not only apply the substantive elements of the rule of law (Bedner 2010), it is also concerned with the implementability of the legislation.[11] Apart from the substance and implementability, this law adds the law-making process as another indicator of good legislation. To a large extent, these indicators of good legislation resemble the indicators, which Indonesian legal scholars have put forward. These include the following: clearly defined objectives, made by an authorized state institution, proper subject matters, consensual, implementable, certain, and in conformity with

11 On the substantive and procedural elements of the rule of law see Bedner (2010).

national fundamental norms and the constitution (Attamimi 1990; Manan 1994, p. 27-29).

Concerning the elements of the rule of law, Law No. 12/2011 determines that legislation should be easy to understand so that it does not generate multi-interpretations.[12] In other words, it should be clear (Rahardjo 1991, p. 84; Manan 1994, p. 29). The legislation should also be general in application without taking religion, ethnicity, race and social status into consideration.[13] Furthermore, Law No. 12/2011 determines that to pursue certainty, the legislation should take into consideration legality and make lower legislations compatible with higher legislation.[14] In this regard, Law No. 12/2011 reasserts the official adoption of the theory on the hierarchy of legislation within the Indonesian legal system (see Section 4.3).

Indonesia's legal discourse also relates the hierarchy of legislation to the concept of harmonization.[15] It suggests that the hierarchy of legislation constitutes a means to achieve harmonization. In its broader meaning, harmonization is not only concerned with the relation between higher and lower legislation, but also with the relation among sectoral legislations, between legislation and administrative rules, legislation and court decisions, formal rule and social rule, and between national law and international law (Gandhi 1995, p. 30; Otto 2003, p. 16; Goesniadhie 2006, p. 300). Wargakusumah et al. (2000, p. 33-34) points to eight causes that could cause disharmony. These include the differences between statutory law and customary law, statutory law and court decisions, higher legislation and lower legislation, central regulation and local regulation, and conflict of authority among the government agencies. The ultimate goal of harmonization is certainty and equality. In relation to the cause, Otto (2003, p. 17-18) points out that disharmony may emerge throughout all stages of the 'law-and-policy cycle' notably during the setting of goals, principles and legal norms, administrative competition, implementation, and enforcement.

It is even suggested that there cannot be legal certainty without harmonization. Harmonization is the situation in which legal sub-systems fit together or are congruent (Gandhi 1995; Goesniadhie 2006). Thus, in this respect harmonization resembles coherence. Congruence is possible because different sub-systems are brought into agreeable conformity with one another (Otto 2003, p. 16 and 19).

With regard to the law-making process, two indicators of good legislation can be suggested. Firstly, the legislation should be made by an authorized state institution (Attamimi 1990, p. 345-346). Any legislation which is not made

12 See the Elucidation of Article 5f of Law No. 12/2011.
13 See the Elucidation of Article 6h of Law No. 12/2011.
14 See the Elucidation ofArticle 5c and Article 7(2) of Law No. 12/2011.
15 For thoughts, which suggest this relation, see for instance Goesniadhie (2006, p. 119-129) and Wargakusumah (2000).

by an authorized state institution should be avoided.[16] Another procedural indicator that Law No. 12/2011 states is that the process in which legislation is made should be transparent and provide every citizen the opportunity to give input or suggestions.[17] This form of open process will result in consensus-based legislation (Manan 1994, p. 28).

In the legal analysis in Chapters 5-9, I will use the standards of good legislation, namely the substantive elements of the rule of law and implementability, as Law No. 12/2011 suggests, to assess the natural resources legislation for the Mahakam Delta.

1.3.3 Tenure rights

Resource tenure and property rights

This book deals with legislation on the use of natural resources and how it has been implemented in the Mahakam Delta (see 1.2). It employs the term 'resource use' in the sense of 'land tenure' in its broader meaning. Thus this term includes tenure of land as well as of other natural resources. Sometimes, instead of the term 'resource use', people use the term 'land tenure' referring to the same meaning (FAO 2002, p. 7). As Bruce (1998, p. 2 and 6) has pointed out, resource tenure describes the rights to land, water, trees and other resources. The term may also include flora, fauna and the water system in so far as they are associated with an area of land (Leonard and Longbottom 2000, p. 35).

This book prefers not to make sharp distinctions between the terms 'resource tenure', 'land tenure' and 'property rights' given that they are conceptually not significantly different.[18] Conceptually, the three terms are concerned with the relationship between and among persons from which a person gains legitimacy to use resources. I will therefore use the terms interchangeably. I here follow the notion that resource tenure should not be seen simply as a set of rules, but also as principles and processes. When it includes social practices as well, a more proper term that could be used is 'resource arrangements'.[19]

In academic discourse, the term 'resource arrangements' actually represents a criticism on earlier thoughts which saw property rights and land tenure simply as rights and obligations, or as terms and conditions on the basis of which resources were held, used and transacted (Adams, Sibanda, and Turner

16 See the Elucidation of Article 5b of Law No. 12/2011.
17 See the Elucidation of Article 5g of Law No. 12/2011.
18 For work which conceptually distinguishes between the two terms see for instance Safitri (2010, p. 24).
19 See McCharty (2006) and Safitri (2010, p. 24).

1999). In discussions about property rights, the instrumentalist rule-based approach defines property rights as rights to use, to earn income from, and to transfer or exchange assets and resources (Libecap 1989). This notion, which strongly echoes a neo-classical economic approach, has recently re-emerged through the work of Hernando De Soto. De Soto basically argues that the informal sector will gain certainty, if it is formalized. Formalization will make extra-legal property easy to transfer and use as a collateral. According to De Soto, this could ultimately eradicate poverty (De Soto 2000).

Some scholars have reacted to this instrumentalist approach arguing that it overlooks a usually complex reality. This type of criticism originates in notions, which challenge rule-based and legal centralist approaches. The scholars point out that instead of land tenure merely consisting of a rule, it comprises of principles, practices and processes, whereby society defines control over, access to, management of, exploitation of, and use of means of existence and production (Dekker 2001). Broader than a mere legal institution, resource tenure is a social institution that specifically governs how humans interact with nature, particularly in relation to the control of the use of natural resources (Hanna et al. 1996, p. 1). It is perceived as patterns of behaviour rather than that it specifically serves to control society's use of environmental resources (Crocombe 1971). The social reality that profoundly influences the forming of resource tenure often consists of different rule systems that exist simultaneously. The different rule systems interact which makes resource tenure rather complex (Franz and Keebet von Benda-Beckmann in Moeliono 2000).

This book will approach the issue of land tenure from both a legal and social perspective. As a result, this book suggests that resource tenure includes complex and various sets of norms, practices and processes regarding resource use in which both legal and non-legal factors have an impact. The processes, in which various actors with different or even conflicting interests and perceptions and influenced by various prominent factors interact, have shaped a form of resource tenure where formal and informal legitimacy meet. Formal and informal legitimacy are in constant contact, which sometimes turns into conflict, but also accommodate each other or support mutual recognition. An accommodating relation can result in tenure rights based on a combination of formal and informal legitimacy – even when in terms of form they could still be identified as formal or informal rights. Because of the fact that there are many different forms of legitimacy of resource use, this book does not rigidly follow the categorization of formal, informal and *de facto* resource tenure.[20]

Meanwhile, property rights are also perceived as bundles of rights. This means that there may be several layers of rights over one certain piece of

20 On this categorization see for instance Reerink (2011, p. 15).

property. Riddell (1987) points out that a parcel of land might belong to a person or a group of persons, whilst it is used by others to collect firewood, fruits, and crops and in some cases even to live on. Regarding the bundle of rights, it is important to underline that in a situation where formal and informal rules are combined, it may happen that each right in the bundle is subject to a different normative order. For example, the ownership rights could be subject to formal rule, while the use rights fall under informal rule or vice versa. The dynamic aspect of the rules constellation suggests that a bundle of rights changes over time subject to constant interaction between the actors involved (Van Meijl and Von Benda-Beckmann 1999).

Tenure security

Tenure security broadly refers to the holding or exercise of rights by right holders without any hindrance or interference from other (groups of) persons. A more detailed definition of tenure security is that someone has the right to resources on a continuous basis, free from the imposition or interference from outside sources, as well as the ability to reap the benefits of labour and capital invested in the resources, either in use or upon transfer to another holder (Migot-Adholla and Bruce 1994; Bruce 1998). Accordingly, tenure security is associated with the extent and duration of the rights, which determine the scope of the rights (Ubink 2008, p. 18). It is conceptually assumed that rights are secure if: (i) they encompass many actions that right holders may exercise including the exclusion of others; and (ii) they have a long period of validity. Given these assumptions, formal private property is often assumed to have the strongest tenure security (FAO 2002, p. 18; Lund in Ubink 2008, p. 18).

However, due to the weak correlation between formal resource tenure and tenure security, some critics suggest that tenure security should also take into account informal or actual resource use. In a 2003 report, the World Bank pointed out that formal land titles are not necessarily sufficient for a high level of tenure security. In a situation where formal institutions are absent or powerless, it is better to choose a gradual approach and build on the existing system(s) of land tenure, such as local non-state institutions (Deininger 2003, p. 33). Thus, tenure security is also possible within an informal tenure system (Migot-Adholla and Bruce 1994, p. 25).

Concerning the source of tenure security, this book follows Safitri's and Reerink's notions that perceived security can also contribute to tenure security besides formal and actual tenure security. Safitri (2010, p. 30) and Reerink (2011, p. 16) define perceived security as a perception, or strong conviction, that the right holders are secure in having and exercising their rights, because they think that the government officials agree with them. In such cases the perception may derive from their knowledge and experience with formal tenure (Safitri 2010, p. 30). Nevertheless, following the definition and sources

of tenure security as the Food and Agriculture Organisation (FAO) has formulated, this book found that the perceptions of other actors, such as government officials and company employees, also contribute to perceived tenure security (FAO 2002, p. 18-20).[21] As Reerink (2011, p. 221 and 225-226) found, as far as a regional and local government is concerned, long residence and land-related documentation are two prominent factors that encourage local officials to perceive semi-formal *de facto* land tenure as legitimate. As already mentioned (Section 1.2), such perception might emerge as a result of the bureaucrats' understanding of the ability of the land holders to abide by the law or the risks or consequences they might encounter if they impose the formal rule.

1.4 METHODS OF RESEARCH

When I commenced my research mid-2007, East Kalimantan was indeed not new for me. My first visit to this second largest province of Indonesia was in 1999. At that time, I joined a group of NGO activists and university lecturers who were undertaking a comparative study on community forestry. We visited some upstream villages in the West Kutai District, at that time a new district and formerly part of the Kutai Kartanegara District. The local villagers we met during this study belonged to Dayak indigenous groups.

I grew more familiar with the Province when I worked in Balikpapan city in 2000, and during my consulting jobs for a local NGO and in the course of two international projects. The jobs provided me many opportunities to meet the Dayak indigenous groups who resided in the interior part of the Province. Likewise, I also had the chance to meet Provincial and Kutai District officials through which I enhanced my knowledge on legal and policy issues in East Kalimantan. I was fortunate to have two opportunities which later became important for my PhD research. The first opportunity was to contribute to an international research project concerning the management of Balikpapan Bay, through which I became familiar with the coastal issues of the Province. The second opportunity was to carry out a research on community forestry policy for a Bogor-based NGO in 2002.

Considering the abovementioned work experience in the Province, I could say that my PhD research has given me a great opportunity to develop a closer acquaintance with the Kutai District government, and with coastal issues as well. This research then led to my first encounter with the Mahakam Delta. It brought me, who formerly worked in the field of indigenous peoples, into closer contact with immigrant communities.

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21 According to the FAO's definition, tenure security may derive from many sources. It may derive from communities and the government. One may have tenure security from those sources in cumulative (FAO 2002, p. 19-20).

I obtained most information and data for this research through interviews and the collection of documents. In addition to these two methods, I undertook non-participatory observations in which I observed the ways in which the officials of the Province, Districts and deconcentrated government agencies acted and understood their day-to-day activities. Meanwhile, from a number of village visits which I made in the course of 2007 up to 2011 and from a survey carried out by a post-doc researcher in the East Kalimantan Program, I became acquainted with the villagers and their local tenure (see Section 1.5 for an account of the project).

1.4.1 Collection of Documents

The documents that I obtained can be divided into three groups/types of data. Firstly, there are authoritative legal texts consisting of legislation, administrative rules and court decisions. The local regulation and administrative rules comprise of provincial, district and sub-district legislations and administrative rules. The court decisions comprise of district court, high court and supreme court decisions and also include a decision by the Constitutional Court. Secondly, I collected and studied research reports and publications of government agencies, companies, universities and NGOs. Thirdly, I used official reports and minutes of Provincial and Kutai District government meetings. Apart from these three types of data, I also gathered documents regarding dispute settlements on environment and land.

Given that the Mahakam Delta was practically new to me, I first collected several research reports which provided me with much information concerning the environmental condition of the Mahakam Delta, the livelihood of the local people, and stakeholder initiatives in the pursuit of sustainable management of the Mahakam Delta. Those reports and publications also provided me with an overall picture of the law and policy problems of the management of the Mahakam Delta, which this research further examines in a comprehensive and analytical manner. It should be underlined, however, that the reports had little to say about the role of local bureaucrats in the law and policy processes. Therefore data collection through interviews was important for this research.

In general, there were few serious handicaps in getting the authoritative legal texts. Nowadays, national legislation, certain administrative rules and quite a number of court decisions can easily be accessed via the internet. Yet local regulations and policies are not all online. I collected these from various circles, including government offices, NGO activists, company employees, and university lecturers. I visited the Provincial and Kutai District Fishery, Forestry, Environmental Agencies and several bureaus of the Provincial and District Secretariat Office to obtain local legislations, administrative rules and draft regulations. I also visited regional offices of the Ministry of Forestry and the National Land Agency, as well as the offices of some NGOs, company

employees and university lecturers. I visited the Kutai District Court and two law offices to get the verdicts of lower and higher courts. I found the cassations on the internet. To obtain the research reports, publications, meeting reports, minutes and maps, I mostly visited the offices of government officials, NGOs, company employees, and university lecturers.

My contact with some NGO activists in East Kalimantan also helped me with collecting data. They introduced me to government officials and company employees, which helped me in building trust. This made them more willing to provide the data I needed. However, I also encountered some difficulties in getting the data. The district annual budget, maps of the Forest Areas and the reports of forest delineation were the three documents that were most difficult to obtain. I had to make an appointment with a Provincial Forestry official to get a map of the delineated Forest Area of the Mahakam Delta. He asked me to meet him at the office, where he held a side job. I was asked to pay for the map.

To obtain the report on forest delineation, I even had to wait until an office head was moved to another office. I was lucky because the new head trusted me and allowed me to copy the reports, though this only occurred after we had met and discovered we shared cultural ties. I received the reports in the last year of my PhD research. On the other hand, when I met government officials who had formerly worked as a journalist or NGO activist, I found it easy to obtain the data. They were even willing to send me any data I still needed by email.

I also collected documents during my several visits to the Netherlands. My first two visits in 2007 and 2009 introduced me to the academic debates through the expansive university library collections. It is an extraordinary privilege to have access to such a huge collection of publications and reports. There I found not only literature on the Mahakam Delta but also on Indonesia and on the theoretical framework that I employ for this book.

1.4.2 Interviews

In total I interviewed 120 respondents consisting of civil servants (82), retired civil servants (11), company employees (6), university lecturers (6), police officers (4), NGO activists (3), a parliament member (1), lawyers (2), and community members (5). The fact that the largest group of respondents consists of active and retired civil servants (93/120), shows the focus of this research. On average, I interviewed these people more than one time, and in some cases three or four times.

As previously said, my network among the East Kalimantan NGOs helped me to get the documentary data from government officials and company employees. It provided me with similar support for conducting interviews. With the help of the network, few government officials asked me to present

ahead my research permits before the interviews took place. Nevertheless, the network was not the only factor that eased the process of holding interviews. I noticed that my official status as PhD student at a foreign university and sharing cultural ties also helped.

Some of my interviewees were welcoming once they knew that I was following a PhD program abroad. The interviews often commenced and ended with conversations about what it meant to have or how they could get an opportunity to study abroad. The interviewees' questions about studying abroad could be out of personal interest or for their children's future education. On some occasions, attempts to get interviews scheduled and the running of the interviews themselves went well, because I consciously and naturally used my cultural ties (which I prefer not to disclose due to ethical reasons).

Yet, the main reason for the success of the interviews was the growing transparency of the Kutai District government. The environment started changing after the prosecution of a number of high-ranking officials who were accused of corrupt practices. The prosecutions, to some extent, forced the Kutai District government officials to be more welcoming to those who were requesting public information. However, this context impeded the interview process at the same time. I found it difficult to make interview appointments with some retired government officials. They or their family members were not very willing to meet me, suspecting I was sent by the central government to hold a legal investigation. Therefore several interviews were refused. Their family members explained that the person I was looking for, was not an active official anymore, and asked me to contact the active officials instead.

High-ranking employees of the companies were the most difficult persons to reach during the research. I sent official letters twice asking for an interview but neither was answered. As an alternative I held informal interviews with some of the company's middle and lower-ranking employees. I had met them before during some seminars and conferences. They were willing to be interviewed on the condition that I would not disclose their identity.

Meanwhile, it seemed that the lawyers were pleased to be interviewed as they expected their office names to be quoted in a book written abroad. They therefore did not mind if I copied the relevant legal documents I needed, something that they may not have done, if I had been a student at an Indonesian university.

When arranging the interviews with the Kutai District government officials I was not necessarily intent on interviewing the officials, who were at the top of the decision making processes in their respective agencies. Given my research does not focus on top-level decision making processes, I actually needed interviewees who had adequate knowledge of matters of my interest. It was a fact that some or even most of the District Agency Heads or Heads of Divisions of the Agencies knew little about their office regulations and policies. This was mainly due to the unstable condition of the Kutai District government during the period 2006-2011. In that period, many high-ranking

officials were frequently replaced due to political favouritism. Lower staff was therefore the only group that had useful knowledge for they had been working in their respective offices for a longer period of time.

1.4.3 Observation

As said, I conducted a non-participatory observation for this research. I used two methods. Firstly, I observed what the officials did routinely during office hours. Secondly, I took part in the implementation process of some programs and out-of-office hour activities.

From observing the daily routine of the officials, I learned firstly and foremostly much about the working environment of some agency offices. Due to the fact that the Kutai District government is overstaffed, too many employees work in one room, leading to an overcrowded office space. The officials whom I interviewed were sometimes uncomfortable answering my questions because their colleagues and superiors could hear them. Therefore, when necessary, I encouraged them to have conversations outside their offices. A situational factor that helped me was the fact that many agency officials did not have a chair, which made it easier to approach them. Some of them stayed in the rooms, and occupied themselves with activities that were not related to their job. Others were standing or sitting at the corridors of the offices during office hour. This situation enabled me to easily approach them and have conversations, as they were not on duty.

Meanwhile, my observations in two sub-district offices provided me with another view of the bureaucratic environment. At least two realities I can share: how the sub-district officials provided daily administrative services to various resource users, and how the sub-district officials who did not have a background in law dealt with legal matters. Concerning the first reality, I witnessed how the sub-district officials, who dealt with issuing legalization letters to resource users, were not aware of the formal signatory procedures. One day in March 2009, I came across an official, who was in charge of a land matter, and was under a lot of pressure, because some people were demanding to receive the sub-district secretary's signature immediately. The reason for doing so was that if the newly appointed sub-district head were inaugurated they might not be able to get the signatures from the new sub-district head so easily. This put the official in a difficult position, because on one hand she knew that the signature of the sub-district secretary did not have a strong legal basis, but on the other hand she did not want to disappoint the people.

With regard to the second reality of the sub-district bureaucracy, I found how an official with an educational background in agriculture tried to master law. She bought some books on land legislation for self-study. During the interview I found she had misunderstood some provisions of the land legislation. I did not correct her, for I knew that it could influence the way she

was thinking. At the same time, I found myself in a dilemma. Whilst I did not want to have my research influenced by changing the mind of an interviewee, I also knew that correcting her at an early stage could help improve the services to the public. I finally decided to point her to the correct legal provisions, but only after my fieldwork was nearing the last stage.

The second form of observation consisted of various activities. I joined several field officials' village visits. My opportunity to become more involved in the agency's official activities grew, when I informally assisted the Kutai District Land Bureau in setting up some policy development. Apart from my involvement in their official activities, I also joined them informally in the canteens and played cards with them in the office's back rooms. These settings gave me the opportunity to get information that maybe they would hesitate to tell me in the office rooms or during office hours.

1.5 Development of the research

This research formed part of an extensive research project called the 'East Kalimantan Program' (EKP). The original title of the EKP is 'Linking Forests with Marine Systems: Investigating Developmental, Biological, Legal and Economic Ties across Scales in East Kalimantan'. The main title was later divided into several sub-titles and my research falls under the sub-title 'Stakeholder Interests and the Potential for Sustainable Coastal Management through Rights Regulation Practices in the Context of Decentralization in the Mahakam Delta, East Kalimantan'.

The EKP was a joint collaboration between a number of Dutch universities and Indonesian universities and government institutions. The researchers involved came from various educational backgrounds due to the interdisciplinary nature of the research. Most researchers involved in the EKP studied natural sciences, namely biology, geology, hydrology and engineering. Thus, legal and social aspects formed only a small part of the EKP. My specific sub-project involved one post-doc researcher and one PhD researcher.

The different members of the EKP were keen on applying an interdisciplinary approach. Regular internal meetings and conferences were held in which the various researchers presented their findings. By learning about the findings of other disciplines, the researchers were expected to seek the link between their own research and that of others, either within the natural sciences or between the natural sciences and socio-legal sciences. To some extent this has been successful, at least in the form of being able to use findings from other pieces of research as supporting data.

Another effort to apply the interdisciplinary approach was to prepare a synthesis report of the EKP where the major research findings of two clusters of this project namely the Mahakam Cluster and Berau Cluster, were combined into one report. The main idea of making the synthesis report was to formulate

a future scenario for the management of the two deltas from an interdisciplinary point of view. From a substantive point of view, the synthesis was aimed at making comparisons and finding interconnectedness between the two deltas. For this purpose, I undertook nine days of fieldwork in Berau, as did the post-doc researcher. I have not included the findings from the fieldwork in Berau in this book for it was originally intended for the synthesis. More importantly, it would be methodologically incorrect seeing that I spent far more time in Mahakam (one and half years) than in Berau (nine days), making it impossible to compare the fieldwork and the results on an equal footing.

As said, this PhD research was originally a joint research project with a post-doc researcher. Within the framework, a division of focus was set up. The post-doc, a social anthropologist, was to focus on *local* tenure arrangements, whereas I myself being a jurist would focus on *state* tenure arrangements. To maintain collaboration, periodic meetings between the two of us were planned. We envisaged that the meetings would take place somewhere in between our two work spaces between the village and the city: at one particular coffee shop (Ind. *warung kopi*) in the sub-district. That we would meet at a coffee shop is mentioned not only to indicate the division of focus but also because the coffee shop symbolizes where our research meets. Some of the data used in this book therefore originates from the coffee shop meetings.

1.6 Limitations of research

On many occasions where I had the opportunity to present the preliminary findings of this research, it was suggested to me to also pay sufficient attention to the accounts of local resource use. I would have liked to respond to these suggestions, yet due to the division of focus I already described, this book will not discuss local resource use much. Thus the extent to which I have included accounts of local resource use is mainly limited to what I gathered from government officials. More extensive accounts of local resource use are expected to be available in the works of the post-doc researcher.

In describing law-making, this book focuses on the processes that took place within the district bureaucracy. Very little is said about the processes in which the district parliament was involved. Therefore, the number of local members of parliament who were interviewed is small: in a book focusing on the bureaucracy, there is less need for accounts about the legislative and judicial institutions.

There are three sub-districts in the Mahakam Delta, as other reports and publications suggest (see Section 2.1). However, due to time constraints, this research only focuses on two of the three sub-districts, i.e. Anggana and Muara Badak. In terms of distance, the two selected sub-districts are closer to Samarinda, the Province's capital city, where I mostly stayed during my field work.

1.7 OUTLINE

The chapters of book can be divided up in three main parts. The first part consists of the chapters in which I mostly describe my fieldwork findings (Chapter 5-9). The second part is mostly based on the documents and literature I collected (Chapter 1-4). In the third part I analyse the data which have been described in the previous chapters (Chapter 10). The topic and content of each chapter is briefly outlined below.

As an introductory chapter, Chapter 1 explains why this research is significant (1.1), the research questions (1.2) and the conceptual background for the analysis of my findings (1.3). The remaining parts of the chapter concern methodology, the research obstacles, issues of access, strategy and forms of collaboration when the research took place (1.4 and 1.5). In relation to the applied methodology, this chapter also lists the limitations of this research (1.6).

Chapter 2 is about the setting and environment of my research, including the geography (2.1), ecology (2.2), human settlements (2.3), social structures (2.4), livelihood (2.5), stakeholders (2.6) and policy problems (2.7).

Chapter 3 and 4 function as background chapters. Chapter 3 provides a historical background whereas Chapter 4 gives a legal and administrative background. The focus of Chapter 3 is the history of state intervention in resource use in three historical periods, namely 1945-1970 (3.1), 1970-1998 (3.2) and 1998-present (3.3). Meanwhile, Chapter 4 provides an account of governmental structures in Indonesia, both horizontally (4.1) and vertically (4.2), and of the legislative system (4.3).

As said Chapter 5-9 provide extensive accounts of the field findings. In general, the five chapters contain the following sections: (i) law-making processes and main legal provisions, (ii) implementation of law, (iii) legal problems, and (iv) interactions between state and resource users. The sections on law-making processes portray how national legislation on forest delineation (5.2; 6.2), local regulations on fisheries (7.2), land (8.2) and spatial planning (9.2) were made. The sections on the main legal provisions (5.2; 6.2; 7.2; 8.2) chiefly describe government institutions or officials who are authorized to issue rights or permits, terms and conditions to obtain the rights or permits, rights and obligations of the right- or permit-holders and how to exercise the rights or permits. In addition to the provisions, the section describes a number of government institutions that were formed to implement and enforce the formal rules. The legal provisions encompass local, regional and national legislation.

The sections on the implementation of law (5.3; 6.4; 7.3; 8.4; 9.3) focus on some areas, where the implementation of law has been effective or not. They further point to prominent factors that have hampered effective implementation. The sections on the interaction between state and resource user (5.5; 7.5) zoom in on the actual reality of the implementation of law, whereby one can

see that field officials frequently made direct contact with the local resource users.

Meanwhile, the sections on legal problems (5.4; 6.3; 7.4; 8.3; 9.4) examine the appearance of incoherence and inconsistency in the formal rules in the respective sectors, which consequently had an effect on the way in which the law was implemented. They also assess its impact on the legal certainty of the resource users.

Chapter 10 systematizes the legal problems and factors that have influenced the law-making processes and the implementation of law. Concerning the legal problems, the chapter examines the extent to which laws and regulations are inconsistent and incoherent (10.1). Meanwhile, in assessing why and how actors were involved in law-making, the chapter suggests three areas of focus (10.2). Factors that are internal and external to administrative institutions are recalled to explain why the regional and local government officials did not effectively implement the formal rules and at the same time provided legitimacy to the actual resource users (10.3). By way of conclusion, the final section of the chapter presents a conceptual recommendation to improve the management of the Mahakam Delta, namely that the actual implementation of law needs to be taken into account during all phases of the policy process (10.4).