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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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3 | A short history of state intervention in the Mahakam Delta

Let me commence this chapter by quoting a statement, to which many other scholars have referred: 'No introduction to East Kalimantan is complete without mentioning the fact that East Kalimantan's petroleum, liquid natural gas, and timber export have earned nearly one-quarter of Indonesia's total export earnings in some years' (Daroestan 1979, p. 43). The period that the statement refers to is East Kalimantan in the late 1970s, but this is still the case today.¹ As said (Section 2.5), natural resources in the Mahakam Delta in general, and oil and gas extraction in particular constitute a significant part of national revenue in Indonesia.

Due to the importance of natural resources extraction for state revenue, state intervention (formal and actual exercise) in natural resources management in East Kalimantan² and Kutai Kartanegara³ has been influenced considerably

1 The significant contribution of East Kalimantan to national revenue had actually begun in the 1920s, when the Dutch government managed oil extractions around Balikpapan, Tarakan, Sanga-Sanga and Samboja. In 1928, for instance, the Province provided 66% of the total Netherlands-Indies production of crude oil, before it decreased to 22% in 1940 due to the discovery of oil fields mainly in Sumatera Island (Daroestan 1979, p. 50; Lindblad 1985; Wood 1985, p. 65; Lindblad 1989). Meanwhile, the forest sector began to contribute significantly to national revenue in the early 1970s. The Province became used to being the centre for commercial timber industry, for it supplied 25% of national commercial needs (Poffenberger and McGean 1993, p. 2). Another figure shows that in 1970, the Province had a share of US\$ 55 million of Indonesia's total value of timber export of US\$ 91.7 million (Manning 1971, p. 31 and 56). In 1975 it rose to US\$ 307.43 million of the national total value of US\$ 500 million of timber export. Meanwhile, for domestic consumption, East Kalimantan supplied two-thirds of total national timber supply (Magenda 1991, p. 83-84).

2 East Kalimantan Province was officially established in 1956 when the central government enacted Law No. 25/1956 concerning the Establishment of the Autonomous Regions of West Kalimantan, South Kalimantan and East Kalimantan. Previously, as stated in Law No. 2/1953, the whole Indonesian part of Borneo Island was administered in only one province. When it was officially established in 1956, East Kalimantan consisted of three autonomous regions namely Kutai, Berau and Bulungan.

3 The name of Kutai Kartanegara district was found in 1999 when the district was fragmented into three districts and one municipality (see Section 3.3 footnote 61). Before that, from 1959 onwards, the district was named Kutai. The central government officially declared Kutai as autonomous district (*swapraja*) together with three other districts and two municipalities (*kota praja*) through Law No. 27/1959. Prior to the status as an autonomous district, as of 1953 Kutai had a status as special region (*daerah istimewa*). See Pemerintah Provinsi Daerah Tingkat I Kalimantan Timur (1992, p. 130-137).

by the desire to control the natural resources in the Province (Daroestan 1979; Wood 1985; Magenda 1991; Peluso 1992; Jemadu 1996). Putting an emphasis on forestry resource, Peluso (1992, p. 53; Peluso 2000, p. 148) points out that the nature of natural resources management of East Kalimantan, and in particular forest resource, is epitomized by formal forestry control superimposed on traditional forms of natural resources management. Some scholars suggest that the high level of state intervention in natural resources management has been strongly pushed by the motive to get money to fund political agendas (Magenda 1991, Obidzinski 2003, p. 94-95). It is also due to its richness in natural resources, in particular in oil and gas, that the Province was often listed as a priority target for conquest during wars (Magenda 1991, p. 37-38; Pemprov Kaltim 1991; Obidzinski 2003, p. 75).

Although the state declared its formal control over natural resources use in the marine part of the Mahakam Delta since the 1960s over fisheries, 1970s over oil and gas and 1980s over mangrove forest, it is important to highlight that the way formal control was exercised differs from the way it was done on the Kutai mainland. The nature of natural resources – whereby oil and gas are more profitable compared to forest and fishery resources –, in this remote area with few inhabitants, and with actual open access of resource use, has led to a different exercise of state intervention in the Mahakam Delta than on the mainland.

This chapter discusses state intervention in natural resources management of the Mahakam Delta throughout three periods. The three periods are 1945-1970, 1970-1998, and 1998-2011. For each of these periods, evolution and changes in state intervention will be described. The period of 1945-1970 in itself could be divided into two sub-periods. In the first sub-period, from 1945-1950, formal colonial natural resources management mostly remained in place. In the second sub-period, from 1950-1970, the Indonesian government eventually obtained political and legal authority to control natural resources management. Yet, in response to strong demands from the regions to share power, the central government applied decentralized natural resources management. In practice, the Provincial and Kutai District governments hardly intervened in the Mahakam Delta.

Unlike the first period, in the second period of 1970-1998 the state intervened actively and systematically by enacting some laws and regulations followed by a formal designation of the administrative territories of sectoral departments. It is a period, in which natural resources management is centralist in nature. For the Mahakam Delta it is a period of both formal and actual state intervention.

The period of 1998-2011 is a period in which state control was seriously tested by the strong competition to gain access to natural resources. For the Mahakam Delta in particular, it is also a period in which the District Government together with other stakeholders developed many policies and programs

to pursue sustainable resource use, notably of fish, shrimp, and mangrove forest.

This book argues that the type of state intervention in natural resources management in the Mahakam Delta that matters most in practice, is intervention at the district and provincial level. Therefore, an account of state intervention at the district and provincial level will be put ahead of that by national agencies, especially in Sections 3.2 and 3.3.

3.1 THE PERIOD OF 1945-1970: HARDLY ANY INTERVENTION

Even though independent Indonesia had declared formal state rights to control natural resources management in the 1945 Constitution, in reality these could not be exercised due to the re-entry of Dutch colonial rule, e.g. the Netherlands-Indies Civil Administration (NICA), which resulted in five years of Revolutionary War (1945-1949). This was certainly the case for East Kalimantan, where the NICA administered forestry and mining as before. Regulations on natural resources management implemented during this period were actually identical to those, which had existed prior to the three years of Japanese military occupation (1942-1945). They will be described briefly in the following paragraphs.

As of the late nineteenth through to the early twentieth century, formal rule on natural resources management in East Kalimantan was influenced considerably by the common colonial strategy known as 'indirect rule'. This meant that four sultanates, namely Kutai, Bulungan, Sambaliung and Gunung Tabur, were given the political status of self-governing territory. The status supported the traditional relation between the sultans and the land, which they claimed they owned, and the condition that land use was conditional upon a license issued by a village head (*petinggi/demang*). The same principle was applied both to the extraction of minerals and the collection of forest products (Kanwil Depdikbud Kalimantan Barat 1990, p.119-120 and 132).⁴ The sultanates' status of self-governing entity and their authority over land and natural resources were laid down in an exclusive contract and a 'short declaration' (in Dutch *Korte Verklaring*), in the late nineteenth and early twen-

4 Many scholarly works (Wortman 1971; Peluso 1983; Peluso 1987; Magenda 1991; Peluso 1992) have actually highlighted the impossibility of the sultan to be able to exercise its domain declaration by controlling people's activities, production and land use. In reality, due to the absence of a strong bureaucracy which had real power and the fact that the sultanate was more like a tributary state, the domain declaration was hardly exercised effectively, in particular in the case of Dayak's communities, who mostly resided in the interior. The domain declaration is therefore perceived as a mere claim which was strongly influenced by Islamic law, and reinforced by a mystical Hindu-Buddhist philosophy (Peluso 1987, p. 5).

tieth century.⁵ At the same time, the contract and declaration abolished the sultans' authority to collect tributary payments on agricultural and forestry products.

The acknowledgment of the self-governing status on one hand, and the take-over of management control over natural resource use on the other hand resulted in the following arrangement of power-sharing. Firstly, the Dutch government in Batavia would pay a regular salary, share of revenue and rent to the sultans (Peluso 1983; Peluso 1987; Lindblad 1988; Potter 1988; Magenda 1991; Pemprov Kaltim 1991, Selatto 2001; Obidzinski 2003). Having obtained all the rewards, the sultanates were not allowed to collect taxes and tributary payments from the resource users. All power to collect taxes and tributes now rested with the Dutch authorities. Secondly, the sultanates still had the authority to issue particular forest utilization rights to foreigners and native people. In addition, they could grant permits to native people for collecting non-forest products and fishing.⁶ With regard to fishing rights, the sultanates could award exclusive rights to collect sea cucumbers or shells on the condition that the fishermen paid a levy (Knapen 2001; Butcher 2008, p. 7).

Apart from debates among the Dutch government officials about the extent to which the 'domain declaration' (*domeinverklaring*) was socially and culturally appropriate for the colonial government to apply in Borneo, and the fact that the 'domain declaration' could not entirely be enacted in self-governing states, it was officially enacted in Southeast Borneo in 1888.⁷ However, the 'domain declaration' only slightly enhanced state intervention in natural resource use. With the enactment of the *domeinverklaring* through which forest was perceived as waste ground, the Dutch government could now issue plots for long-lease, which at that time were needed to grow tobacco (Potter 1988, p 130; Lindblad 1988).⁸ In Samarinda and Upper Mahakam, where the Dutch government exercised direct government and where therefore all populations were subject to the Dutch administrative and judicial system, the *domeinverklaring* could

5 An exclusive contract was signed with the Kutai sultanate, while the other three sultanates signed a short declaration. The Kutai sultanate was given an exclusive contract as a reward for its neutral position in the Banjarmasin War, while the other three sultanates had been on the side of the Banjar sultanate (Lindblad 1988; Magenda 1991; Obidzinski 2003).

6 There were three types of utilization or collection rights over forest resources at that time, namely a long-term contract or concession, small logging plot and small-scale cutting permit. Long-term contracts and small logging plots were given for commercial purposes, while small-scale cutting permits were merely for subsistence needs. Small logging plots and small-scale cutting permits were awarded by the Sultan and did not exceed 5,000 ha. In practice, resident or resident assistants had the authority to review the issuance of small logging plots (Potter 1988, p. 139 and 142; Obidzinski 2003, p. 67).

7 The *domein verklaring* is a legal principle which was laid down in the *Agrarische Wet* of 1870 during Dutch colonial rule. It stated that all land of which absolute private ownership right (*eigendom*) could not be proven, could be claimed as state land.

8 See Potter (1998, p. 133-134) about objections against the application of state designation on forest, which traditionally belonged to indigenous communities.

even be fully imposed.⁹ Following the passing of a regulation on land reclamation in the 1920s, the award of land reclamation permits to native people had to be approved of by the Dutch authorities (*districthoofd*) as well as traditional local authorities (*demang/petinggi*).

Through the resurgence of the pre-Japanese legal framework on natural resources management, NICA reorganized supervision over natural resources extraction, mainly mining and forest, that had laid idle during the three years of Japanese military occupation. In order to boost tree cutting, NICA issued a regulation through which small-scale logging was re-legalized (Obidzinski 2003, p. 88). Meanwhile, as the status of self-governing state was returned to them, the sultanates regained their rights to receive a salary, a share of the revenue and rent. In addition, the authority of the sultanates to issue permits on the collection of non-forest products and fishing was recovered as well (Magenda 1991, p. 42).

Following the agreement of the Round Table Conference in The Hague (1949) between the Indonesian and Dutch delegations, in which the Dutch government officially recognized Indonesia's independence, the actual control over natural resources management went to the government of the Republic of Indonesia. The official incorporation of the Federation of East Borneo¹⁰ into the Unitary State of the Republic of Indonesia in August 1950 marked the end of the first sub-period. In spite of the official status of the four sultanates as self-governing territories (*daerah swapraja, daerah istimewa*) during the first sub-period, their authorities and rights over natural resources extraction were considerably reduced from now on. The oil and gas, coal and forest companies did not directly pay royalties to the sultans through the Federation of East Borneo, but to the central government instead. The central government subsequently shared a particular amount of the revenue from natural resources extraction with the provincial government of South-East Borneo, which included the present region of East Kalimantan. The Provincial government office, which at that time was situated in Banjarmasin (South Kalimantan), further shared the budget they obtained with the four sultanates or *swaprajas* of East Kalimantan (Peluso 1983, p. 133; Magenda 1991).¹¹

Despite the shift of power with regard to the collection of revenue from the NICA to the government of the Republic of Indonesia, the appointed resident of East Kalimantan (see Section 4.1 for an elaborate description of governmental structure and position in East Kalimantan) continued to use the legal framework as well as norms on natural resources management,

9 For an account of the forms of traditional and Dutch administrative and judicial structures and the division of jurisdiction see Pemerintah Provinsi Daerah Tingkat I Kalimantan Timur (1992, p. 55-73).

10 This federation of sultanates in East Kalimantan was established in 1946.

11 The arrangements of sharing the revenue were stipulated in Law No. 32/1956 on the Fiscal Balance between the Central Government and Autonomous Regions.

inherited from the NICA. With the sultanates having been granted the formal status of autonomous regions during the early years of the unitary Republic of Indonesia, the central government e.g. resident continued to recognize their former authorities to issue forest utilization rights, and permits for the collection of non-forest products and fishing (Peluso 1983, p. 139). To give an example, in the early 1950s, the resident of East Kalimantan issued a regulation, which allowed the sultanates to issue small-scale logging permits on an area of 1,000 ha (Obidzinski 2003, p. 95). The inherited colonial legislation still largely existed in 1957, when the central government eventually enacted and established some new regulations and government institutions concerning forest management. One of the important regulations passed in that year is the Government Regulation of 1957 concerning the Partial Devolvement of Authority from Central to Provincial Government with regard to Fisheries, Forestry and Small-Scale Rubber Plantations.¹²

Even though there was a significant level of power sharing between the central and the provincial government concerning forest management, in the second sub-period (1950-1970) there was little change in the form of state intervention. The only two changes were that the central government emerged as a new actor replacing the role of the former Dutch government, and that the Provincial government enjoyed greater autonomy. The forest exploitation system that was officially determined by the Government Regulation of 1957 did not differ much from the colonial and the first sub-period. As Obidzinski (2003, p. 95) points out: 'The exploitation system relied on the continuation of regulations from the Dutch period that allowed for timber extraction either by means of large concessions or smaller logging plots'.

Given the central government assumed itself as the highest political authority, thereby undermining lower non-state authorities, the Government Regulation of 1957 determined that the central government was entitled to exploit forests or allow someone to carry out forest exploitation on the grounds of a license. Concerning the license, the Government Regulation maintained the previous categorization of types of forest utilization and collection, comprising of large-scale logging (concession), small-scale logging (*kapersil*) and the collection of forest and non-forest products. The concession was given for an area, the size of which did not exceed 10,000 ha and for twenty years. A license for *kapersil* applied to an area which did not exceed 5,000 ha and was valid for five years. A license for the collection of forest and non-forest products was given for the duration of two years.¹³ The governor was authorized to award a concession, while the district head could award a license for *kapersil* and collection. Meanwhile, the authority to issue a concession for an area larger

12 No. 64/1957 on Partial Delegation of Government Affairs on Fishing, Forestry and Small-Scale Rubber Plantation to Provinces. The Government Regulation was made to implement the new Law No. 1/1957 on Regional Autonomy.

13 See Article 10 (2) of Government Regulation No. 64/1957.

than 10,000 ha rested with the Director-General of Forestry of the Ministry of Agriculture (Magenda 1991, p. 78).

The implementation of the Government Regulation of 1957 which lasted for more than a decade (1957-1970) was seen to benefit local people greatly. As Magenda (1991, p. 79) wrote:

The period between 1967 and 1970 was considered a happy and prosperous one by most of the people of East Kalimantan who in one way or another benefited from the flood of logs.¹⁴

Peluso (1983, p. 177) also points at the importance of the period saying that not only there were *banjir kap*, but also an increase in employment opportunities, investment, high profits and prosperity for nearly all participants. Not only did it benefit local residents, the implementation also stimulated large waves of migration to East Kalimantan from South Sulawesi, South Kalimantan as well as Java (Wood 1985; Magenda 1991, Jemadu 1996; Obidzinski 2003).¹⁵

However, instead of getting the benefit from effective implementation of the Government Regulation, the local people and migrants actually benefitted from a severe lack of effective implementation. With only a simple forestry administrative organization with low-educated officials, effective protection and supervision of fourteen million ha of production forest proved difficult.¹⁶ Meanwhile, forestry officers from the Ministry of Agriculture undertook only irregular surveys of East Kalimantan (Obidzinski 2003, p. 95). As a result, the only way the local people could benefit from the regulations was through the revival of small-scale logging and the easy procedure of obtaining a cutting permit.¹⁷ The system only required local people to get a permit from the sub-

14 Flood of logs or *Banjir kap*, is a term for the manual (non-mechanized timber extraction) felling of trees particularly along the river banks and then floating them down river when the monsoon floods come (Daroestan 1979, p. 45; Tacconi et al. 2004, p. 141).

15 For an account of the migration from South Sulawesi in response to job opportunities see Vayda and Sahur (1985). On how it also attracted Dayak people see Peluso (1983, p. 179) and Urano (2010). See also Manning (1971, p. 56) and Peluso (1983) for how the small-scale timber extraction impacted the labour dynamic in general. Whereas for an account of how it also attracted villagers of the Mahakam Delta see Levang (2002, p. 7).

16 The fourteen million hectares of production forest came under control of the Provincial government after the Directorate-General of Forestry was pushed for several years to hand over the forestry management to the Province, following its establishment in 1956. As the Directorate-General of Forestry accepted the demand, Perhutani, which was replaced by Inhutani II in the 1960s, only managed the remaining 3,5 million hectares. Perhutani got the 3,5 million hectares concession from the Ministry of Agriculture through a Government Regulation No. 35/1963 (Manning 1971, p. 36; Bappeda Kabupaten Kutai 1971, p. 66; Peluso 1983, p. 176; Departemen Kehutanan RI 1986, p. 76; Magenda 1991, p. 77-8; Jemadu 1996, p. 128).

17 In brief the system was shaped by an exchange between upstream people and downstream trading communities. The latter consisted of town-based timber exporters, middlemen and contracted lumberjacks. The parties involved were interlinked by a system of advance

district government to be able to cut trees, regardless of what they found before they sold the logs to downstream traders (Peluso 1983, p. 177; Magenda 1991, p. 78). In this system, family-owned businesses would only need to ask local people, who resided upstream, to cut trees, which could then be sold downstream.

It is important to remember that the revival of the small-scale logging system coincided with the rise of political power of the military following the declaration of a state of emergency in 1958.¹⁸ Across regions, the state of emergency put civil administrative government under the supervision of regional military commanders (*Penguasa Perang Daerah* abbrev. Peperda). In East Kalimantan, this resulted in the dissolution of the Provincial Forestry Agency in 1958, just one year after the agency was created. In that political context, it is not surprising that family-owned forestry firms became connected with local military officers (Obidzinski 2003, p. 104). Besides military officers, some members of political parties, who courageously campaigned against foreign timber concessions for the sake of nationalism, also had family-owned forestry firms (Magenda 1991, p. 77-78). This context impeded effective implementation of the Government Regulation of 1957 and a Provincial Regulation of 1963.¹⁹ One expert even suggests that the small-scale logging was entirely unregulated whilst hundred kapersils that the regional government had issued were insufficiently monitored (Daroelman 1979, p. 45).²⁰ This turned forest exploitation predominantly into economic and political assets.

Decentralized forest management and anti-foreign investment policies which were in place during the second half of the 1950s officially came to an end after the issuance of the Basic Forestry Law of 1967 and two liberal investment laws.²¹ The Basic Forestry Law of 1967 provided a legal basis for centralized forest management, whereby state control and authority over forests seemed to be the most important principle (Peluso 1994; Jemadu 1996, p. 127). Nevertheless, political conditions at that time were still not suited to implementing centralized forest management. As a result, the Ministry of Agriculture notably the Directorate-General of Forestry, on one hand commenced centralized state intervention in forest exploitation by issuing several large-scale forest concessions, but on the other hand kept old lower regulations, which allowed

payment, either in kind or cash for deliveries of timber within an agreed period of time (Obidzinski 2003, p. 54-55).

18 The state of emergency was officially declared through Government Regulation in Lieu of Law No. 1/1958.

19 Provincial Regulation No. 9/1963.

20 In 1963 across East Kalimantan, 245 kapersils were granted covering a total of 584, 300 ha. Kutai District was dominant among other districts of East Kalimantan with 213 kapersils covering a total of 447, 200 ha (Obidzinski 2003, p. 312-313).

21 The two investment laws were respectively No. 1/1967 on Foreign Direct Investment and No. 6/1968 on Domestic Investment. The two laws have been superseded by Law. No. 25/2007 on Investment.

governors and district heads to issue small-scale logging concessions, in force. This resulted in a contradictory three year period (1967-1970), in which the Directorate-General of Forestry gave a large part of the 17 million ha of Production Forest of East Kalimantan to non-residential foreign and domestic forest concession holders. Other parts were given to local family-owned firms for small-scale logging by governors and district heads.²²

Meanwhile, the absence of an up-to-date land use map, a strong desire to attract foreign investment, and a political motive to repay some generals who supported the New Order, caused the large and small-scale logging concessions to neglect the forest rights of the local people (Peluso 1983; Magenda 1991).²³ As Poffenberger (1997, p. 456) points out:

The mapping of areas for timber leases, due to the paucity of information, has rarely considered the boundaries of community lands, particularly forest tracts used for hunting, gathering, and long rotation agriculture.

With the forests on the mainland of the Mahakam Delta being downstream of the Mahakam River, logged trees could be easily transported to the sea. They therefore formed an attractive project location. So, it was widely known that East Kalimantan was one of the most favorable provinces for timber extraction, due to its well developed river transport system, of which the Mahakam River and its tributaries are the most important parts (Manning 1971, p. 57). About 1,000 hectares of the one million hectares of Perhutani/Inhutani II area in Kutai District was situated on the mainland of the Mahakam Delta (Bappeda Kabupaten Kutai 1971, p. 66). Likewise, the 600,000 ha of the PT. ITCI concession area which was awarded in 1967 was partly located on the mainland of the Mahakam Delta.²⁴ Nevertheless, during all this years there were no forest concessions nor kapersil and Perhutani/Inhutani II areas in the Mahakam Delta. This restricted the level of state intervention in this area severely.

Compared to forestry, the level of state intervention in oil and gas resources in the Mahakam Delta during the second sub-period of 1945-1970 was much higher. This commenced in 1967 when the Minister of Mining officially designated Mahakam-Bunyu Block as a state mining zone, and at the same time

22 During 1968-1971 the Governor and four District Heads issued kapersils totalling 1,148,750 ha in size (Obidzinski 2003, p. 314-318).

23 Poffenberger (1997, p. 456) points out that due to the issuance of large forest concessions, an estimated 2,5 million indigenous Dayak people were displaced or resettled due to logging activities, resettlement projects, and other development activities. For accounts of how the issuance of forest concessions affected the actual local and indigenous forest rights in East Kalimantan see Kartawinata et al. (1984); Vargas (1985); Peluso (1992); Poffenberger and McGean (1993); Eghenter (2001).

24 Another forest company, which obtained a large forest concession, was Kayan River Timber Products, a Philippine subsidiary of an American company. The company obtained 1.2 million hectares in Bulungan District (Gunawan et al. 1999, p. 17).

awarded a concession to the Japanese oil and gas company, Japan Petroleum Exploration (hereafter Japex). As will be described further in Chapter 6, the award of the concession was given a legal basis through Law No. 44 Prp/1960 on Oil and Gas and Law No. 11/1967 on Basic Mining Law. The two laws both respected communities, by prohibiting mining extraction taking place in areas where grave yards and sacred places (*tempat-tempat suci*) existed.²⁵ In addition, the Basic Mining Law provided access to local people to get involved in mining extraction through a scheme of community mining.²⁶

3.2 THE PERIOD OF 1970-1998: AUTHORITARIAN STATE

According to the annual figures of East Kalimantan Province and Kutai District in 1970, the number of kapersils had increased significantly since 1963. In Kutai District alone, 865 kapersils had been awarded by the district head, and 58 by the governor. The nearly 1,000 kapersils of the Kutai District were located in around two million hectares of forest area (Bappeda Kabupaten Kutai 1970, p. 65). Across East Kalimantan, the governor awarded hundreds of kapersils sizing 1,200,000 ha in total (Operation Room Kantor Propinsi Kaltim 1971, p. 78-81).²⁷ The volume of logs from small-scale logging in Kutai District formed two-thirds of the total production of logs in East Kalimantan (Peluso 1983, p. 181). This led to a large increase in revenue. To give an example, during 1969-1970 the Provincial government earned around US\$ 200,000 from timber, while the Directorate-General of Forestry could only earn around US\$ 30,000 (Magenda 1991, p. 86). Other figures shows that in 1970, the Provincial government received IDR 978 million for forest royalties, whereas the Directorate-General of Forestry only received IDR 445 million (Manning 1971, p. 44). Concessions, which were owned by foreign and Jakarta-based companies, were not as profitable as the kapersils, due to the lack of experience in tropical logging, and the longer gestation period of large-scale investment (Manning 1971, p. 57).

Having a legal basis in the Forestry Law of 1967, an interest-based coalition of concession owners, the Directorate-General of Forestry and some high-ranking military officers was formed which campaigned for centralized forest management. The coalition pursued the central government to dissolve the

25 Article 7(3) of Law No. 44 Prp/1960 and Article 16(3) of Law No. 11/1967.

26 Pursuant to Government Regulation No. 32/1969, a license for community mining can be given by the Minister of Mining or governor for a maximum of 25 ha and a five year expiry date.

27 Manning (1971, p. 57) and Daroesman (1979, p. 47) estimate that the Governor issued kapersils of a total size of two million hectares. In the same period, the Directorate-General of Forestry awarded around 37 national and domestic forestry companies with concessions on an area of approximately 5,600,000 ha (Operation Room Kantor Gubernur Propinsi Kaltim 1971, p. 81-83).

governor's and district head's authority to issue *kapersils*. To advocate the dissolution, the coalition used three arguments mainly on environmental, economic and political grounds. They argued that centralized control was more effective than decentralization of authority as far as forest conservation was concerned (Jemadu 1996, p. 129). Besides, for administrative officials and military officers of the central government, the enormous income that the Provincial and District government earned from the timber exploitation was frightening, for it could lead to a substantial accumulation of economic power outside Jakarta (Magenda 1991, p. 80).²⁸ With good access to as well as political and economic ties with policy makers in Jakarta, the coalition easily reached their desired objective.

The successful lobbying of the coalition resulted in the issuance of the Government Regulation No. 21/1970 on Forest Exploitation Rights and Rights to Collect Forest Products. Through the Government Regulation, the central government fully took over the authority to issue *kapersils* from the governor and district head.²⁹ The authority was now given to the Minister of Agriculture.³⁰ Nevertheless, the Government Regulation maintained that the issuance of rights to collect forest and non-forest products belonged to the district head.³¹ The above provisions together with other provisions stipulating that a timber fee had to be paid to the Directorate-General of Forestry, as well as the control and freeze of the existing indigenous rights over the forests, marked the emergence of centralized forest management. In other words, the new regulation ended nearly twenty years (1950-1970) of regional and local governments benefiting from decentralized forest management.

Concerning the implication of the new regulation for local rights on forest use, Peluso (2000, p. 154) points out that such regulation, which favors timber production and ignores local people's rights, led to the criminalization of local forest use.³² Legally speaking, the criminalization was later confirmed through Government Regulation No. 28/1985 which stated that a permit was needed for any logging or the collection of forest products and that this activity would otherwise be criminalized (see Section 5.2 for detailed accounts of the Government Regulation).³³ The move towards centralization of forest management can also be seen in the Government Regulation of 1970 on Forest Planning,

28 For accounts of environmental grounds see Manning (1971); Vargas (1985, p. 143) and Magenda (1991).

29 Cf. Article 10 (1) of Government Regulation No. 64/1957.

30 See Article 12 (1) of Government Regulation No. 11/1970.

31 See Article 12 (2) of Government Regulation No. 21/1970.

32 Jemadu (1996: 136) points at the alienation of local people from the management of forest resources as another impact of centralized forest resource.

33 Article 9 (2 and 3) of Government Regulation No. 28/1985 on Forest Protection.

which puts matters of forest designation and status under the authority of the Ministry of Agriculture.³⁴

The implementation of the abovementioned centralized forestry management resulted in six years (1970-1976) of widespread issuance of concessions in East Kalimantan. The majority was issued during 1970-1973 (Daroestan 1979, p. 47). In fact, 15 million hectares of production forest of East Kalimantan were granted to 120 non-residential foreign and domestic forest concession holders (Vargas 1985, p. 142; Jemadu 1996, p. 132).³⁵

Meanwhile, on the Kutai mainland, the largest part of which was included in the work area of the so-called Technical Unit for Forest Product Circulation of the Provincial Government (Ind. *Unit Pelaksana Teknis Daerah Peredaran Hasil Hutan*, hereafter TUFPC), dozens of forest concessions were granted.³⁶ Some examples are PT. Baltimur Timber (70, 000 ha), PT. Meranti Sakti Indonesia (32,500 ha), PT. Perdana Kutai (23,500) and PT. Kayu Mahakam Kutai (40,000 ha).³⁷ As happened during the peak of the kapersil issuance, no single forest concession was issued in the Mahakam Delta. This set the mangrove forest of the Mahakam Delta apart from the mangrove forest in the northern part of East Kalimantan (Bulungan District). In the latter mangrove forest, the Directorate-General of Forestry gave separate concessions to four companies.³⁸

Meanwhile, apart from the considerable difficulties of the Directorate-General of Forestry to control the 120 concessions, it did manage to exercise some degree of state intervention in forest resource use.³⁹ The exercise of control was stepped up, when in 1983, the Minister of Agriculture issued a decree which designated the Forest Areas of East Kalimantan.⁴⁰ Legally speaking, the Forest Area designation gave the government the authority to apply forest regulation in the designated areas, in spite of its late appearance. The

34 See Article 5 and 8 of Government Regulation No. 33/1970 on Forest Planning. For detailed accounts of the regulation see Section 5.2.

35 According to Daroestan (1979, p. 47) only six of the 120 concessions were held by persons or firms resident in East Kalimantan.

36 There were twenty granted forest concessions in 1984 covering an area of 364,295 ha in total. This dropped to fifteen in 1986 with area of 404,565 ha. However, some of them were inactive at that time. See Laporan Tahunan KPH Mahakam Ilir 1983/1984, 1984/1985 and 1985/1986.

37 Small-large forest concessions were for instance CV. Karya Jasa, Fa. Alga, and Fa. Telaga Mas.

38 Namely, Karyasa Kencana, Bina Lestari, Inhutani II and Jamaker. The concession area of the four companies together sized approximately 213,040 ha (Soetrisno 2007, p.12). About (perceived) reasons for why there is no forest concession granting in the Mahakam Delta see Chapter 5.

39 The lack of forestry officials to exercise the control was significant. A lack of skilled/trained personnel and operational equipment has often been cited as a prominent factor causing ineffective control. Another factor was that local forestry officials were afraid of enforcing the law upon the large forest concessions, for they were backed up by high-ranking officials and military officers in Jakarta (Magenda 1991; Jemadu 1996; Poffenberger 1997).

40 No. 024/Kpts/Um/1/1983.

issuance of the Government Regulation of 1985 on Forest Protection later strengthened this legitimacy. The 1985 Government Regulation gave legitimacy to forest officials to enforce the law on those who did not have licenses. Across the Forest Areas of East Kalimantan, forest officials or forest rangers warned forest settlers for clearing land or cutting trees or they even caught them.⁴¹

On the Kutai mainland, the exercise of state intervention in illegal forest use in the designated Forest Areas also took place. One instance of a form of control that the TUFPC used frequently was curbing illegal logging. To eradicate illegal logging, the TUFPC established dozens of check points with guards, who were assigned to do daily checks on trucks which were loaded with logs. Due to its downstream location, the TUFPC encountered more illegal logging cases than the other two technical units of the Provincial Forestry Agency which were situated upstream. The groups of people that were involved in illegal logging and which the TUFPC dealt with included local residents, forest companies and sub-contractors of Pertamina.⁴² Confiscating the illegal logs and filing the cases with a court were two of the most common forms of control that the TUFPC used. At the TUFPC it was thought that if the institution would collect levy they could legalise illegal logs,⁴³ but in practice this did not happen.

Vargas's work (1985) on the interface between the customary law of a Dayak community and national law on land in a village of the Loa Kulu sub-district of Kutai District interestingly shows how state intervention which infringed upon customary land rights appeared through the operation of the PT. International Timber Corporation Indonesia (ITCI).⁴⁴ The employees and lawyers of the ITCI denied the request for compensation conveyed either by the indigenous Dayak community or migrant communities arguing that the Dayak traditional group did not have legitimate rights. The local forestry officials told the Dayak community that the ITCI should not have to pay compensation for cutting down trees, given that the company already paid to the

41 For concrete examples of law enforcement as cited above see Vayda and Sahur (1985); Vayda (1996, p. 42).

42 The sub-contractors of Pertamina cut trees from Forest Areas mainly for constructing platforms of rigs, employees' housing and helipads (Kesatuan Pemangkuan Hutan Mahakam Ilir 1985, p. 4 and 8).

43 See Laporan Tahunan KPH Mahakam Ilir 1983/1984.

44 The name of the village is Jonggon. When Vargas did her field work, the village was mostly inhabited by Kedang Dayak. Indeed, Loa Kulu is not precisely located on the mainland of the Mahakam Delta. It is located further upstream. See Poffenberger and McGean (1993) for a comparison of how the presence of the ITCI also neglected the traditional rights over forest resource in other villages of the Dayak community. I could not find any literature which describes how state intervention occurred through large-scale extraction on the mainland of the Mahakam Delta during the period of 1970-1998.

government, as the owner of the forest (Vargas 1985, p. 167).⁴⁵ Using the same argument, the ITCI employees and local forestry officials forbade the Dayak community to cut trees in their customary primary forest, arguing this area now fell within the forest concession. The government also denied customary land rights in the case of a project of a small-holder in rubber, run by the Provincial Plantation Crop Service. In addition, the Kutai District government denied customary rights over non-timber forest products, notably birds' nests by forbidding the Dayak community to exercise their traditional rights, whilst awarding licenses for the harvesting of bird's nests to outsiders.

Whilst most parts of East Kalimantan experienced such fierce state intervention in forestry resource use, particularly since the 1983 forest designation followed by the enactment of the Government Regulation of 1985 on Forest Protection, this contrasted rather starkly with what happened in the Mahakam Delta. As will be further elaborated in Chapter 5, there was hardly any exercise of state intervention in the 'Production Forest' of the Mahakam Delta. As a result, unlike the local residents on the Kutai mainland who were unable to utilize surrounding forest land due to the claim of state ownership, the local residents of the Mahakam Delta freely opened the mangrove forest to plant coconut and pepper crops, before converting to shrimp ponds (Levang 2002, p. 6 and 17; Lenggono 2004, p. 112-113). However, though they did not experience any state intervention directly, there was a level of intervention through the presence of oil and gas companies, as is explained in the following paragraphs.

After three years of failing to discover an oil reserve, in 1970 Japex handed over the Mahakam-Bunyu Block to Total E&P Indonesia with the agreement of equal benefit sharing (see Section 6.2). Two years after the hand-over (1972), Total E&P discovered an oil field which was followed by further oil field discoveries in 1974, 1977, 1986, 1991 and 1992 (Sandjati et al. 2005, p. 149). Meanwhile, Virginia Indonesia Company (Vico) discovered an oil and gas field in Muara Badak sub-district in 1972 which was estimated to deposit the largest oil and gas reserve in Indonesia.⁴⁶

The commencement of oil and gas exploitation by Total E&P and Vico definitely affected fishermen and farmers. Total E&P occupied some river and sea areas in the Mahakam Delta that were used for fishing (Hidayati et al. 2004; Hidayati et al. 2005), while Vico used some plots of land that were already utilized or possessed. Given that both Total E&P and Vico used fishing grounds and land that the local people had been using, this inevitably turned

⁴⁵ When the ITCI eventually paid the compensation, the real motive was not that they recognized the land rights of the Dayak community and recent immigrants, but primarily to avoid trouble (Vargas 1985, p. 166).

⁴⁶ The field was named Badak Field. The discovery was followed by six other oil and gas fields in adjacent areas. VICO used to be called HUFFCO Indonesia or Huffington Company Indonesia. The company was founded by two Americans. See http://id.wikipedia.org/wiki/VICO_Indonesia (accessed on 27/10/2011).

to conflict. To deal with conflicts with fishermen regarding fishing grounds, Pertamina Unit IV with which Total E&P and Vico had signed production sharing contracts sent a letter to the Kopkamtib's Regional Special Operation Unit (Laksusda) of East Kalimantan asking to pay attention to the fishing and sailing in or around the platforms of oil and gas companies.⁴⁷ Laksusda conveyed this message in a radiogram to the Governor. The Governor, then, sent a radiogram to the Kutai District Head. The correspondence finally ended with a letter made by the District Head which was sent to the Head of the Kutai Fishery Agency and four sub-district heads, namely those of Bontang, Sangkulirang, Anggana and Muara Badak. In general, the radiogram and letter aimed at controlling the fishing and sailing in and around the companies' platforms.

In the meantime, Vico and Total E&P, strongly assisted by Pertamina Unit IV, obtained land for their exploitation through land acquisition. Recognizing the local ownership of land, Vico and Pertamina provided compensation for land, trees and huts. However, they sometimes applied a physical standard to determine whether a plot of land was private (*tanah garapan*) or state land. If the land was still fully covered by trees, they would claim it as state land and compensation would not have to be paid. When intending to obtain 30 ha of forest land in Sambera, Salo Palai village of Muara Badak sub-district in 1978, Vico did not pay compensation to the local residents, but instead to PT. Meranti Sakti, whose concession areas included this area.⁴⁸

Whilst state intervention in land, forest and oil and gas resources occurred primarily through the issuance of concessions, this was not the case for fishery resource use. Apart from issuing permits, determining fishing zones and prohibiting particular types of gear, the state used two other prominent policy measures to control fishery resource use. Since the late 1960s the Provincial and Kutai District government passed some regulations on fishery resource use to implement the national fishery regulations.⁴⁹ In order to exercise formal state intervention, the Kutai District Fishery Agency installed some warning boards and check points. However, as occurred with the forestry regulations, formal state intervention in fishery resource use similarly lacked effective implementation. As Hartoto (1997, p. 78) observed.

47 The term Kopkamtib stands for Operational Command for the Restoration of Security and Order (Komando Pemulihan Keamanan dan Ketertiban). It used to be an intelligence organization. It was established not long after the so-called G30 S event in 1965. Like the ordinary military organizational structure, the Kopkamtib also existed at the regional level namely in the form of Laksuswil (Kopkamtib's Inter-regional Special Operations) and Laksusda.

48 Vico paid around US\$ 30,000 to PT. Meranti Sakti for cutting down all trees. The acquired 30 ha of land are presently located in non-forest area.

49 See Hartoto (1997, p. 78) about the severe ineffectiveness of the Kutai District Regulation of 1978 on Fishing.

Even though the Kutai District Agency has built some check points nearby the lakes of the middle Mahakam River, no guards stayed at the check points or watched around the lakes. Likewise, even though there were some warning boards installed prohibiting fishing in the lakes, during my field research, there were more than twenty boats operating.

3.3 PERIOD OF 1998-2011: THE 'REFORMASI' AND DECENTRALIZATION

As said, in the period from 1998 until 2011, the fierce competition to gain access to natural resources tested formal state intervention, which had been developed as of the late 1960s in the Mahakam Delta and since the 1950s elsewhere in East Kalimantan. Due to the abovementioned pressure, environmental deterioration came up as overarching issue. This has recently led to discussions on how to establish sustainable natural resources use in the Mahakam Delta, which could generate income for various users on one hand, and protect and preserve the environment on the other.

The pattern of competing to gain access to natural resources in this period is heavily influenced by the way local actors perceived the '*reformasi*' in relation to natural resources management. For local actors, whether government officials or local people, the *reformasi* has been understood as an opportunity to benefit from natural resources extraction from which they had been excluded for more than thirty years of timber concessions steered by the central government (Barr et al. 2001; Obidzinski and Barr 2003; McCharty 2006; Moeliono et al. 2009). In relation to the perception which suggests that *reformasi* is an opportunity, district government officials on many occasions said that the *reformasi*, which held decentralization of natural resources management high on the agenda, would provide greater prosperity to local people. One way to achieve that goal would be to give greater access to local people in utilizing natural resources, so they would get a greater share of its benefits (Casson 2001, p. 15).

Similarly, regional and local government officials regarded the *reformasi* as an opportunity to end centralized natural resources management. Pursuing revenue generation and enhancing the prosperity of local people were two of the most important reasons for pushing the central government to move to immediate and full regional autonomy (Moeliono et al. 2009). The former Kutai District Head said during his opening speech of the start of an ambitious program, entitled 'Moving Forwards Kutai's Development Endeavours' (*Gerakan Pengembangan Pemberdayaan Kutai* abbrev *Gerbang Dayaku*).

With capital originating from Law No. 22/1999 and Law No. 25/1999,⁵⁰ we had many opportunities to determine and colour our future lives. We can shape the regional community of Kutai to be independent, creative and prosperous.⁵¹

At the time the central government was formulating laws and policies on decentralization, in many places local people reclaimed their rights over natural resources, which they perceived as having arbitrarily been taken away from them by the government or private companies. Those who made the claim on the basis of their customary rights argued that customary law was now equal to state law (Barr et al. 2001, p. 26; Potter 2005, p. 390; Barr et al. 2006, p. 12).⁵² Their claims corresponded with the long standing promotion of community-based natural resources management, which NGOs had campaigned for the early 1990s. In a place like the Mahakam Delta, the occupation of state forest land was not based on customary claims, but on the fact that the forest land was not utilized (Hidayati et al. 2005; Timmer 2010). Apart from these specific arguments, there was an underlying general notion at stake, namely the perception that the reformasi meant the disappearance of previous control, which in Indonesian language is popularly called freedom (*bebas*) (Potter 2005, p. 390; Arnscheidt 2009, p. 350).

These changing social phenomena at the regional and local level influenced the substance of the reformasi in natural resources management that the central government was shaping, considerably. A former Head of the Kutai Forestry Agency, who served during 2001-2004, conveyed a very interesting view on the reason which the Minister of Forestry used for forming the policy that gave district heads the authority to issue small-scale logging. To him, the policy was primarily aimed at controlling the anger of the local people by allowing

50 While as far as political issues are concerned the two laws were made in the hope to prevent national disintegration, from a legal point of view the two laws were enacted in a way to formulize legal instruments for decentralization policies after 32 years of an authoritarian regime led by Soeharto. Prior to the passage of the two laws in 1999, the People's Consultative Assembly had made the decree No. XV/MPR/1998 concerning regional autonomy, just natural resources use and fiscal balance between the central government and the regions, which laid down an official political consensus on decentralized government. The political consensus was subsequently translated into the two laws. Law No. 22/1999 on Regional Autonomy in which the central government transferred some of its authorities to regional governments, indeed contained a spirit to boost regional governments to pursue people's prosperity by allowing the regional governments to generate regional development on the basis of local creativity. This creativity can, for example, be translated into exploring potential sources of local revenue that can be used to fund regional development. For this purpose, Law No. 25/1999 on the Fiscal Balance between the Central Government and the Regions was made. This law introduced new fiscal relations between the center and the regions and provides new formulas for dividing revenues (Hidayat and Antlov 2004: 270). It was assumed that the two laws formed a package for policy on regional autonomy. See Fauzan (2006, p. 225); Sabon (2009, p. 152) and Sutedi (2009, p. 8).

51 Casson (2001: 15). See also Syauckani (2004a); Syauckani (2004b).

52 For the accounts of how local people reclaimed their customary forest land to pursue compensation from private companies see Casson (2001); Obidzinski and Barr (2003, p. 25).

them to enter forest areas and cut trees.⁵³ This view reminds us of the reasons, which motivated the central government, when responding to the emergence of regionalism in the 1950s and 1960s (see Section 3.1).

This concrete instance of forest policy formulation shows that allowing local people to legally participate in natural resources extraction was an important objective of the reformed policies on natural resources management. Some departments of the central government thought that giving the authority to district/municipality governments to issue small-scale logging would be the most appropriate response to the increasing demand of the local people. In addition, they also thought that decentralization would enable democratic natural resources management, given that the local people could more easily access decision-making (Barr et al. 2001, p. 25; The Asia Foundation 2003; Aspinall and Fealy 2003; Moeliono et al. 2009, p. 5).

In the light of the above developments, the central government immediately passed some regulations on the transfer of government affairs to regional government, notably at the district/municipality level. With regard to natural resources management, public management of forests, plantations and mining was transferred. In the forestry sector, the partial transfer of authority through the enactment of the Government Regulation of 1998, had even taken place before the Law on Regional Autonomy, the Law on the Fiscal Balance between the Central Government and the Regions and the Law on Forestry were all passed in 1999.⁵⁴ Without waiting for the completion of the new Forestry Law, which was in the process of being drafted, the Minister of Forestry continued to make regulations concerning the transfer of authority through the issuance of a Government Regulation and two ministerial decrees in 1999.⁵⁵

With the ultimate goal of decentralizing forest management, notably by issuing concessions which increase local people's access to forest exploitation, the regulations stipulated the following two things. Firstly, they expanded the authority of the provincial and district/municipal governments in matters of forest management. Secondly, they gave a governor the authority to issue small concessions on timber and the extraction of forest products on areas sizing no more than 10,000 ha, whereas a district head/mayor could issue a concession on an area not larger than 100 ha. To ensure that the concession

53 Interview SS, a former Head of Kutai Forestry Agency, 11/6/2008.

54 Government Regulation No. 62/1998 on the Partial Delegation of Authority in the Forestry Sector to the Region. This regulation replaced Government Regulation No. 64/1957.

55 The Government Regulation was No. 6/1999 concerning forest enterprises and the extraction of forest products in areas designated as Production Forest, and the Decree of the Minister of Forestry and Estate Crops No. 310/Kpts-II/1999 concerning guidelines for the issuance of licenses for the extraction of forest products, and No. 317. Later, the Ministerial Decree was changed by No. 317/Kpts-II/1999 concerning the indigenous rights on the collection of forest products in areas designated as Production Forest. Later, the former ministerial decree was replaced by No. 05.1/Kpts-II/2000.

would be given to local people, the regulations stated that the concession had to be awarded to an individual Indonesian citizen, cooperatives or another Indonesian legal body.⁵⁶

Similarly, the Minister of Energy and Mineral Resources formed regulations which granted a district/municipality the authority to issue a mining license. In 2000, the Minister passed a decree, which authorized district heads/mayors to issue a small mining concession over an area sizing no more than 5,000 ha.⁵⁷ Before this decree was issued, licenses concerning vital and strategic mining which could only be issued by the Minister of Energy and Mineral Resources. Restrictions remained. For example, the district head/mayor could only issue a license for mining which was not classified as vital and strategic. The small mining concession could be assigned to local cooperatives (Salim 2005; Susmiyati 2007, p. 22 and 38).

Policies aimed at enabling local communities to benefit more from land and natural resources extraction occurred too in the plantation sector. In 1999 and 2002, the Minister of Forestry and Estate Crops and the Minister of Agriculture respectively issued decrees. The decrees gave a governor and district head/mayor the authority to grant licenses for small-scale estate plantation (Colchester et al. 2006, p. 45).⁵⁸

Meanwhile, in contrast with the forestry, mining and plantation sector, no such regulations, which were to create greater access for local people, were introduced for the fishery sector (Patlis in Resosudarmo 2005, p. 233).⁵⁹

As a province which has approximately ten million hectares of production forest, and which contains large mining reserves, East Kalimantan was one of the first provinces in Indonesia to implement the regulations on the issuance of small-scale logging. Moreover, the number of forest concessions that were still active by the end of the centralized government had decreased from 120 to 75 (Poffenberger 1997, p. 456). On the Kutai mainland, some of the large forest concessions had ceased to operate since the second half of the 1980s.⁶⁰ Since many large forest concessions were no longer active, around two millions hectares of Production Forest lay idle and became suitable for the issuance of small forest concessions (Badan Planologi Kehutanan 2002, p. 9). The fragmentation (*pemekaran*) into new districts, which sought to immediately generate

56 See Article 22(2) Government Regulation No. 6/1999, and Article 4 (3) the Decree of the Minister of Forestry No. 310/Kpts-II/1999.

57 The provision was stated in the Decree of the Minister of Energy and Mineral Resources No. 1453K/29/Mem/2000.

58 Pursuant to the Decree of the Minister of Forestry and Estate Crops No. 603/2000 and the Decree of the Minister of Agriculture 357/Kpts/HK.350/5/2002, a district head could issue a license on an area sizing no more than 100 ha.

59 In 1999, Berau District Government issued Local Regulation No. 69/1999 concerning the management of turtles and their eggs (Obidzinski and Barr 2003, p. 13-15).

60 Interview A, a staff of Muara Badak office of Kutai Forestry Agency, 6/3/2009.

district revenue, was another factor that pushed district governments to issue small concessions.⁶¹

Through these enabling and push factors, the implementation of the regulations on the transfer of authority in East Kalimantan resulted in a large number of small concessions on forest, mining and plantation.⁶² To illustrate the point, this book takes Kutai District as an example. During 1999-2000, the period when many small forest concessions were granted, the Kutai District Head issued 200 Timber Collection and Utilization Permits (*Izin Pemungutan dan Pemanfaatan Kayu* abbrev. IPPK) and 50 Forest Product Collection Permits (*Hak Pemungutan Hasil Hutan* abbrev. HPHH).⁶³ During the period of 2002-2006, the Kutai District Head issued 493 letters confirming coal mining licenses (*Surat Keterangan Izin Pertambangan*). Of these, 309 permits resulted in exploration permits, and 90 exploitation permits (Susmiyati 2007, p. 44).⁶⁴ It should be noted that the issuance of the small concessions was only possible through the prior passing of some Kutai District regulations. Two of these are Kutai Regulation No. 22/1999 concerning private forest land, and No. 2/2001 concerning mining permits.

As said, the central government expressed hopes that the decentralization of natural resources management in which the local people would have a greater share of its benefits, would effectively control their anger on one hand,

61 After being divided into four districts and two municipalities in 1959, in 1997 East Kalimantan province saw the establishment of another municipality called Tarakan. During the early stage of the 1999 decentralization, the Province saw a further division with two large districts, Kutai and Bulungan, being fragmented into several smaller districts through Law No. 47/1999. The fragmentation resulted in Kutai District being divided into three districts and one municipality namely Kutai Kartanegara, Kutai Timur, Kutai Barat and Bontang. Bulungan District was divided into three districts namely Bulungan, Nunukan and Malinau. In 2002 and 2007, the region was further fragmented with Penajam Pasir Utara and Tanah Tidung as new districts.

62 Another push factor behind the issuance of the large number of small-scale concessions on natural resources extraction in East Kalimantan was the desire of local politicians to collect money for their respective political activities. It resembled the situation of the 1950s, when there was a democratic multi-party rule. The engagement of local politicians in the business coincided with the emergence of new local networks, mostly with ethnic and kinship ties, which benefited from the small-scale concession system. See Peluso (1983); Obidzinski and Barr (2003); Obidzinski (2003); Barr et al. (2006). For an account of how the local networks evolved and played a role in the small-scale logging in Central Kalimantan see McCarthy (2001); McCarthy (2004), and in Sumatera see McCarthy (2005), and McCarthy (2006).

63 Across East Kalimantan, around 700 IPPKs/HPHHs were issued during that time, covering hundreds of thousands of hectares of forest land. See Casson and Obidzinski (2002, p. 137-138); Barr et al. (2006, p. 89).

64 According to a figure released by the Indonesian Forum for Environment of East Kalimantan (Walhi Kalimantan Timur), with a total area of 1.2 hectares of coal mining, Kutai District has the largest coal mining area in East Kalimantan. See 'Total Izin Melebihi Luas Kaltim. IUP Tambang Bermasalah Disorot Lagi. LSM Sebut Bertolak Belakang Kaltim Green'. *Kaltim Post*, 7/8/2010.

and prevent environmental destruction on the other hand. However, uncontrolled issuance of small concessions generated serious social and environmental problems. Due to a severe lack of local forestry officials, particularly for newly established districts, the destructive management of the small concession holders could not be controlled (Casson 2001; Obidzinski and Barr 2003; Barr et al. 2003; Moeliono et al. 2009). Moreover, in reality there was much logging without a permit from the district government (Casson and Obidzinski 2002; Obidzinski 2003; Barr et al. 2006).

As said, in a Production Forest like the Mahakam Delta where no forest concession or protection existed, the practice of competing to gain access to natural resources was widespread. At that time the local people and recent immigrants who cleaned up the forest to convert it into shrimp ponds, found the area empty and belonging to nobody. For this reason they felt that their occupation was legitimate, despite perceiving the empty area as state land (Hidayati, Djohan and Yogaswara 2008, p. 57).⁶⁵ The only state-like intervention in obtaining land rights was through the role of village heads, who gave semi-official permissions to some land holders (Lenggono 2004, Hidayati et al. 2005; Hidayati, Djohan and Yogaswara 2008). Only after the land holders started undertaking transactions on their land – e.g. acquisition, sale and loan –, formal and semi-formal rules began to apply. Only later, they encountered objections to or contestations about their rights over the forest land by advancing economic, social and legal arguments (see Chapter 8 for a further description of the various arguments that land holders advanced).

3.4 CONCLUDING REMARKS

Since independence in 1945 until the late 1950s, natural resources management in East Kalimantan, notably in Kutai District, did not only rely on legal norms, but also on government structures inherited from the colonial times. In the course of this period, regulations concerning permits on forest, mining and fishery resource use chiefly continued to be based on a colonial framework. The only change to the legal system on natural resources in this period was the person, who makes the decisions in public administration, notably who was authorized to issue permits and collect royalties, levy or tax. One thing that should be noted is that in the course of the period, due to their past status as self-governing states and the slow establishment of regional government agencies, the four sultanates still played a significant role in issuing permits in addition to collecting tax, levy and royalties. In the years between 1957 and 1970 the decentralization of management of natural resources enabled local

⁶⁵ For an account of how a similar argument was used by local residents and migrants to occupy a mangrove forest in Bulungan District see Setiawati (1999).

people to interact more closely with local politicians or policy makers so that they could practice their customary norms on natural extraction.

During the period of 1970-1998 state intervention in natural resources use was carried out through centralized natural resources management. To implement the centralized state intervention, the central government produced a packet of laws and regulations. The laws and regulations did not only move the authority to issue permits to the central government, but also superimposed formal rules on traditional or local rights on land and natural resource use. During the period of centralized management it became difficult for people to exercise their local rights on natural resources management. In many places, it was prohibited for local people to clear land and cut trees. The only way the local people were able to practice their rights was through informal and semi-informal arrangements, which could emerge since the actual implementation of formal state intervention was very weak.

It can also be observed that during the period of centralized management, state intervention was less exercised in one sector, but strongly exercised in others. As will be elaborated in detail in Chapter 5, in this period the local people were relatively free to clear up forest to convert it into farms and later shrimp ponds. There were hardly any local forest officials who warned or even asked them to stop converting the forest land. Unlike the timber companies on the mainland, which regarded the rights claims of the local people as illegitimate, Vico and Total E&P behaved differently. They recognized the local people's rights on their land by providing compensation. At the same time, state intervention in fishery resource use was fiercely exercised by creating restricted fishing zones. This fiercer form of state control ensured that oil and gas extraction was not interrupted.

From 1998 the reformasi and decentralization were perceived by the local actors (government officials, politicians, community leaders and ordinary local people) as implying more freedom to exercise authority and customary law on one hand, and by the central government as an opportunity to manage the anger of local actors on the other. The period of 1999 until the present has been filled with regulations which primarily allowed provincial and district/municipality governments to issue permits on small-scale natural resources extraction. By awarding small-scale extraction to the local people, the regulators expected that the local people would get a greater share in benefit from natural resources use. However, this objective has not been fully realized, as narrow self-interests of local networks have impeded an effective exercise of state intervention. As a result, in reality, the extent to which the local people could utilise local natural resources use has depended heavily on informal and semi-informal arrangements. This has also been the case with the local people of the Mahakam Delta, as no official permit has been issued by either the Provincial or Kutai District government.