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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8 The status of the forest: how legal is forest land use?

8.1 INTRODUCTION

When mangrove forest in the Mahakam Delta was increasingly converted into shrimp ponds during the period 1997-2002, some pond owners came to the District Office of the National Land Agency (DONLA) to apply for a land title with the eventual aim to obtain a land certificate. Knowing that most of the Mahakam Delta is state forest, the DONLA officials refused to process the applications. They refused the applications, despite being aware that some of the land to which the pond owners applied was not located in the Forest Area but in the 6,000 ha of non-forest area over which they were actually allowed to issue land certificates. Given that few parts of the Mahakam Delta are non-forest area, the DONLA officials were supposed to figure out in which area the applied-for land was located, before deciding on refusal or acceptance. Even when the pond owners brought them letters that were officially signed by village heads and sub-district heads, the DONLA officials still refused to process the applications. The overarching reason why the DONLA officials refused to consider the applications was that they were afraid of being accused of taking part in the deforestation of the Mahakam Delta.

When a local journalist asked whether the Kutai Land Office (2000-2009), a supporting division of Kutai District government, had issued any land certificates in the Mahakam Delta, the former Head immediately answered that his institution had never done so. He said:

> As we clearly know that the mangrove forest of the Mahakam Delta is a Protected Forest, we never issued any land certificate in the area. If, in fact, there are pond owners who hold a certificate, I can assure you that they must be illegal land certificates.[1]

The illegality of land possession (see Section 6.2 for the reason why I use the term 'possession' in this book) in the Mahakam Delta has long been discussed. Nevertheless, the discussions on illegality have not led to law enforcement in case of illegal land possession. Instead, the discussions moved to administrative justifications self-defence, where the concerned provincial and district agencies argued that they did not provide any support or legitimacy to man-

1 'Tidak Ada Sertifikat'. *Kaltim Post*, 14/6/2004.

grove conversion. In fact, the officials have been unwilling to further figure out whether the alleged issuance of land certificates in the Mahakam Delta really had taken place or not. The officials' responses to queries about the issuance of land certificates were without adequate knowledge of how many land certificates on the Production Forest had actually been issued. They, therefore, merely responded to rumours.[2]

The DONLA officials had often used legal arguments in refusing the land title application, saying that the Production Forest of the Mahakam Delta was not under their jurisdiction. Yet, it should be noted that through this argument, the officials accordingly considered any land possession in the Mahakam Delta as illegal. However, the former Head of the Kutai Land Office, whose statement was quoted earlier, did not call the land possession illegal, because the pond owners still had use rights, even when they did not have ownership rights. Not only regional and local government officials have had this opinion, so have central government officials and companies' employees. Legal professionals such as judges and solicitors have similarly regarded land possession in the Mahakam Delta as legal.

Like many millions ha of land possession in Forest Areas across Indonesia, land ownership and land possession in the Production Forest of the Mahakam Delta have a history of questions on legality (Fay and Sirait 1999). The unclear legal framework on land ownership and land possession in Forest Areas has resulted in continually changing behaviour of local officials in treating land owners or land possessors. Their behaviour has varied according to time and situation. However, there seems to be a pattern in their behaviour that the closer they are to land possessors, the more they tend to perceive the possession as legal.

This chapter discusses how formal and semi-formal rules govern land possession in the Mahakam Delta. Emphasis is on the formal and semi-formal rules concerning state land which is occupied and cultivated by private parties. The way in which regional and local government officials as well as legal professionals have dealt with legal matters surrounding this type of land possession is also discussed.

2 The Head of the Provincial Environmental Agency told a local journalist that they would take the necessary measures to stop the issuance of land certificates in the Mahakam Delta. Yet, when he was asked whether land certificates really had been issued in the Mahakam Delta, he simply said, 'I do not know, but it seems that many pond owners have land certificates, since control is weak'. See 'Dilarang Keluarkan Sertifikat Tanah, Dampak Kerusakan Delta Mahakam'. *Kaltim Post* (N.d.).

8.2 LEGISLATION: MAIN LAWS AND PROVISIONS

Chapter 5 and 6 extensively discussed forestry and petroleum laws and regulations, and included short accounts of land regulations. Chapter 5 on forestry regulations (Section 5.2) mentioned a few things about land possession when forest delineation processes were described. In sum, it was stated that the Committee on Forest Boundary Delineation, which was carrying out forest delineation, was to make an inventory of all instances of land ownership and land possession, and buildings and crops that existed on the forest land that was to be delineated. If the inventory found either land ownership or possession, the committee had to resolve any rights claims of the owners or possessors, notably by providing compensation. Only if the right claim had been wholly resolved, then the Ministry of Forestry could claim that a particular Forest Area now belonged to the state, for it would be free from any private property rights. Chapter 6 (Section 6.2) informed us on the rules regarding the process of land acquisition, which guided oil and gas companies in their negotiations with land possessors. It was said that any petroleum company, which would acquire land for extraction, had to provide compensation to any land owner or holder, who owned or used this land. The companies also had to provide compensation to land owners or possessors, who could not exercise their rights over their land temporarily due to the companies' extraction activities.

Yet, since those two chapters discussed the rules on land from a specific angle, they could not provide a broader picture of land regulations. This, therefore, leaves the following basic question: how do land regulations actually regulate land in a specific situation like in the Mahakam Delta? The question is, more specifically, how formal and semi-formal rules govern the use of forest land for non-forest use, which is carried out by private parties who do not have a land certificate as evidence of ownership.

8.2.1 The origin of the recognition of possessory evidence

Indonesian land law recognizes three types of land ownership evidence and land possession (Ind. *bukti hak*), namely a written document, a testimony and a self-declaration. Of the written documents, a certificate is regarded as the strongest type of evidence of ownership (Perangin 1986, p. 108; Parlindungan 1999, p. 127; Soerodjo 2002; Harsono 2007, p. 478,).[3] A certificate is also the only form of ownership evidence that provides a land title as recognized by

3 See Soerodjo (2002).

land law.[4] Other forms of written evidence of ownership include tax receipts, sale receipts, notary deed of land transaction, and a letter of rights issued by a government official.[5] Those different types of written evidence could be named forms of 'possessory evidence'. Yet, as provisional evidence, possessory evidence should be complemented by other forms of evidence (Aryanto 2006, p. 26). To what extent does formal land law recognize possessory evidence?

In general, it could be said that the origin of the recognition of possessory evidence came from their function as provisional support that was needed for two purposes, namely to issue land titles and licenses for other natural resources use, and to provide compensation in case of land acquisition (*pengadaan tanah*). Although ending up with different final processes, land titling, a license issuance or land acquisition turned possessory evidence into a means of determining whether the holder was entitled to a land title, license or compensation.

Possessory evidence has not only been used in public law, but also in private law. Law 1996 on Land Mortgage over Land and Related Properties is one such example. In principle, the law stipulated that only registered and certified land could be proposed as mortgage. Yet, the law would allow a mortgage, in which the land was unregistered and uncertified on the condition that those who would like to borrow money from a bank would apply for a certificate, shortly after they and the bank had officially signed a bank loan contract.[6]

With regard to land titling, regulations on land conversion (*konversi tanah*) treat possessory evidence as a recognized written document, besides the certificate which is required to apply for land conversion.[7] It is stipulated that possessory evidence could be either a tax assessment (Ind. *Surat Pemberitahuan Pajak Terutang* abbrev. SPPT), a letter of declaration signed by a village head

4 The recognized land titles are ownership rights, long-lease rights (*hak guna usaha*), building rights (*hak guna bangunan*), use rights (*hak pakai*), lease rights (*hak sewa*), land reclamation rights (*hak membuka tanah*), and rights to collect forest products (*hak memungut hasil hutan*). There are also several temporary land rights, such as *hak gadai, hak bagi hasil, hak menumpang and hak sewa tanah pertanian*, which the BAL suggested to be abolished in the future due to their exploitative character. Besides those rights, *hak pengelolaan* is a new land right, which is not stipulated in the BAL but became a new official land right in 1965 (Parlindungan 1999, p. 86 and 104).

5 In this regard land law is subject to Indonesia's Civil Law Code (Article 1866), which determines that a written document, testimony, *persangkaan*, letter of declaration and pledge are forms of legal evidence.

6 Article 10 of Law No. 4/1996 on Land Mortgage over Land and Related Properties. See also Effendi (2009).

7 Part II of BAL is the foundation for all legislation on land conversion. It was further elaborated by two organic regulations, namely the Decree of the Minister of Agriculture and Agrarian Affairs No. 2/1962 and the Decree of the Minister of Home Affairs No. Sk. 26/DDA/1970 on *Penegasan Konversi dan Pendaftaran Bekas Hak-Hak Indonesia Atas Tanah*. In Indonesia, land conversion is defined as any policy or action to convert former land rights into land rights as recognized in the BAL (Harsono 2007).

and sub-district head, a receipt of a land transaction (sale, grant, exchange) or a decree issued by authorized officials awarding a particular right to someone. If someone does not have a complete set of possessory evidence or no evidence at all, he or she may still apply for conversion by providing a letter of self-declaration stating that the land belongs to him or her, supported by a testimony of those who have knowledge of the ownership history of the land in question (Ilyas 2005; Harsono 2007, p. 494-495, Sabillah 2008, p. lxvi-ix). Likewise, regulations on land registration require possessory evidence for the application for a particular land title. It is stipulated that all those applying for a land title should present either written or unwritten evidence to prove their actual control (Ind. *dasar penguasaan)* over the applied-for land.

Concerning land acquisition, although higher land regulations stipulate that only certificate holders are entitled to compensation, some lower land regulations stipulate differently.[8] Lower land regulations state that possessory evidence should be presented by those who apply for compensation.[9] Regulations on land acquisition, which is not for public interest but for private development, stipulate the strict need for possessory evidence. The Decree of the Executive Agency of 2007 concerning land acquisition in the petroleum sector, for instance, emphasises the requiirement that any land possessor should present a land letter signed by the village head and sub-district head (see Section 6.2).

Not only for land conversion, registration and acquisition, Indonesian land law also uses possessory evidence for license issuance. The provisions can be found in legislation concerning a Land Reclamation License (LRL). According to Abdurrahman (1995, p. 99), the LRL derived from Land Reclamation Rights as stipulated in the 1960 Basic Agrarian Law. Land Reclamation Rights themselves originated from *adat* customary law, where they are referred to as forest reclamation rights (Parlindungan 1986, p.121, Harsono 2007). Forest reclamation rights were granted by an *adat* community leader, either to a member of the community, or to an outsider, to clear a piece of forest for agriculture and further utilize it. In the subsequent regulations, Land Reclamation Rights were converted into a license instead of rights, as already indicatively existed in the BAL (Article 46). This marked a shift in regulation of Land Reclamation Rights, whereby the authority moved from the customary *adat* community to state administration (Azam 2003:12).[10]

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8 The higher legislations are Presidential Regulation No. 36/2005 as amended by Presidential Regulation No. 65/2006 on Land Acquisition for Development in Public Interest, and the Regulation of the Head of National Land Agency No. 3/2007.

9 See Article 51 (1 b and d) of the Regulation of the Head of National Land Agency No. 3/2007.

10 Reclamation is not completely new, for it had existed during Dutch colonial rule. In 1896 and amended in 1925, Dutch colonial rule enacted regulations concerning land reclamation. The regulations stated that any land reclamation should be on the basis of a license issued by a village head or sub-district head. The license was given for a particular size of land

After the enactment of the BAL, legal norms on LRL first appeared in a Regulation of the Minister of Home Affairs of 1972.[11] The Regulation authorizes a head of sub-district to issue a permit called a Land Reclamation License. According to the regulation, the maximum size of a piece of land that a sub-district head could give a LRL for was 2 ha, whereas a head of district/mayor could grant a LRL for an area between 2 and 10 ha. The regulation also stated that in issuing the license, a head of sub-district should take into consideration the advice from the village head. In practice, however, this advice turned into a standard land letter (see Picture 8.1) which was also popularly known as a *leges* letter or *segel* letter (Simarmata 2010b, p.124). Due to problems caused by the issuance of LRLs, in 1984 the Minister of Home Affairs instructed to abolish the authority of heads of sub-districts to issue a LRL.[12]

Apart from its official role as provisional evidence of land possession, some scholars have suggested other sociological and administrative explanations for why possessory evidence still exists and is still recognized by Indonesian land law. One explanation is the slow process of land titling organized by national, regional and local land agencies. Another scholar suggests that the government is aware of the plurality of normative orders of Indonesian land law (Fitzpatrick 1997, Fitzpatrick 2007; Warman 2010; Safitri and Moeliono 2010, p. 15). There is even the suggestion that the pervasive existence of customary land law, in which possessory evidence has increasingly been used, has made the formal land registration system dysfunctional (Haverfield in Lindsey 1999, p. 57).

As said, regulations on other natural resources use also include rules about possessory evidence. The regulations chiefly stipulate that possessory evidence is needed to carry out land acquisition as well as to issue licenses. The next sub-section will examine what forestry regulations say about possessory evidence.

8.2.2 Possessory evidence in Forest Areas

As said (Section 5.2), pursuant to current forestry legislation concerning forest delineation, members of the Committee on Forest Boundary Delineation are assigned to make an inventory of existing private land rights and resolve any

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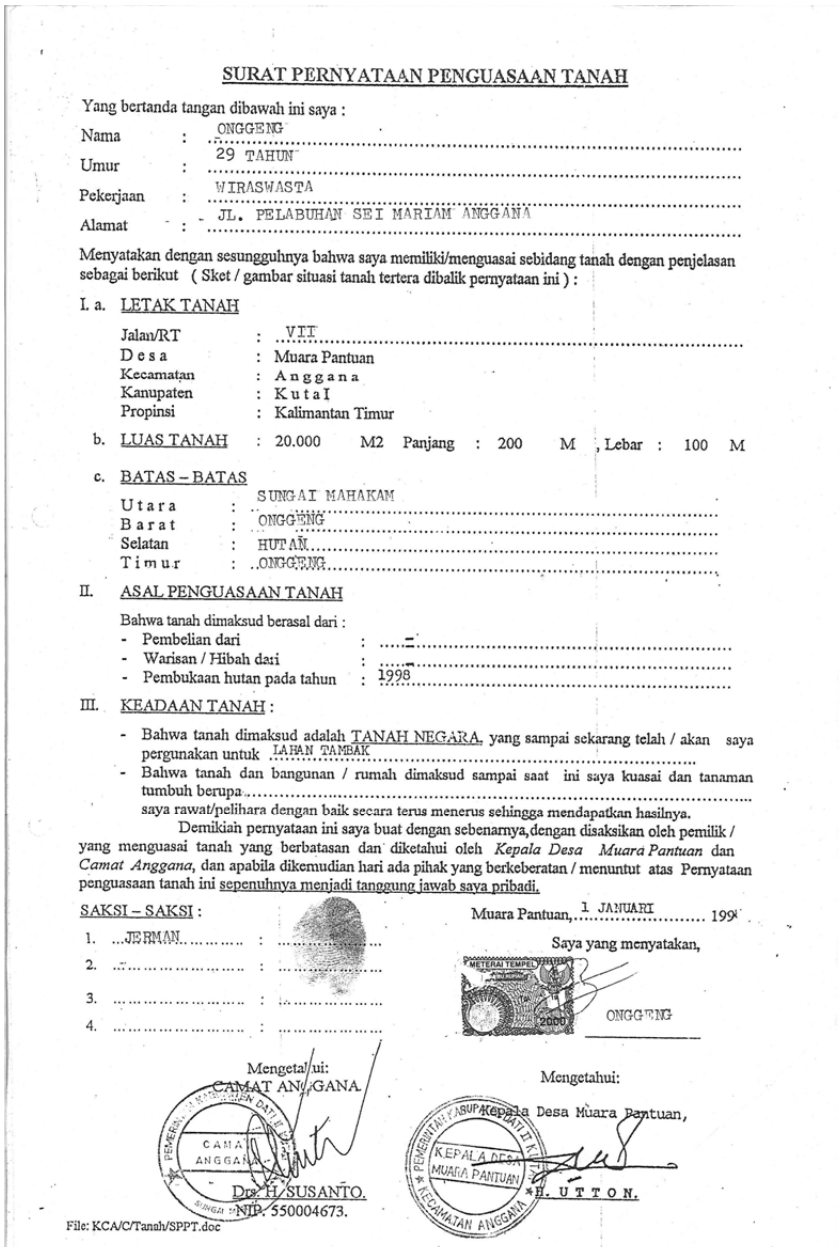
and time period. Any offence was charged with imprisonment or a fine. At that time, the license was popularly known as *cap singa* (literally translated as 'lion brand'). See Wiradiputra (1951, p. 4-6), and Susanto (1980, p. 29-32).

11 Regulation No. 6/1972 on the Transfer of Authority to Issue Land Titles. It has been superseded by the Regulation of the Head of National Land Agency No. 3/1999 concerning the Transfer of Authority on the Issuance of Land Title on State Land and its Annulment.

12 The instruction dated from 22 May 1984. Problems arose because the issuances often concerned the same plots, and the licenses were sold to others instead of being used by the applicants. See Simarmata (2010a:10).

Picture 8.1: Land letter



SURAT PERNYATAAN PENGUASAAN TANAH

Yang bertanda tangan dibawah ini saya :

Nama : ONGGENG

Umur : 29 TAHUN

Pekerjaan : WIRASWASTA

Alamat : JL. PELABUHAN SEI MARIAM ANGGANA

Menyatakan dengan sesungguhnya bahwa saya memiliki/menguasai sebidang tanah dengan penjelasan sebagai berikut (Sket / gambar situasi tanah tertera dibalik pernyataan ini) :

I. a. LETAK TANAH

Jalan/RT : VII
Desa : Muara Pantuan
Kecamatan : Anggana
Kanupaten : KutaI
Propinsi : Kalimantan Timur

b. LUAS TANAH : 20.000 M2 Panjang : 200 M , Lebar : 100 M

c. BATAS – BATAS

Utara : SUNGAI MAHAKAM
Barat : ONGGENG
Selatan : HUTAN
Timur : ONGGENG

II. ASAL PENGUASAAN TANAH

Bahwa tanah dimaksud berasal dari :
- Pembelian dari : -
- Warisan / Hibah dari : -
- Pembukaan hutan pada tahun : 1998

III. KEADAAN TANAH :

- Bahwa tanah dimaksud adalah TANAH NEGARA, yang sampai sekarang telah / akan saya pergunakan untuk LAHAN TAMBAK
- Bahwa tanah dan bangunan / rumah dimaksud sampai saat ini saya kuasai dan tanaman tumbuh berupa ..... saya rawat/pelihara dengan baik secara terus menerus sehingga mendapatkan hasilnya.

Demikiah pernyataan ini saya buat dengan sebenarnya,dengan disaksikan oleh pemilik / yang menguasai tanah yang berbatasan dan diketahui oleh *Kepala Desa Muara Pantuan* dan *Camat Anggana*, dan apabila dikemudian hari ada pihak yang berkeberatan / menuntut atas Pernyataan penguasaan tanah ini sepenuhnya menjadi tanggung jawab saya pribadi.

SAKSI – SAKSI :

1. JERMAN : .....
2. ..... : .....
3. ..... : .....
4. ..... : .....

Muara Pantuan, 1 JANUARI 199

Saya yang menyatakan,

METERAI TEMPEL 2000

ONGGENG

Mengetahui:
CAMAT ANGGANA

Dra. H. SUSANTO.
NIP. 550004673.

Mengetahui:
Kepala Desa Muara Pantuan,

H. UTTON.

File: KCA/C/Tanah/SPPT.doc

rights claims.[13] The norm implies that the definite status of Forest Area can only be gained, if there are no longer any existing private land rights (Fay and Sirait 1999; Fay and Sirait 2005, p. 8). Nevertheless, the norm does not further specify the term 'private land rights'. Thus, it is necessary to look at other forest regulations, which contain provisions concerning the matter.

First, we could go to the Forestry Law of 1999 to find out what forestry regulations say about private land rights. Like other Indonesian legislation on natural resources, the Forestry Law stipulates that private land rights are identical to land rights as stipulated in the BAL. The law refers to ownership rights (*hak milik*), long-lease rights (*hak guna usaha*) and use right (*hak pakai*) as examples of private land rights.[14] The law emphasizes that those who lose their land rights because of forest designation and delineation, are to be compensated (Article 68 (4).[15] Thus, in this respect, following the logic of the BAL and some other lower land regulations, we might think that the law requires implicitly that someone has to present a certificate to prove his or her ownership over a particular piece of land.

Thus, on the basis of systematic interpretation it could be assumed that 'land rights', in the way that the abovementioned forestry regulations understand the concept, include land which is proved by possessory evidence. However, some forest policy experts suggest an opposite interpretation of 'land rights' in these forestry legislations. According to them, the way 'land rights' is meant, includes land title based on certificates only, and therefore excludes possessory evidence (Fay and Sirait 1999, p.14; Fay and Sirait 2005, p. 8; Fay, Sirait and Kusworo n.d, p.12). The proponents of this view refer to the insight of some legal staff members of the Ministry of Forestry, who insisted that a certificate is the only written land title document that forestry regulations include (Fay and Sirait 1999, p. 14; Fay, Sirait and Kusworo n.d, p. 12).[16]

In sum, it appears that private land rights stipulated in forestry legislation on forest designation and delineation include possessory evidence. Yet, this only seems to apply to possessory evidence, which existed before delineation. What applies to private land rights which come into being, after delineation

13 The owners of forest concessions were also asked to resolve rights claims. Such provision is not mentioned in forestry legislation, but it is stipulated in President Directive No. 1/1976 concerning Synchronization of Agrarian Affairs, Forestry, Mining, Transmigration and Public Sector Works.

14 General Elucidation of Law No. 41/1999 on Forestry. See also Article 2(1) of the Regulation of the Minister of Forestry No. P. 26 /Menhut-II/2005 on Guidance for the Management of Private Forest.

15 Same provision can be found in Article 22(2) of the Government Regulation of 2004 on Forestry Planning. Meanwhile, the law defines private forest as forest in which private land titles exist (Article 1 (5) and General Elucidation).

16 Given that the officials of the Ministry of Forestry merely recognized certified land titles, of 108 million ha or 90% of all delineated forest area it is unclear whether it is considered as private land or not (Fay and Sirait 2005, p. 10).

is completed? And in the specific case of the Mahakam Delta, what applies if delineation did not assess and resolve land right claims?

8.2.3 What rights does possessory evidence include?

Given that the BAL does not recognise that the possessor of possessory evidence has any kind of formal land right (Sihombing 2005; Supriadi 2007, p. 23), subsequent lower land regulations have constructed the relation between the possessor of possessory evidence and land. The lower regulations regard possessory evidence as the foundation of rights (Ind. *alas hak*),[17] which proves someone's actual control over as well as the relation with particular land (Effendi 2009, p. 35-36). This brings us to the following questions: what rights does the possessor of possessory evidence actually have, and from which normative order do such rights come?

Attempts to figure out what rights the possessor of possessory evidence has, lead us to its origin. Originally, the land with possessory evidence was customary *adat* land, even if in some cases the land rights can presently not be identified with a particular customary *adat* norm, given the land rights did not develop in a relatively coherent *adat* law community (Fitzpatrick 2005, p. 131; Bedner 2011). Land with possessory evidence originated from Land Reclamation Rights. As said, the rights were granted by an *adat* community leader either to a member of the community, or to an outsider, to clear a piece of forest for agriculture and further utilize it. Pursuant to *adat* law, Land Reclamation Rights allowed its owners to use and alienate (sale, rent, inherit) land (Susanto 1980, p. 31; Wignjodipuro 1982, p. 201-202; Kartasapoetra et al. 1985, p. 91-92).

Currently, instead of naming these rights Land Reclamation Rights, village inhabitants favour the name cultivation rights or 'use rights' (*hak garap, hak pakai*). The term means that the possessors are only entitled to use (*memakai*) the land (Sihombing 2004, p. 80). The name seems appropriate, because the land is actually owned by other parties, whether state or private. When the possessors of land with possessory evidence transfer their land, they merely transfer use rights, instead of ownership rights (Effendi 2009, p. 57).

In practice, however, the possessor of possessory evidence often behaves like the owner, who could transfer and use the land. Thus from a practical point of view, the land does not belong to the state anymore, since it seems

17 Literally, *alas hak* refers to all written documents, except a certificate, which prove someone's possession or control (*penguasaan*) over particular plots of land. As said above, all written documents can be used as the basis for land holders to either register their land, apply for a permit or obtain compensation.

now to be privately owned.[18] Unofficial as well as official rules and actors justify the practice to alienate land. Pursuant to the 2004 Government Regulation on Land Registration, notaries and sub-district heads can endorse the transfer of land with possessory evidence, on the condition that the possessor provides a letter from DONLA stating that the land is not certified yet, ahead of the transfer (Article 39 [1b]). The other provision of the Government Regulation is even more tolerant in that it includes any deed of land transaction signed by either a village head, *adat* chief or notary as evidence for land registration.[19]

Indonesia's Supreme Court through a number of verdicts has long recognized possessory evidence to prove ownership (Ind. *bukti hak*). In this respect, the Supreme Court has not only accepted possessory evidence as valid evidence, but it has also applied *adat* law to settle land disputes. For specific forms of possessory evidence, like a land letter signed by a village head, the Supreme Court has established stable case law (Ind. *yurisprudensi tetap*). The judge-made rule states that the court can not dissolve any document on land that a village head has composed.[20] The recognition of possessory evidence by the Supreme Court actually derived from another verdict of the Supreme Court, which stated that *adat* law should be applied to the transfer of land. In this verdict the Supreme Court stated that *adat*-based land transactions, in which the rights transfer occurs at the moment of the transaction, are recognized. At the same time, the official registration of the transaction in accordance with rules on land registration is a mere administrative procedure.[21]

8.2.4 Formal local rules on possessory evidence

In the East Kalimantan region, regulations on possessory evidence were largely aimed at administering the use of state land by a private possessor. From a legal point of view, the regional regulations were formed in an attempt to implement the Regulation of the Minister of Home Affairs of 1972 on the Transfer of Authority to Issue Land Titles. Nevertheless, the regulations were also set up, because regional governments were dealing with widespread occupation of state land – both Forest Area and non-forest area – mostly by

18 Given that the land possessor actually behaves like the owner, some land law experts have concluded that possessory evidence resembles a certificate (Sutedi 2007, p. 79 and 129-130).

19 See Government Regulation No. 24/1997, the Elucidation of Article 24 (1), and Article 60(2) of the Regulation of the Minister of Agrarian Affairs/Head of National Land Agency No. 3/1997 on Land Registration.

20 This was also the case in, for instance, the verdict of the Supreme Court No. 361 K/Sip/1958. See Ali (1979, p. 172-176).

21 Supreme Court Verdict No. 123/K/Sip/1970. See also Effendi (2009, p. 4). For the recent use of *adat* law in settling a land dispute in East Kalimantan, see the Supreme Court Verdict No. 28 PK/TUN/2006.

migrants and local people. The grand-scale occupation had been triggered by the opening of Forest Areas to the cultivation of cash crops, which were in demand due to the increasing price of exported cash crops. The occupation was mostly undertaken by migrants from South Sulawesi and South Kalimantan.[22]

A second motive for the large-scale occupation was land speculation, in which new immigrants and local people competed for new plots of land or reclaimed land that had long been abandoned. They hoped that companies or government projects would possibly want to use the land they occupied, so that they would obtain compensation.[23] Some government projects, such as transmigration, and private company projects, which needed land, had been hampered considerably by the occupation. In Samarinda city, due to the uncontrolled new occupation, the mayor of Samarinda municipality released a circular letter asking the heads of urban-quarters *(lurah)* to not issue new land letters.[24] Given this background, the regulations on the use of state forest land, which was supported by possessory evidence, were primarily aimed at controlling land use, so that the public and private projects could run without interruption.

At the provincial level, in addition to regulation, an administrative document was also composed to govern possessory evidence.[25] In contrast with the drafting of other regulations, which barely involved non-state actors, the drafting of the administrative document engaged both state and non-state actors.

Provincial Level

(a) Regulation Making

At the provincial level, there are three regulations, which to some extent deal with the occupation and use of state land. Two specifically concern possessory evidence, while the third concerns compensation for land acquisition.[26] Only the first two are described because the third one I have no access to. The first

22 For accounts of the opening of forest land to migrants from South Sulawesi see Daroesman (1979); Vayda et al. (1980, p.182); Poffenberger and McGean (1993); Vayda and Sahur (1985) and Vayda and Sahur (1996), and to migrants from South Kalimantan see Lindblad (1988); Magenda (1991); Knapen (2001).

23 For accounts of this type of land occupation see Vayda and Sahur (1996); Hidayati, Djohan and Yogaswara (2008); Simarmata (2010b); Urano (2010, p. 211).

24 Interview PI, a retired staff the Provincial Office of the National Land Agency, 11/3/2008. For a similar story in Muara Badak sub-district of Kutai District see Hidayati, Djohan and Yogaswara (2008, p. 59).

25 By referring to administrative document I mean a form which applicants for a permit or rights required to fill out.

26 The third local regulation is the Decree of the Governor of East Kalimantan No. 183/1977 concerning the guidance for the compensation of land acquisition for the projects of regional government in East Kalimantan.

two regulations are respectively the Decree of the Governor of East Kalimantan of 1974[27] and the Decree of the Governor of East Kalimantan of 1995.[28]

As said, the initiative for the first two regulations stemmed from the observation that private parties had started using state land without recognized formal land titles in an uncontrolled manner. The regulations, therefore, aimed at controlling the land use. The 1974 decree contained very simple provisions. It stated that any occupation and use of state land for agriculture, husbandry and fishery purposes should be taken through a LRL issued by a sub-district head, as stated in the Regulationof the Minister of Home Affairs of 1972.[29] Occupation and use of state land without a license would be considered as unlicensed use of state land, which could face criminal charges, as stipulated in a law of 1960.[30]

The expiry date of an LRL was not determined, but the decree stipulated that if its possessor did not use or abandoned the land for three consecutive years, the land would automatically become state land. For any prior land use, which had taken place before the decree was promulgated, the occupants or users were required to register their land with DONLA via a village head and sub-district head to be awarded a LRL. In implementing the regulation, the Provincial government issued a subsequent policy, requiring farmers to organize themselves in local peasant associations (*kelompok tani*) rather than acting individually. Members of the peasant groups, which were officially recognized by village heads and reclaimed the forest, would be granted 2 ha each (Vayda and Sahur 1985, p. 101, 1996, p. 31; Hidayati et al. 2008).

As only a small number of LRLs were issued and the occupation of state land was still pervasive, we may conclude that the implementation of the 1974

27 Decree No. 237/1974 on the Cultivation of State-Owned Agricultural Land.

28 Decree No. 31/1995 on the Guidance to Control Land Letters and Control and Ownership over Buildings/Plans on State Land.

29 Some norms in the 1974 Governor Decree and subsequent regional regulations included stipulations on how to obtain possession rights over land, that had applied in former territory of the Kutai Sultanate since the middle of the nineteenth century. The norms were formed by the Kutai Sultanate (1605-1950), after the Sultan officially declared himself to be the owner of all land and resources in the Kutai Sultanate. Since, any land use in the Kutai Sultanate should be on the basis of a license issued by a village head (*petinggi/demang*) in the name of the Sultan. Likewise, the norms were applied to mining extraction and the collection of forest products (Kanwil Depdikbud Kalimantan Barat 1990, p. 119-120 and 132). Nevertheless, such norms of land possession are unlikely to have applied to the Dayak indigenous groups as their members could convert forests into farms without necessarily getting a license from a village head or *adat* chief. In addition, once the forest has been converted into a farm, it is considered to be permanently owned, even when its owner temporarily abandons it. The abandoned land does not automatically return to the community. For detailed accounts of *adat* rules on land possession of the Dayak indigenous groups see Vargas (1985); Potter (1998); Bakker (2009); Urano (2010).

30 The criminal charge was three months imprisonment and/or a fine of maximum 5,000 IDR. See Article 6(1) of Law No. 51 Prp/1960 on the Prohibition of Land Use without Prior Permission of the Right Holder or His Representative.

Decree largely failed. Rather than creating uniformity in possessory evidence as well as reducing land conflicts, the Decree was followed by two developments. Firstly, village heads hardly carried out a thorough examination of the applications for land letters as they skipped some measures, required by the 1974 Decree. This occurred, because outsiders who acted as land speculators, were able to bribe village heads. In addition, village heads issued land letters to family and relatives. Secondly, the 'name' of land letter signed by village heads and later by sub-district heads varied from one place to another, despite the content being the same.[31]

These practices inevitably led to an abuse of power by many village heads. More than one land letter could appear for the same plot of land. Another common practice was that the applicants were not those who had used the land for several years, before they applied for a land letter. They were often indeed land speculators who reclaimed the forest or started cultivating the land, shortly before applying for a land letter (Petocz et al. in Vayda and Sahur 1996, p. 24 and 25; Simarmata 2010a, p.11). Worse than that, there were also people, who came to the village heads and presented a rough sketch of the area, which they claimed they had reclaimed. As village heads hardly ever carried out a ground check, they signed the land letters without really knowing the location or condition of the particular plot of land. This tempted some people to reclaim the forest area, only after they obtained a land letter.[32]

In the Muara Badak sub-district, where the oil company VICO acquired plots of land in the 1970s and 1980s, many land speculators came to VICO asking for land compensation by only bringing rough sketches of maps with them. They were not actually the real owners of the claimed land. Given that, at the time, the land claimed was still heavily forested, the company hardly ever undertook any field visits. The absence of the field visits then tempted some land speculators to increase the size of the land on paper in an attempt to gain more compensation. As a result, the company often found that the land was still occupied or used, when they were about the start a project. When in certain cases the real possessor contested the company's claim over

31 Some of the the various names of the land letter are: self-declaration letter of land possession (*surat pernyataan penguasaan hak atas tanah),* self-declaration letter to have a plot of land *(surat pernyataan memiliki sebidang tanah),* letter of forest reclaim *(surat pembukaan hutan),* clarification letter (*surat keterangan),* self-declaration letter *(surat pernyataan),* self-declaration letter of land ownership/possession *(surat pernyataan pemilikan/penguasaan tanah),* self-declaration letter of land use and land utilization *(surat pernyataan penggunaan dan pemanfaatan tanah),*clarification letter of ownership/possession over buildings/plans existing on state land *(surat keterangan penguasaan dan pemilikan bangunan/tanaman di atas tanah negara),* clarification letter of land *(surat keterangan tanah),* clarification letter of possession of cultivation of land *(surat keterangan pemilikan tanah garapan) or* self-declaration letter of land possession *(surat pernyataan penguasaan tanah).*

32 Interview ED, 9/6/2008.

the land and asked the company to show the rough sketches of the maps, the company was unable to do so.[33]

As a result, many private companies which ran government projects, went up to the regional government, reporting that their projects had temporarily ceased. The complaints raised by the private companies were further voiced by district and municipality governments in several coordinating meetings with the Provincial government. The regional governments' inability on one hand, and the speed at which land letters were issued by village heads on the other, made effective implementation of the provincial regulations hardly possible.

In response to the above developments, the Provincial government was in favour of making a new provincial regulation, instead of systematically evaluating what went wrong in the existing regulations. The new provincial regulation was primarily based on oral reports delivered by district and municipality governments during meetings held by the Provincial government. In one coordinating meeting, the Provincial Office of the National Land Agency (PONLA) was assigned to draft a Governor Decree. After the PONLA completed a draft decree, it was discussed in several meetings attended by various provincial agencies. It was also discussed in a meeting, where all DONLAs were invited.

The drafting process was completed by the issuance of the Governor's Decree of 1994 on the Guidance to Reorganize Land Letters with regards to Control and Ownership over Buildings/Plans on State Land, which was followed by a Governor's Directive a week later.[34] It took only a year, before the Provincial government decided to revise the 1994 Decree, which led to a Governor Decree of 1995. Similar to 1974, the 1995 Decree ordered lower government officials, notably village heads, to undertake the registration of any use of state land by private parties. Yet, whilst the 1974 Decree formalised the registration with the LRL issuance, the 1995 Decree led to a land letter issuance. Yet, it stipulated that the land letter could be used to apply for a LRL. Because the 1995 Decree did not have a provision on sanctions, state land occupation or use without a LRL was no longer a criminal offense in contrast with the 1974 Decree.

Other provisions that differ between the 1974 and 1995 Decree concern restrictions to as well as the prohibition of land letter issuances. The 1995 Decree states that a land letter is only valid for three years and it does not prove any formal land rights as recognized by Indonesia's land law. However, a land letter can be used as a supporting written document to apply for a particular formal land title. Any application for a land letter should be pro-

33 Interview IY, KA and Abd, staffs of Muara Badak sub-district, 17/3/2009.

34 Governor's Decree No. 97 A/1994, and Governor's Directive No. 03/1994 on Guidance to Control Land Letters with regard to Control and Ownership over Buildings/Plans on State Land.

cessed unless: (i) the land is in dispute; (ii) the land is situated in a protected zone or green belt; (iii) its size exceeds the maximum allowed size for land ownership; (iv) it is absentee land possession; (v) the land is considered subject to public interest (*kepentingan umum*); and (vi) the land is on the list of land that is to be used for other government purposes.

The procedure to obtain a land letter is another important provision in the 1995 Decree. The head of the neighbourhood (*rukun tetangga*) has to give a letter of introduction (*surat pengantar*), which the land possessor needs to bring to the village government office. To be able to get the letter of introduction, the land possessor can either present written documents or explain to the head of the neighbourhood how they obtained the land, in case they do not have sufficient written documents. After receiving the letter of introduction, the village head has to assign a member of staff to carry out a ground check. If during the ground check someone raises objection to the land claim, the village head should facilitate a dispute settlement. If the settlement fails, the dispute can be brought up to higher government units to be settled by sub-district heads and the DONLA. If this level of dispute settlement also fails, the disputing parties are recommended to proceed to court.

If there is no any objection from anyone else, the village government is allowed to register the applied-for land in the Village Land Registration Book. In addition to the registration, the village head has to provide the applicant with a land letter.

(b) Administrative Document

Meanwhile, due to the ending of the authority of the sub-district to award LRLs in 1984 and before the enactment of the 1995 Governor Decree, those who were occupying and using land without possessory evidence sought for another form of written possessory evidence. The form had to be legally stronger than the land letter signed by the village head. Some stakeholder meetings as well as training sessions hosted and organized by the PONLA tried to respond to this need. The meetings were attended by the staff of PONLA and DONLA, other concerned provincial agencies, some sub-district as well as village heads. In these meetings, the different parties agreed on two important changes, namely to introduce a uniform land letter and to change to it from a clarification letter (*surat keterangan*) into a letter of self-declaration (*surat pernyataan*).[35] With

35 The name of the new land letter is Letter of Self-Declaration concerning Land Possession, which is, again, popularly known as 'land letter' (*surat tanah*). Three other uniform documents are 'letter to declare that there is no dispute' (*surat pernyataan tidak sengketa),* 'letter to declare the transfer of land rights (*surat keterangan untuk melepaskan hak atas tanah*) and 'report of ground check' *(berita acara peninjauan tanah/perwatasan).* The 'report of ground check' is needed to apply for a land letter, whereas the 'letter to declare that there is no dispute' and the 'letter to declare the transfer of land rights' are needed for land transactions. Except the 'report of ground check', the other three documents are signed by the

regard to the content, the new uniform land letter was no different from the old one. However, the change from a clarification letter to letter of self-declaration implied that the village heads were no longer responsible for the reliability of the information in the land letter. The change meant that the responsibility now went to the land possessor. Consequently, the land possessor would be charged for any fake information in the land letter. The change was deliberately aimed to increase the reliability of the information in land letter. Moreover, removing the responsibility from the village head would prevent possible sanctions for providing fake information in land letter.

To some extent, the land letter and the associated land documents resemble possessory evidence, as stipulated in Indonesia's land law. Yet, the change from declaration letter to letter of self-declaration created a greater distance between the land letter introduced by the 1995 Governor Decree and the land letter formed as a result of the meetings. In the former, the village head is the highest official and the one who signs, whereas in the latter, this role is ascribed to the sub-district head. The signature from the sub-district head in the land letter is something that the land possessor hoped for, because they sought a legally stronger written possessory document. Moreover, that kind of form fitted with regulations on land registration and acquisition, which require a land letter signed by the sub-district head.[36]

In an effort to let regional and local officials know about the content of the 1995 Governor's Decree, the Provincial government organized some short meetings in several districts and sub-districts where they also circulated the format of the declaration letter. By conducting the meetings, the Provincial government officials expected that the officials of village and sub-district governments would further socialize the decree to a wider audience in their respective villages or sub-districts. However, the expectation was not met, as the local officials did not really make an attempt to increase awareness of the new declaration letter. As a result, only very few of the village and sub-district government officials whom I interviewed, knew much about the 1995 Governor Decree. When the Head of Anggana sub-district showed a bundle of land regulations that his office had been referring to, the 1995 Governor Decree was not included. In practice, sub-district governments circulated the format of the letter of self-declaration in the villages, before it was copied by the village government.

Learning about the above efforts to govern the use of state land by private parties where possessory evidence is recognized, we soon realize that neither of the 1974 nor of the 1995 Governor Decree it is clear whether they were enacted with regard to both forest and non-forest area or merely with regard to non-forest area. As a research report points out:

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sub-district head, while all four documents require signatures from the land holder, head of neighbourhood, village head and two witnesses.

36 Interview Kmd, a retired staff of Muara Badak sub-district, 18/8/2009.

> The 1995 Governor Decree does not distinguish between forest and non-forest area, instead it generally classifies each as state land. It is in contrast with reality, where there is obviously a division between forest and non-forest area. Each of the areas is under different authorities.[37]

In the list in the 1995 Decree, where the conditions for refusing the application of a land letter are mentioned, 'being a Forest Area' is not included. This then brings us to the questions which in essence resemble previous questions: are the Provincial Regulations applicable to a Forest Area? Do they merely apply to the approximately 6,000 ha of non-forest state land or to the 81,180.80 ha of Production Forest of the Mahakam Delta as well?

District Level

As of the 1990s Kutai District government has been clear in regulating land with possessory evidence, particularly in cases of land acquisition. Not only did they recognize possessory evidence, Kutai's District also created, by regulation, a detailed classification of land on the basis of different types of evidence. The regulation governed the compensation for land as well as crops and buildings which existed on the land, including costs already spent. The details of the provision can be found in the Decree of the Head of Kutai District of 1993.[38] The Decree was deliberately formed to implement the Governor Decree of 1977 as already mentioned.

Several types of land based on ownership and possessory evidence were clearly distinguished by the 1993 Decree of Kutai District Head. Firstly, it distinguished as well as recognized private customary *adat* land from private land rights. The holder of private land rights has a land certificate. According to the decree, private customary land is land which was continuously or temporarily occupied and used by individuals in accordance with local rules. This definition of private customary land led to three categories of private customary land. One of the three categories is land, which was occupied and used after the enactment of BAL in 1960.

The aim of formulating categories was to determine different rates or amounts of compensation that land owners or possessors would obtain. For instance those, who owned or held certified agriculture land, would obtain compensation amounting to 100% of the minimum price, as determined by the decree, whereas those who held cultivated land supported by possessory evidence would only obtain 40%. Meanwhile, those who had neither a certificate nor possessory evidence would only obtain 20% of the basic price.

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37 Hidayati et al. (2008, p. 26-27).

38 No. 083/1993 on the Minimum Amount of the Compensation for Land and Crops in Kutai. It has been superseded by the Decree of the Head of Kutai District Government No. 180.188/HK-630/2008.

Location and recent physical condition of the land are two other factors in determining the amount of compensation.

The most interesting part of the 1993 Decree is a provision on forest land as well as land which was used for pond construction. The provisions state that the level of compensation for forest land and pond land should be determined by engaging Kutai agencies which deal with forest and fishery affairs. Yet, the decree notes that the compensation should still be subject to its provisions. However, the decree's table of minimum amounts based on area division, does not determine clearly the minimum amount for frontier forest land, like the Mahakam Delta. Apart from the fact that the minimum amount for owning a plot in a forest like the Mahakam Delta is not listed, the mention of forest land in the decree seems to have strengthened forestry regulations on forest delineation. The Committee on Forest Boundary Delineation could have used the minimum amounts, as stated in the decree, to provide compensation for those who occupied and used forest land. Not only did it strengthen the forestry regulations, the 1993 Decree also implicitly legitimized ownership or possession over land in Forest Areas.

After the 1999 Decentralization, the Kutai District government regulations have, on the one hand, strengthened the recognition of possessory evidences, yet on the other hand they have slowly put it aside. The Kutai Regulation of 2000 on Location Permits still implicitly recognizes the existence of possessory evidence, when it asks companies which have already obtained a Location Permit to also provide compensation for those who only have possessory evidence (Article 7d).[39] The Kutai District government just recently explicitly recognized possessory evidence, by issuing two Circular Letters of the Kutai District Head in late 2010.[40]

Yet, even though the two Circular Letters recognize the existence of land rights, supported by possessory evidence, they have some remarks about it. Firstly, unlike the national and provincial land regulations, one Circular Letter regards the land letter not as provisional evidence of land ownership. Instead, it regards it merely as a document, which informs us of the physical dimensions as well as the possessors of the land. Moreover, with regard to land acquisition, the second Circular Letter advises that those who have land certificates should be prioritized for obtaining compensation. The change to the Kutai regulations might be related to the requirement that the Audit Board of the Republic of Indonesia (Ind. *Badan Pemeriksa Keuangan*) sets, which states that land compensation can only be given to those who have land certificates.

39 No. 32/2000.

40 The two Circular Letters are respectively No. 590/651/A.Ptn-Prc/SE on Guidance of Land Administration and No. 590/652/A.Ptn-Prc/SE on Land Acquisition for Small-Scale Public Projects.

That means that any compensation for land acquisition to those who have possessory evidence given by government agencies is unjustified.[41]

8.3 Legislation: identification of some problematic issues

Through our examination of national forestry, provincial and district regulations on possessory evidence, we are brought to the central question: is possessory evidence which was issued over the land in the Production Forest of the Mahakam Delta, really legal? The question is central not only because the answer to the question would determine whether the forest occupation and use was legal or not, but it would also determine whether the actions of petroleum companies together with the Executive Agency and many other public services, which were provided by the provincial and district agencies, were legally justified or not.

By referring to the account in Sections 5.2 and 5.4 we now can easily answer the above question. Many legal and socio-legal arguments support the conclusion that possessory evidence which was issued in the Forest Area of the Mahakam Delta is legal. From a legal point of view, the legality is not merely due to a decision of the 2012 Constitutional Court which basically stated that in order to determine Forest Areas, the Ministry of Forestry has to carry out the four cumulative steps, but also due to the previous national and regional regulations and court decisions which had stated that possessory evidence in Forest Areas is legal. In a situation where the Ministry of Forestry has carried out the steps of designation, forestry regulation concerning planning and demarcation recognizes the possessory evidence when they asked the so-called Committee on Forest Boundary Delineation to settle any arising land rights claims from third parties (see Section 5.2 and Section 5.4).

The Decree of the Kutai District Head of 1993 concerning the Minimum Amount of Compensation for Land And Crops in Kutai, case law from the Tenggarong District Court and Samarinda High Court decisions in 2003 and 2006 recognized the legality of possessory evidence in Forest Areas regardless of the steps of forest establishment that have been taken. In other words, on the basis of these statutory rules and court decisions possessory evidence in the Forest Areas of the Mahakam Delta is still legal despite the fact that the Minister of Forestry has designated the Forest Area.

The legal answer to the above question has become especially clear after the 2012 Constitutional Court verdict. As said in Section 5.2 and Section 5.4, pursuant to the verdict the mangrove forest of the Mahakam Delta is not yet

41 Interview Mjd, a Head of Sub-Division of Bureau on Land Administration of Kutai District Government, 18/6/2012. Nevertheless, he then added that the Audit Board of the Republic of Indonesia recently did not apply the requirement as they were told that only 10% of the land in the Kutai District had been certified.

a Forest Area and as a result it is not yet state property. As I mentioned in Section 5.4, in my view, the fact that the technical team formed by the Head of TUFPS did not assess the existence of any private rights and the so-called Committee on Forest Boundary Delineation did not settle the claims of the third parties during the delineation and mapping of the Forest Area of the Mahakaham Delta, has made state claims over the Forest Area weaker.

However, even though the above accounts confirm the legality of possessory evidence in Forest Areas, its should be underlined that the picture of Indonesian law on this matter is still not fully clear yet, as there remain some case laws and legislation that contest the above accounts of the legality of possessory evidence. Concerning case law, as said (Section 5.2), the Supreme Court cassation verdict of 2006 stated that particular areas were already officially Forest Area, despite the fact that the Ministry of Forestry had not yet taken all the steps of the process.

After the 2006 Supreme Court verdict, the Minister of Forestry made one letter and issued one regulation that both stipulated that the four steps of forest establishment are not cumulative, but optional. Yet, one should not forget that the legislation which states that land law and therefore possessory evidence does not apply to Forest Areas has a long history. It goes back to the 1970s when the central government issued the Presidential Directive of 1976 concerning the synchronization of land affairs with respect to forestry, mining, transmigration and public works. The Directive appeared in order to resolve a conflict of jurisdiction between the ministries. As they were dealing with the issues of mining, forestry, transmigration and land, they laid claim on the same areas. In relation to the non-application of land law in Forest Areas the Directive stipulates that the possessors of forest concessions are not required to have particular land rights when they use forest land to exercise their rights of forest utilization. Only if the concession holders use the forest land for any activities which are not directly related to these main activities, they are required to apply for particular land rights with the Minister of Agrarian Affairs/Head of National Land Agency. The provisions are obviously different in the case of oil and gas regulations whereby contractors are required to have use rights (*hak pakai*) when they use land within their work area (see Section 6.2).

In East Kalimantan, the issuance of the Directive was followed by meetings attended by related provincial agencies. The Provincial Forestry Agency and PONLA came to the agreement that the Provincial Forestry Agency had jurisdiction over Forest Areas and PONLA over non-forest areas.

Not only those who occupy and use the Production Forest of the Mahakam Delta have encountered legal issues on tenure, but also those who occupy and

use the surrounding 6,000 ha of non-forest area.[42] On the one hand, they were not regarded as land owners, given that they do not have certificates. Therefore, the land belongs to the state. This means that, in case of payment of compensation to the land holder, the land price would not be included. Yet, on the other hand, formal rules regard land possessors as owners in as far as they are allowed to transfer and use their land as mortgage. To some extent, the lack of clarity is deeply rooted in an unclear definition of state land. Pursuant to a Government Regulation of 1953,[43] land of which the ownership is based on customary law, either individual or communal, is not state land (Soemardjono 2007, p. 61-62). Yet, some Supreme Court decisions and legal scholars suggest that communal land rights together with *tanah wakaf* and forest land is included in the state land definition. According to this view, only individual customary land rights are excluded from state land (Harsono 2007, p. 290). Some legal professionals and government officials even regard individual customary *adat* land rights to be part of state land, leaving private land rights recognized by formal land law as the only type of land rights excluded from state land.

8.4 Implementation of law by regional and local officials

As referred to in Section 8.1, the fact that officials of the DONLA refused to process any application for land certificates for the Mahakam Delta, arguing that the Forest Area was not under their jurisdiction, does not mean that they regarded the occupation and use of the Forest Area as completely illegal. Chapter 5 and to a lesser extent Chapter 6 describe the complex factors, causing the local officials to not effectively implement the laws and regulations. This includes, for example, the motivation of the local officials or what Lipsky (1980) names 'street-level bureaucrats', when they interacted with fishermen and farmers.[44]

This section, therefore, specifically looks at the extent to which local officials perceived the occupation and use of the Forest Area as legal or illegal. Besides, the description also includes the perception of legal professionals and private companies. This book argues that perceptions eventually affect the way, in which local officials and legal professionals implement laws and regulations on land.

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42 Of 6,000 ha of non-forest area of the Mahakam Delta, only 891 ha have been certified. This land certification resulted from a project on land consolidation and redistribution held by the District Office of the National Land Agency in 1986 and 1991 which took place in Sepatin and Muara Pantuan village of Anggana sub-district.

43 No. 8/1953 on the Control over State Land.

44 Lipsky (1980, p. 3) defines street-level bureaucrats as public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work.

8.4.1 Regional and local government officials

Although not many, yet a number of government officials, in particular the officials of the regional technical units of the Ministry of Forestry as well as the National Land Agency, strictly perceived the occupation and the use of the Production Forest as illegal. In the eye of these officials, the land possessors were simply squatters (*perambah hutan*) and therefore illegal.[45] In a meeting held in mid-2007, DONLA officials warned the officials of the Kutai Fishery Agency to not continue to provide services to the fishermen and farmers of the Mahakam Delta, for they were illegal occupants.

However, the officials never openly called the land possessors illegal occupants when they had face-to-face meetings with them. In two meetings aiming to 'socialize' relevant laws and regulations concerning the Mahakam Delta in August 2008, some representatives of the shrimp farmers of the Mahakam Delta were present. The DONLA officials did not call them illegal occupants, but they quoted an article of the Forestry Law of 1999 prohibiting any illegal occupation and use of Forest Areas.[46] The quotation of the Forestry Law was meant to explain why the DONLA refused to issue land certificates on the Mahakam Delta. However, during these occasions the DONLA officials did not call a land letter an illegal document (Tim Sosialisasi Kawasan Delta Mahakam 2008, p.18).

Even though these regional and local officials did not openly call the land possessors illegal occupants, the way they implemented the formal land law still indicated that they regarded these land possessors as illegal, or at least having limited rights. For the local officials, the illegality and limits affected the way the land possessors could exercise their rights as well as the obligations imposed on them. In the Mahakam Delta, two concrete examples of repercussions of perception can be shown, one on land acquisition and the other one on tax (Hidayati, Djohan and Yogaswara 2008, p. 57). With regard to land acquisition, the local officials excluded the land price from the compensation. This meant that they only included those expenses incurred by land possession for business development (for example the construction of ponds and huts, and seeding of shrimps). They preferred to refer to any compensation

45 Interview GBD, a staff of Regional Technical Implementation Unit of Watershed Management of the Ministry of Forestry, 2/5/2008, Shr, a Head of Division of the Ministry of Forestry, 6/4/2009, and SDU, 22/4/2008.

46 The two meetings for 'socialization' were held in Anggana and Muara Jawa sub-district. They were organized by a committee which was officially established by the Head of Kutai District government. The main aim of the meetings was to respond to the long-standing farmers' query of whether there were formal rules which prohibited the opening of ponds in Forest Areas. The committee expected that socialization would inform the farmers about the existing formal rules, so that the remaining forested parts of the Mahakam Delta could be preserved. See Tim Sosialisasi Kawasan Delta Mahakam (2008), and interview ED and KA, a Deputy Head of Kutai Fishery Agency, 9/6/2008.

money they paid to the land possessor as a 'donation' (in Indonesian, variously *uang keperdulian, pengganti jasa, pengakuan atas jerih payah, imbalan or sikap kasihan pemerintah).*

The legal concept on compensation may influence the local concept on compensation or the other way around. For Buginese, the traditional conception of compensation merely encompasses pioneering labour and/or expenses in clearing land (Ind. *ganti rugi merintis*, in Buginese *passelle ma'bela*).[47] In the Mahakam Delta the traditional concept appeared, when the land possessor did not take into consideration whether they had certificate or possessory evidence when they were negotiating the amount of compensation they wished to obtain from the companies.

In administrative practices, elsewhere in East Kalimantan, local officials made a price distinction between land with a certificate and land with possessory evidence. The latter is further divided into: land with a title deed (*akta*) and land with a land letter (*surat keterangan tanah*). The category determines the land price. For land with a certificate, compensation would be 100% of the going market rate, while cultivated land with a title deed would be compensated for 90% of the going market rate, and compensation for cultivated land with a land letter would be based on a tax rate (Ind. *Nilai Jual Objek Pajak* abbrev. NJOP). On average, NJOP is 30% of the going market rate. This, for example, applies to land with a land letter, which is authorized by a sub-district head. The tax rate for cultivated land which is authorized by a village head or head of an urban neighbourhood would be less than 30%. Recently, across the Province, a common flat rate of NJOP on cultivated land has been introduced. For cultivated land which has been cultivated for one or two seasons, the compensation is approximately between IDR 2,300 (US$ 0.27) up to 2,750 (US$ 0.32) per m². Cultivated land which yields good harvests is priced at IDR 4,500 per hectare.[48]

Meanwhile, the officials of the Kutai Regional Revenue Agency and the District Office of the Directorate General of Tax of the Ministry of Finance were not willing to collect tax on land and buildings.[49] These two government offices did not think they had the authority to collect tax on land and buildings from the pond owners, given that their business was illegal (Hidayati et al. 2008, p. 115).

Recent developments, as already said in Section 7.5, suggest that as of late 2009, some village governments and the sub-district government of Muara Badak have been very selective or even refused to process any land letter

47 See Vayda and Sahur (1996, p. 19).

48 Personal communication with Abdullah Madjidi, 10 and 19/6/2011, and 18/6/2012.

49 Pursuant to Law No. 12/1985 on Tax on Land and Buildings, tax on land and buildings is state tax imposed on the land and or buildings. The tax on land and buildings is material in the sense that the amount of tax payable is determined by the state of the object, ie. the land and or buildings. Circumstances or subject (the payee) do not determine the amount of tax.

registration, as requested by the officials of the Secretariat Office and the technical implementation unit called the Unit of Forest Area Establishment of the Ministry of Forestry, in a meeting in 2009. Only if the land possessor applies for a use permit with the Minister of Forestry, the village and sub-district officials can respond to the application of the possessor.[50] However, as the land possessors came to the sub-district office of Muara Badak in the course of 2009-2011, and asked the officials about the policy, the officials told the land possessors to keep using their land. For those who did not have possessory evidence yet, the officials told them the same with the condition that the officials would not process any land letter applications.[51]

The officials' suggestion to land possessors and those who did not have possessory evidence resembles the suggestion of some members of Kutai's House of Representatives to some villagers of Nilam, Saliki village of Muara Badak sub-district in 2011. In a hearing, the members of Kutai's House of Representatives said, 'Please keep on using the land and reclaiming new plots of land. We can take care of the land letters later. If you need funds to buy seeds and fertilizer, please feel free to send us proposals'.[52]

However, the bulk of the Kutai District government officials perceived the occupation and use of the Production Forest of the Mahakam Delta when supported by a land letter, as legal. A very basic argument, which the officials pointed at, was that the land possessors owned the land letter, which could clearly function as official evidence of someone's rights over a particular plot of land. Therefore, for example, a local official suggested that the land letter was equal to a timber or mining concession (see Section 5.3). Although they considered the land possession as legal, they differed in their ideas on how

50 In telling land possessors that they are not allowed to process the land letter application, the officials of village and sub-district governments showed the land possessors a map of the Agreed Forest Land Use Plan that the officials of the Unit of Forest Area Establishment of the Ministry of Forestry had given them in 2009. Interview Nur (a Head of Section for Governance of Muara Badak sub-district) and Secretary of Muara Badak sub-district office, 13/12/2011.

51 After the 2009 meeting and the Unit of Forest Area Establishment of the Ministry of Forestry gave a map of the Agreed Forest Land Use Plan, the Muara Badak sub-district office received many questions from land possessors particularly from those who resided in Saliki village. Since the map did not exactly indicate the boundaries of the Forest Area clearly, the sub-district officials found it difficult to answer when the villagers asked whether the land they had been using was inside the Forest Area or not.To cope with the situation, the sub-district officials sent official letters twice to the Unit of Forest Area Establishment of the Ministry of Forestry in 2009 and 2011. In the letters, they asked the Unit of Forest Area Establishment to carry out field visits to mark the forest boundaries (*pelacakan/penin-jauan batas*). However, they never got any replies to their letters. As a result, one day the Secretary of the Muara Badak office phoned the office of the Unit of Forest Area Establish-ment but only got the answer that the Unit could not do anything, since the authority on forest establishment still belonged to the central government, i.e. the Ministry of Forestry. Interview Nur and Secretary of Muara Badak sub-district office, 13/12/2011.

52 Interview MT, 3/12/2011.

that related to the legality of the Forest Area. Some said that, as the land possession was legal then as a consequence the legality of the Forest Area should be questioned. Yet, others said that the rights of both the Forest Area and the land possessor were legally recognized, for they had different kinds of tenure rights.

The local officials, who perceived the land possession as legal but not the Forest Area, used the prior long-standing period of residence of the local inhabitants as the main argument. The argument chiefly stated that the occupation and use was legal, given the fact that the land possessors had resided in the Mahakam Delta for generations, even before the forest designation came. A former Head of Muara Badak sub-district experienced this, when he disseminated the 1995 Governor Decree on the Guidance with regard to Control Land Letters and Control and Ownership over Buildings/Plans on State Land to some local residents. When he quoted the decree to explain that building shrimp ponds in the Protected Zone was prohibited, the participants immediately pointed at the date of the enactment of the Decree to prove that the Decree came after they had settled in the Mahakam Delta.[53]

Both the officials of the Provincial Forestry Agency and Kutai Forestry Agency emphasized the length of time that the local inhabitants had resided in the Mahakam Delta to conclude that the occupant could not be named a squatter. The acting head of the TUFPS, as mentioned in Section 5.3, commented:

> The shrimp farmers have been in the Mahakam Delta for a long time before the Forest Area was designated. We cannot blame the shrimp farmers for being in the Forest Area because they have never been told about the existence of the Forest Area. Besides, the government carried out the delineation of the Forest Area very late. Thus, legally speaking we may say that the shrimp farmers are illegal but first let us see the history of their settlements there.[54]

A middle-ranking official of the Kutai Forestry Agency added to the above comment:

> We cannot name the pond owners illegal occupants given they were born there. We therefore did not give them any status.[55]

Even though the local officials did not explicitly pointed this out, their reference to the long period of residence of the land possessor seems actually a recognition of local rules concerning land. Although the officials did not perceive the local inhabitants of the Mahakam Delta as a customary community

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53 Interview Sbd, a former Head of Muara Badak sub-district, 17/3/2008. For how this argument was similarly used by forest settlers in Kutai National Park of East Kutai see Vayda and Sahur (1996) and Arnscheidt (2009, p. 350).

54 Interview AN, 2 and 5/12/2011.

55 Interview AM, an Interim Head of Division of Kutai Forestry Agency, 24/4/2008.

(*masyarakat adat*), they still seemed to believe in the existence of local rules (see also Section 5.3).[56]

For local officials, who recognized the long residence of the local inhabitants, it was obvious that the land price had to be included in any compensation of land with possessory evidence. The reason they put forward was that the land possessors also had a land title, although it was not being supported by a certificate. Nevertheless, in line with those local officials who believed that the land price should be excluded from compensation, they also suggested that the land price for certified land should be higher than land with possessory evidence.[57]

Meanwhile, local officials who regarded the Forest Area and land possessor as legal suggested that the state has ownership rights, whereas land possessors have use rights. The officials of the sub-district governments developed this insight in an effort to justify their issuances of land letters in the Mahakam Delta. The head of Anggana sub-district claimed that his signing of land letters did not constitute an act of violating existing laws and regulations. He pointed at two reasons to justify his view. Firstly, he claimed that, in his perception, signing the document did not mean that land possessors had ownership rights. Instead, land possessors were only granted the rights to use the land. As the existing laws and regulations only forbade granting ownership rights, he believed that he did not break the law. Secondly, he claimed that by signing the document he did not "issue" or authorize any license or rights, because his role in signing the document was only that of a witness.[58]

However, such interpretation was disputed by an officer of Muara Badak sub-district, who acknowledged that the signing of a land letter by a sub-district head means that he or she does issue and authorize a permit, or at least provides a strong recommendation. Interestingly, this official stated that she did not believe that signing land documents was a violation of existing laws and regulations. She gave two reasons for this. First, there had been no objection from superior officers from either the Kutai District government or the National Land Agency, nor was there any reminder from the officials not

56 For an account of how local rule formed land rights in the Mahakam Delta see Simarmata (2010b). In governing fishery resource use, the officials of the Kutai Fishery Agency sometimes assumed that local rules were stronger than formal rules. In 2004 the officials of the Kutai Fishery Agency asked the fishermen's local association of Muara Badak sub-district to form local rules, which prohibited the use of trawl nets in shallow waters, arguing that fishermen would probably be more willing to comply with local rules instead of formal rules. Interview Agg, 8 and 9/2/2010.

57 Interview Kmd, 18/8/2009.

58 Interview ATH, a Head of Anggana sub-district, 26/7/2007. Other officials of Anggana and Muara Badak sub-district have developed similar interpretations. Interview ES, 30/6 and 1/7/2008 and Kmd, 18/8/2009.

to sign the document.[59] Second, the practice continued because the officials felt they had built a consensus with the local villagers. Beside those two reasons, the official stated:

> If we ask the land possessors to comply with all legal requirements, the process will take a long time. Moreover, the land possessors will possibly protest, asking why the government officers had not informed them in advance about the requirements. Besides, we also feel that strictly imposing the existing laws and regulations would sometimes be culturally improper, when the applicants are older men or community leaders.[60]

Field officials referred to two other arguments for not calling the land possessors squatters. The first is the absence of earlier notification. The second is a lack of law enforcement with regards to occupation and utilization of the Forest Area. In this respect, the officials blamed the officials of TUFPC for not taking earlier precautionary and repressive action, before the scale of the occupation had become as large as in 2010.

8.4.2 Legal professionals and private companies

This sub-section will discuss a land dispute between two land possessors notably two big *punggawas* in the Mahakam Delta. It will shed light not only on the case itself but also on the perception of the legal professionals included, i.e. the solicitors and judges. The case is known as *Haji Maming and 57 other plaintiffs vs. Haji Latief and Haji Onggeng*.[61]

Not only did the dispute result in violence and intimidation, it also led to the involvement of some important politicians as well as military and police

59 This claim was refuted by a statement from a high-ranking officer of the Kutai District government, who stated that they had warned the sub-district head several times not to sign any land letters for land located within a Forest Area. He added that sub-district heads claimed they had difficulty following this directive, because land owners would ask them to point out the physical signs of the borders of the state forest, which they were unable to do.

60 Interview Nur, 19/3/2009.

61 Haji Maming was aged 73 and Haji Onggeng 29, when the case was in process in 2003. Haji Maming and Haji Onggeng actually had family ties, since Haji Onggeng's wife had kinship ties with Haji Maming. Due to the family relationship, some mediation efforts had been initiated before and during the court sessions. In November 2002, the Kutai District government officials held a mediation meeting in the office of sub-district government, in which local military and police officers were present as well. The dispute settlers proposed the two conflicting parties to come to a solution by equally sharing the disputed land. The Tenggarong District Court advised the parties twice to have an out-off-court settlement. Yet, all mediation efforts were fruitless, for Haji Onggeng consistently refused.

officers.[62] Haji Onggeng was accused of hiring and sending some local army officers to the disputed land in order to intimidate Haji Maming's men, pretending it to be a regular military training. Meanwhile, Haji Maming was accused of sending some local bandits from Samarinda city to the disputed land, who confiscated the digging machines rented by Haji Onggeng and damaged his property. The Head of Kutai District government even officially asked the two disputing *punggawas* to calm down.[63] The dispute was tried twice by Tenggarong District Court. The first trial took place from January to August 2003 and the second trial from November 2003 to January 2005.[64] The first trial resulted in the refusal of the Haji Maming file (in Dutch *niet onvankelijk verklaard* abbrev. NO), as the Court found that the legal status of Haji Maming as a plaintiff was unclear. The High Court of Samarinda needed two years to examine the case, before it eventually reached a decision in April 2007.[65] The following is a brief account of the case.

> H. Maming and 57 other plaintiffs filed a case with Tenggarong District Court, accusing Haji Latief together with Haji Onggeng of illegally occupying 500 ha of land in Muara Pantuan village, Anggana sub-district. The illegal occupation was said to have started in November 2002. According to the plaintiffs, they themselves had cleared up the forest land in 1984 and began to grow around 500 trees of various crops, mainly coconut and lemongrass, as of 1992. They had cleared up the forest land by forming a local peasant organization, which they had asked Haji Maming to chair. In 1994 Haji Maming obtained a Letter of Forest Reclamation signed by the former village head (1991-1999). The letter declared that the land was controlled and owned by Haji Maming. For the illegal occupation, Haji Maming and other plaintiffs sued the defendants for tort (in Dutch onrechtmatige daad).
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> Haji Latief and Haji Onggeng denied the allegation, saying that, when they began to clear up the forest land in 1994, they found the land was fully covered with nypa trees. There were no crops, as the plaintiffs had claimed. To support his claim of ownership over the disputed land, Haji Onggeng presented a number of land letters signed by the village head and sub-district head. The land letters stated that the way Haji Onggeng had become the owner of the disputed land was by clearing up a forest, similar to what Haji Maming had done. One request that both the

62 Haji Maming was known to be close to the Deputy of the District Office of the Indonesian Police Department. Haji Onggeng was close to a high officer of the District Office of the Indonesian Army. Haji Onggeng was also known to have a close relation with the former Head of Kutai District government, as during his leadership Haji Onggeng took care of some of his shrimp ponds. Haji Onggeng's lawyer, who used to be a member of the Provincial House of Representatives, first introduced Haji Onggeng to the Head of Kutai District government.

63 The call was made in a Circular Letter No. 100/175/Pem.A/IV/2003, dated 14 April 2003. See also in Section 5.1.

64 The verdict of the first trial is No. 03/Pdt.G/2003/PN.Tgr, and of the second trial is No. 44/Pdt.G/2003/PN Tgr.

65 Verdict No. 132/PDT/2006/PT.KT.SMDA.

> plaintiffs and defendants made to the courts was to decide whether the land letter they presented was valid. In that way, it would become clear which person legally owned the disputed land, thereby making the other party's land letter automatically invalid. In addition, the plaintiffs requested the court to also fine the defendants an amount of approximately US$ 7 million (IDR 58,037,500,000) as compensation.

During the court sessions neither the solicitors of the plaintiffs, defendants or judges asked whether the disputed land was located inside or outside a Forest Area, even though the solicitors and judges undertook a field visit (*pemeriksaan setempat*) of the disputed land together. The solicitors perceived the disputed land as privately owned and had two reasons for that. Firstly, their clients showed a land letter, which proved their property rights over the land. The land letters proved that the possessors held a particular land title, which the solicitors of the plaintiffs called use rights (*hak garapan*).[66] Secondly, during the field visit they discovered that there were no forest trees, but instead some crops.

When the judges examined which party was the actual original holder of the disputed land, they probably presumed that the disputed land was not situated in a Forest Area, despite the fact that they thought the land belonged to the state.[67] Thus, they thought that the land was state land, which was not situated in a Forest Area and used by private parties. With regard to the land letter, the judges undoubtedly recognized it as legal evidence of land possession.[68]

In spite of recognizing the land letter as possessory evidence there appeared to be different views among the solicitors and judges in deciding whether land with a land letter is either state or private. The lawyers of the plaintiffs regarded the land as privately owned. However, the solicitors of the defendants and judges regarded it as state land. This meant that the possessor of the land

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66 Interview BR, a practice lawyer, 28/8/2009, and SB, 2/9/2009.

67 A senior official of Anggana sub-district expressed his disappointment to the court for not inviting the official of Kutai Forestry Agency as a witness during the court sessions. He envisaged that, if the official of the Kutai Forestry Agency had been a witness to the court, this official would have made the decision that both disputing parties had illegally occupied and used the forest land. Further, such verdict could have been used by government officials to enforce the law with regard to any illegal occupation and use of the Forest Area. Interview ES, 30/6/2008.

68 In their verdict of the second trial, the judges eventually accepted the land letter presented by the defendants. The judges came to the decision, as the plaintiffs could only present one letter, which stated Haji Maming as the possessor of the disputed land, while the other 57 plaintiffs could not present a similar land letter. In addition, according to the judges, the rough map of the disputed land, which the plaintiffs showed, was not authorized, given it was not issued by either the DONLA or PONLA. Meanwhile, the judges thought that the land letter presented by the defendants was convincing, given it was signed by the village head and sub-district head. Throughout the hearing, the judges refused the requests of the plaintiffs. The Samarinda High Court of East Kalimantan simply upheld the decision of the Tenggarong District Court without making additional notes.

letters would only be granted use rights, and, therefore, only be granted compensation for the expenses, but not for the price of land. To give a concrete example of how this view affects the way the case is handled, a solicitor of the defendant explained that every time his office handled a land dispute involving a company and the community, they would first figure out whether the disputed land was located in a Forest Area or not. If yes, they would advise their clients to not pay any compensation for land to the community members making rights claims, given they were illegal occupants.[69]

As said, pursuant to the Government Regulation and the Decree of the Head of the National Land Agency of 1997 on Land Registration, notaries and sub-district heads are allowed to make a title deed on land transactions, even if it is only supported by possessory evidence. The formal rules have been effectively implemented in the Mahakam Delta. As Land Deed Officials (*Pejabat Pembuat Akta Tanah*), sub-district heads of the Mahakam Delta did make title deeds for any land transaction by asking the land possessor to sign two necessary documents, namely a letter declaring the land to be free from disputes and a letter of land title transfer.[70] Some companies, like VICO, also registered the land they acquired with a notary, besides the letter of land title transfer.

As already said, the 1996 Law on Land Mortgage over Land and Related Properties stipulates that non-registered and non-certified land is accepted as a mortgage on the condition that the land is prepared for a land titling application shortly after the loan agreement is signed. However, in the Mahakam Delta these provisions were only partly complied with. Two state-owned banks, Bank Rakyat Indonesia and Bank Pembangunan Daerah, did not require borrowers with a land letter to arrange land titling shortly after receiving the loan. In other words, the bank considered the land letter as sufficient. In addition to the land letter, the banks did require some other documents, such as a feasibility study, field visit report, identity card, and letter certifying the level of income (Bourgeois et al. 2002, p. 50; Hidayati et al. 2008, p. 63).

As already described in Section 6.4, like many local officials and legal professionals, the employees of Total E&P Indonesie recognized the land letter as one of several empirical facts that give legitimacy to occupants of land in the Forest Area. The company's officials were aware that, in accordance with forestry regulations, the land possessors were illegal. However, they found

69 Interview SB, a practice lawyer, 2/9/2009.

70 According to Article 5(3) and 23(2) of Government Regulation No. 37/1998 on the Regulation of Official Certifiers of Title Deeds, in regions where the number of Official Certifiers of Title Deeds is not sufficient, the Head of the National Land Agency can appoint a sub-district head and village head as temporary Official Certifiers of Title Deeds. In regions which have only one notary and a temporary Official Certifier of Title Deeds, the sub-district head and village head can appoint their respective deputy and secretary to make deeds on land transaction.

that some villages of the Mahakam Delta were officially registered as administrative villages and above of all, that the land possessors had land letters.[71] The company with approval from the Executive Agency, therefore, required land possessors to present land letters to be able to obtain compensation. Nevertheless, with regard to the amount of compensation, they made a distinction between land located in and outside the Forest Area. The amount for the former would be primarily based on the NJOP, whereas for the latter on the market price. This practice was different from VICO's, which did not make a distinction between forest and non-forest area. VICO would normally negotiate with the land holder about the amount of compensation in each case.

As said in Section 6.4, the long practice of land acquisition by companies in the Forest Area of the Mahakam Delta has gained support from the Ministry of Forestry when in 2009 an official of the Directorate of Forestry Planning of the Ministry of Forestry advised two employees of Total E&P Indonesie to provide compensation to the forest occupants whose land would be acquired by the companies.

8.5 Concluding remarks

On the basis of the previous accounts, one may say that Indonesian legislation and case law recognize possessory evidence and therefore those who have possessory evidence have land rights. Both public and private laws recognize possessory evidence so that those who have it are allowed to register their land, obtain permits and compensation, use it as a mortgage, as well as to transfer their land. Thus, in that regard the rights of land possessors are similar to rights of ownership. In practice, therefore, some officials and legal professionals perceive land possession similar to land ownership. Nevertheless, as the rights that the land possessors have over their land do not resemble the rights that the BAL and implementing regulations recognize, public administration practices treat land possession and land ownership differently. In land acquisition, the different treatment is very visible.

Yet, in the case of the Production Forest of the Mahakam Delta where actual control of state is severely absent on the one hand, and local users have long resided before official forest designations on the other, government officials show two contrasting co-existing behaviours. The majority of the central, regional and local government officials whom I interviewed regarded the forest occupants in the Mahakam Delta as against the law. Yet, in practice, they did

71 In many cases which concern the legality of forest occupation, the regional and local officials or even private actors questioned the accusation of forest occupancy by raising the fact that the villages in which the accused illegal forest occupants were living were officially registered. Based on that argument, they would say that the forest occupancy is actually legal. Interview DH, 14/12/2009.

not show this perception when they had face-to-face meetings with the forest occupants.

The regional and local officials largely raised social legitimacy rather than legal legitimacy when looking at the legality of the land possessors or forest occupants. The officials were aware of the illegality of the land possessors from a legal point of view, but they found that the formal rules were not adequate and did not have external consistence through which the rules were not compatible with the external situation (see Section 1.3.2 on adequacy and external consistence). One may add that the local officials could have pointed to the factors of usefulness and desirability, when illustrating that the formal rules were not adequate. As said in Section 1.3.1, the extent to which a law is socially useful and desirable will influence its implementation. Not only the regional and local officials raised the social legitimacy of the land possessors, but also the company employees, legal professionals and members of the regional house of representatives.

From a legal point of view, the contrasting co-existing behaviours in looking at the legality of the land possessors should come to an end after the 2012 Constitutional Court decision. Even though in accordance with some legislation and case laws saying that the mangrove forest of the Mahakam Delta is Forest Area, yet the 2012 Constitutional Court decision has dismissed the constitutionality of the state claim over the mangrove forest. As a result it is now still private land.