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Summary

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

Due to their wealth of natural reserves, deltas worldwide attract people. For ordinary people who seek a better life, a delta is a promising place because its natural resources can be collected and utilized. Meanwhile, states make legal arrangements to control the resource use of deltas so that they can generate state revenue and protect the environment. Nevertheless, in many deltas around the world increasingly destructive natural resource extraction has led to a number of social and environmental problems.

The Mahakam Delta of East Kalimantan, Indonesia, is no exception in that regard. It has repeatedly been suggested that deforestation, namely the conversion of mangrove forest into particular uses, is the main cause of the environmental destruction of the Mahakam Delta. In turn, deforestation has caused other forms of environmental destruction, such as abrasion, water intrusion, depletion of fishery resources and reduced biodiversity. All those forms of environmental destruction have tested the vital ecological functions of the ecosystem of the Mahakam Delta over the last fourteen years. One result has been the fact that the Mahakam Delta has lost much of its ability to provide environmental services. In addition to the environmental destruction, conflicts between resource users have arisen.

These two problems raise socio-legal questions about the Mahakam Delta's legal and administrative arrangements. How does law regulate resource use in the Mahakam Delta? To examine the extent to which formal rules on resource use have functioned, it is important to assess the extent to which government officials have actually implemented the formal rules, and which actors and factors have influenced the implementation of law. To better understand legal and administrative arrangements it is important to also know the law-making process of formal rules so that explanations for why resource use is regulated in a particular way can be provided.

As far as the law is concerned, law has long regulated resource use of the mainland as well as the marine part of the Mahakam Delta. Nevertheless, one should say that when we discuss the making of implementing rules, regulation concerning resource use on the mainland of the Mahakam Delta is ahead of

such regulation on resource use in the marine part. Regulations regarding state control over resource use constitute an important part of the legal arrangements. The state has actually exercised formal control over all forms of resource use in the Mahakam Delta; the type of control has depended, though, on the form of use. For forestry resource use, law applied control through a territorial strategy whereas for oil, gas and fishery resource use law applied a non-territorial strategy. In forestry resource use, law determines that complementary to the designation of a Forest Area, there has to be a physical delineation through which the state affirms its tenure claim over the delineated area. By contrast, in case of a state mining or fishing zone, law determines no such physical delineation. In addition to the exercise of state control, there are laws and regulations on spatial planning, whereby each natural resource sector and each government unit has its own spatial plan.

The different sectors of natural resource apply different forms of state control, but the legal provisions on use are similar. In general, they stipulate that the state determines how and by whom resources within the designated and delineated areas can be used. They also determine that only those who have obtained a permit, license or rights from particular assigned formal authorities are allowed to collect or utilise natural resources. Those who offend the provisions could be sentenced to imprisonment or a fine. To be able to exercise their rights over resource use, the permit or right holders are required to fulfil a number of particular obligations. The companies with a Production Sharing Contract for oil and gas extraction, for instance, are required to acquire the land from private parties, before they exercise their rights of exploration and exploitation.

In addition to the abovementioned legal provisions, there are provisions, which assign the government the task to implement laws to control resource use and carry out environmental protection whereby the different government institutions have to be mutually interdependent. Forestry regulations, for instance, appoint the central and regional government agencies to carry out forest delineation and forest protection. Meanwhile, fishery regulations assign only to the regional government the task to make implementing rules on input and output control to avoid overexploitation.

However, due to a combination of complex factors, laws and regulations on natural resources management of the Mahakam Delta have not been effectively implemented, with a few exceptions. In the forestry sector, the Provincial Forestry Agency carried out forest delineation only seventeen years after the forest designation was made. With regards to forest utilization, neither the Regional Office of the Ministry of Forestry, nor the Regional Technical Implementation Unit of the Ministry of Forestry nor the Technical Implementation Unit of the East Kalimantan Forestry Agency have imposed the laws on oil and gas companies because no permit had been issued by the Minister of Forestry. At the same time, neither the officials of the East Kalimantan Forestry

Agency nor the officials of the Kutai Forestry Agency carried out the official surveillance of the Production Forest of the Mahakam Delta.

Meanwhile, despite a long list of actual and only-scheduled activities of the various agencies of Kutai district in the Mahakam Delta, it is evident that control over destructive fishing through a permit mechanism is (still) lacking. So is the implementation of regulations and policies concerning environmentally friendly shrimp ponds. Dysfunctional implementation of law can also be detected in laws and regulations on spatial planning as sectoral departments and the regional government, to whom had been assigned the task to demarcate the designated areas, hardly did anything.

There are several reasons for why the implementation of law has not been effective. The first explanatory factor is legal, and is related to the observation that the laws and regulations on resource use are neither consistent nor coherent with one another. In general, laws and regulations are inconsistent when they are contradictory and incompatible.

On the basis of some major cases which are assessed in this book, such as regulations on forest management authority, the rights of small-scale fishermen and the legality of possessory land evidence, it can be concluded that the contradictions arise from three sources. Firstly, there are contradictory regulations between the different natural resource sectors. Secondly, a number of higher and lower regulations are incompatible. Thirdly, newly introduced laws and regulations have often ignored already existing laws and regulations.

In addition, the laws are often incoherent mainly because of the severe lack of mutual referencing between sectoral legislation as well as disharmony between statutory and case law.

In practice, the inconsistency and incoherence have diminished the rights security of the resource users, and led to confusion about the level of authority and legality of the regional and local government officials. Inconsistency between statutory and case law has led to inequality between right holders. A lack of rights security, inequality, unclear legality and authority have been caused by the fact that particular regulations de-legitimised other regulations. This has led to a situation whereby illegitimate regulations are unable to pursue their primary goals. Nevertheless, it should be noted that inconsistency and incoherence have also resulted in an increase of legal interpretations by local officials used to justify the legitimacy they had given to the actual resource use.

Next to the abovementioned legal factor, there are also several non-legal factors, which have hampered an effective implementation of law. In a simple classification, the non-legal factors can be divided into: (i) factors that are internal to the government institution tasked with implementing the law; and (ii) factors that are external to such administrative institutions. There are common problems shared by all natural resources sectors, but each sector also has its own specific problems.

Regarding factors *internal* to the administrative institutions, one may say that a lack of resources, administrative competition, and rigid planning and budgeting procedures are common factors that have hampered an effective implementation of law. Specific to the forestry sector is an issue, which this thesis has called 'timber orientation'. Timber orientation has made local forestry officials reluctant to protect the Production Forest of the Mahakam Delta, because no forest concessions have been awarded there. Specific to the fishery sector is the question whether its local officials are strongly committed to or concerned with the environment or not.

Factors *external* to the administrative institution are more complex. Apart from a few differences between the natural resource sectors, generally speaking, there are two factors which have impacted the planned implementation of law: the long residence of the local users in the Mahakam Delta in line with long existing local use rights, and the economic importance of resource use for local livelihoods. On the basis of these two main factors local officials have tried to justify putting social legitimacy ahead of legal legitimacy, when they had to make sure whether the local users had resource rights or not. Local officials also took into consideration the political power of certain resource users, when deciding not to implement the law. Notably the regional forestry officials were reluctant to impose rules on permit use on the oil and gas companies as they were afraid of powerful national backing of the companies, whereas local fishery officials did not implement rules on destructive fishing as they might encounter other local officials who had to serve their constituencies and relatives.

When real interaction between field officials, or 'street-level bureaucrats' in Lipsky's words, and local resource users is taken into account, we witnessed a strong emotion, which has profoundly influenced the implementation of law. Mixed feelings of empathy, respect, fear as well as pragmatism formed two attitudes commonly found among the field officials. Firstly, the belief that non-compliance by local resource users is not something against which legal action should be sought. For explaining this inaction, the field officials raised reasons that have already been mentioned, such as the economic subsistence of the local users. Fear of being harmed and/or losing credible social relations with local users are other reasons which the field officials mentioned. On many occasions, the field officials even defended local users when the latter were accused of violating regulations of other sectors of natural resource. They also concealed the original objective of their activities – the implementation of law – to avoid resistance from the local users so that they could realize their planned programs and activities.

Meanwhile, the government's implementation of law has often been effective when it concerned oil and gas companies. They are classified as national vital objects and have significantly contributed to both central and regional government revenues. Due to its strategic role, oil and gas resource use was often favoured by local officials and law enforcers to ensure that the oil and

gas extraction kept running. It should be underlined that the perception of the importance of oil and gas resource use has coincided with the way in which the local officials often characterized the local users, or Delta inhabitants. The local officials often perceived the local users to be short-sighted, greedy, tricky and stubborn.

Not only in the implementation of law, negative characterization also emerged in law-making. The Kutai government hardly took notice of the input from the locals who lived in Kutai district, but did pay attention to input from outsiders. In this respect, Kutai district government favoured legal legitimacy provided by the central government over social legitimacy provided by the local residents. The reason that certain local officials gave for not actively engaging the locals was that they perceived themselves as better educated. Moreover, they claimed to know what the local users aspired to.

From the extensive and comprehensive examination of the most important actors and factors which influenced the implementation of law and legal enforcement, it becomes clear that rather than the pursuit of personal interests or the interests of closely affiliated groups, it is actually a combination of rational and emotional considerations which drove the local officials and law enforcers to not effectively implement and enforce the law concerning resource use in the Mahakam Delta.

The local officials realised that if they were not adaptive and responsive to the reality and merely resorted to a strict implementation of laws and regulations, this would potentially do more harm than good. They have been fully aware that without providing any form of compensation, implementation and enforcement would only worsen the livelihood of the local users. The field officials risked four possible consequences when implementing and enforcing the law. Firstly, they risked not being able to realize other planned programs and activities, due to lack of goodwill with local inhabitants. Secondly, the local users, reacting to the implementation and enforcement, could jeopardize the local officials. Thirdly, the local officials could lose their social insurance derived from having credible social relations with the communities of the local users. Fourthly, the implementation and enforcement of law could increase the workload of the local officials, a problem considering the lack of resources.

In terms of their emotional considerations: these were related to a sense of social concern. Social concern arose alongside feelings of empathy and respect. The local officials felt a sense of fairness, as the local users had long been residing in the Mahakam Delta and carried out resource use only to survive. Such feelings of fairness were often strengthened, when the local officials discovered unjust situations, for example when the central government had hardly paid any attention to the inhabitants of the Forest Area, whilst oil and gas companies earned huge benefits. This sense of social concern combined with the inconsistency and incoherence of legislation, brought local officials to the conclusion that the actual resource use was fair, and legal. As

such, the local officials were often not only responsive and compromising, but on some occasions they would even act as the defenders of local users.

In the light of these observations, this book argues that the lack of implementation and enforcement of law does not always mean that local officials are advancing personal gain. Rather, they try to maintain a continuous equilibrium between adapting to external influences on one hand and maintaining their level of autonomy, on the other.

This book strongly recommends further research on the management of the Mahakam Delta to better understand the way in which implementation of law works in this area. Further research will help to form perspectives, which do not prematurely disrespect the role of local officials or bureaucrats in coping with legal and non-legal factors that make the implementation of law difficult. Such insights may help with the making of relevant local policies and regulations for the future. To be relevant it is important for such regulations regarding informal and semi-informal resource use to be jointly created by local officials and local resource users.