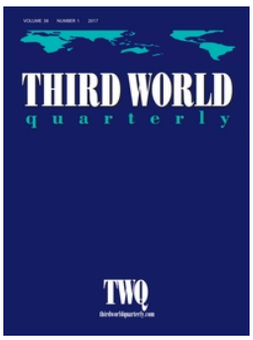

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Who owns the right to food? Interlegality and competing interests in agricultural modernisation in Papua, Indonesia

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ABSTRACT

Economic globalisation has transformed the politics of realising the right to food. This article aims to discuss the extent to which competing as well as conjoined interests in agricultural modernisation reconfigure the right to food as actors, norms and practices change. Drawing upon the concept of interlegality, which considers dynamic perspectives of plural legal orders, the discussion focuses on, first, existing norms linked to the wider understanding of the right to food and, second, the interplay of interests supported by the state, corporations and civil society organisations. The Indonesian agricultural modernisation project in Papua is used as a case study.

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Introduction

An assertion of the right to food in international human rights law consists of an overarching claim that the right holders, ie every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.[1] The claim entails not only the availability of food, but also enabling social, political, economic and cultural environments, in and through which access to food ought to be realised. States are in this regard the primary duty bearers with obligations to respect, protect and fulfil. In the context of agricultural modernisation, where actors (ie the state, corporations, civil society organisations, communities and individuals) openly interact, the claim becomes a contested issue. Economic globalisation has altered the ways multinational corporations operate and has contributed to their spreading influence beyond the traditional notion of nation-states. At the same time the rise of capital has significantly transformed domestic structures and shaped the politics of realising rights.[2]

Agricultural modernisation is not a new phenomenon. Studies of Europe between the 15th and 19th centuries clarify it as entailing the abandonment of an economy of self-sufficiency in favour of a market economy, which was a consequence of a rational change in cultivation systems and the introduction of improved technology.[3] Scholars studying the phenomenon in developing countries have found that agricultural modernisation consists of,

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but is not limited to, the introduction of new technology, including seeds, crops or machinery, promotion of market liberalisation, divestment of parastatal companies, structural adjustments, changes in land allocation, title and tenure, and export-oriented growth.[4] Agricultural modernisation mostly refers to endeavours designed towards aggregating agricultural productivity. In addition to meeting domestic needs, surpluses become a target for export and therefore may increase domestic revenue.[5]

In the past decade the phenomenon has gained increased attention from human rights proponents. In 2002 the first official UN report was written on the topic, in which it was regarded as potentially and sometimes successfully eradicating hunger and poverty in developing countries, but needed to be executed according to the principles of the right to food.[6] The tone has become slightly pessimistic following the price spike in the food crisis in 2008. In the *Report of the Special Rapporteur of the Right to Food* of 2009, Olivier de Schutter proposes a set of core principles to address the human rights challenge in large-scale agriculture involving land acquisitions.[7] The report's objective was to delineate the 'minimum human rights obligations' that states, investors and financial institutions must comply with when negotiating and concluding agreements. It includes 11 principles that essentially consider a number of procedural requirements, including informed participation of local communities and a commitment to ensuring food security and adequate benefit sharing.

A potential pitfall with these normative bullet points is that they are unlikely to be realistic in the political process of realising rights, particularly where the production of food commodities is conducted on a large scale in a complex legal environment. Instead of contributing to halting this phenomenon, transnational agricultural movements such as FIAN, GRAIN and Via Campesina fear that the list of principles will lead to its legitimisation.[8] Studies show that states in developing countries are generally controlled by groups that are unsympathetic to rights-related causes.[9] As a result, although such a framework implies a significant regulatory opening, particularly for developing global and domestic legal structures able to control the mixed impact of corporations, and for designing commensurate human rights responsibilities, actual interactions between actors on the ground continue to make the development of rights-based policies and their implementation and enforcement difficult.

In this context the objective of this article is to discuss the extent to which the competing as well as conjoined interests of actors involved in agricultural modernisation are reconfiguring the right to food. Agricultural modernisation provides such a context to study the interplay between global and local levels and between various legal and normative frameworks, as well as how the right to food is promoted or jeopardised in these interactions. The focus here is twofold: first, it is on existing norms linked to the wider understanding of the right to food;, second, the focus is on the diverse interests supported by the state, corporations and civil society organisations, particularly indigenous rights movements. The Indonesian agricultural modernisation project in Papua is used as a case study. The discussion draws on a combination of documentary analysis and data collected during field research in Merauke, Papua in 2011. In order to provide a representative depiction of various ways of practising the right to food and the multiple interests in agricultural modernisation, the discussion draws on a wealth of research, from government documents, corporate statements, and reports written by nongovernmental organisations to observations conducted in the field.

To examine the topic, the article employs the concept of 'interlegality'. Coined by Boaventura de Sousa Santos, the concept describes the dynamic perspective of plural legal orders, formal or informal, where each legal order may create a different legal object out of

the same social object.[10] The analysis avoids the notion of legal orders as fixed and independent elements. It focuses on considering actors' interests and the ways they use their own practices and those of others.[11] The flow of diverging norms and practices is not a new phenomenon. The challenge is to capture not only mutually influencing sets of norms and practices on the right to food but also interests in agricultural modernisation in a meaningful way. The article suggests that actors in a local context of unequal power relations enact consistent and/or contradictory narratives that together shape the meaning and the significance of the right to food. There is a process of adaptation, partial integration and avoidance to the substantive and procedural content of the right to food, but without suggesting that actors are completely free to do as they wish and that their actions always aim at upholding or rejecting the core premise of human rights protection.

The article shows that, in the case of Indonesia, a government-sponsored model of agricultural modernisation does not lead to fundamental socio-political tensions between state, corporations or social movements. Various effective narratives that place the right to food in a wider context of economic development gradually overlap, and they yield unintended consequences that do not necessarily advance the implementation of the state's obligation nor reflect the normative idea of protecting people's physical and economic access to adequate food and the means for its procurement. Analytically the article advances the debate on the practice of the right to food, but also argues for a deeper understanding of the complex processes occurring between competing and conjoining interests in agricultural modernisation.

Theoretical framework: interlegality and competing interests

Drawing on the methodology of legal pluralism, Boaventura de Sousa Santos devised the concept of interlegality in order to explain various spatial scales of law and regulatory phenomena.[12] He called for an analysis of plural legal orders that moves from the understanding of different legal orders as merely separate entities coexisting in the same political space, to a conception of different legal spaces that are superimposed, interpenetrated and mixed in our minds, as much as in our actions. He argued:

> We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing. Our legal life is constituted by an intersection of different legal orders, that is, by interlegality. Interlegality is the phenomenological counterpart of legal plurality, and a key concept in an oppositional postmodern conception of law.[13]

In this article interlegality is understood as a site of struggles that is a political space where each form of law may create different legal objects out of the same social object.[14] The concept also outlines how different levels or scales of law, from local to nation-state to world law, interact and interrelate. Using the metaphor of a map to describe a site at which different modes of legal and social power operate, de Sousa Santos argues that these laws are not isolated from one another but interact in different ways. Here, one indeed needs to account for the superimposition and interpenetration of spaces. However, it should not be assumed that interlegality necessarily involves conflict or competition. There are plenty of examples in the literature of peaceful coexistence, co-optation or cooperation, as well as subordination, repression or destruction. For example, based on his ethnographic study in the highlands of Aceh, Indonesia, Bowen[15] argues that the interplay between state, religious and customary legal orders has influenced decisions on legal settlements; judges were observed

to change their legal preference in treating claims based on Islamic and Gayo customary laws.[16] Moreover, while relations between coexisting legal orders may be relatively static or dynamic, neither stability nor change is necessarily presupposed. In the era of globalisation interlegality implies interactions between discrete entities, but the interaction is often more like that between waves, clouds or rivulets than between hard, stable entities.[17]

In the age of economic globalisation, interlegality is observably a ubiquitous concern for the achievement of human rights.[18] The more secular human rights shapes the lingua franca of global politics, the more persistent challenges linked to non-state legal orders are identified. Inquiries as to how a set of norms and their corresponding legal orders add to the existing and/or corresponding laws in a given political space are widely found. The growing dominance of international human rights law and the direct involvement of international donors and NGOs construct new situations of interlegality, with its supranational dimension of legal pluralism.[19] Studies have also observed that not all non-state legal orders are always separated from the state legal order.[20] In addition to being acknowledged and accessible, non-state legal orders and international legal order may also become part of and/or integrated into the social dynamic of constructing a pluralised state legal order. These orders continue to exert social control and to participate in the rule-making and enforcing power. [21]

In this vein, as a global law, international human rights law may expand, or even compete with, the formal legal system and other related systems in (re)imagining one social object, such as the protection of a livelihoods entitlement. There is a certain duality to this relationship stemming from the fact that, while international human rights law may provide an impetus for legal pluralism, it may also act as a constraint on its existence or manner of operation.[22] Voluminous new national and supranational human rights law might go hand in hand with the erosion of the collective rights of communities, their traditional access to the commons and their right to determine for themselves their own vision of a good life.[23] Moreover, universal and globally accepted human rights norms might generally be viewed as foreign, incompatible or informal, as is argued by prominent government officials in Southeast Asia.[24] There might be trade-offs being made pertaining to the scope of legalities for human rights to be operational the local level.[25]

Interlegality also implies that actors, whether they are government officials, corporate representatives, activists or ordinary people, find themselves in a situation of constant transition and trespass and are forced to engage in dialectical actions aimed at reconciling potential tensions arising from such differences.[26] In local contexts with unequal power relations interactions between various actors and practices might engineer human rights and their corresponding discourses into an instrument to control people and resources. This might not be coherent with the normative framework, nor is such a situation planned consistently. Rather this might be the heterogonous impact of a pluralised legal order. Based on his examination on various aspects of the intersections between the negotiated agreements on indigenous rights, Desai argues that the narratives of laws, actors and indigenous rights professionals underpin the governance of access to resources.[27] These narratives represent, among others, identity politics, strategic implications that are of concern to all actors, and vested interests that influence the deployment of negotiated agreements.[28] In such discursive practices actors not only evaluate the legitimacy of human rights, but also reconfigure their meanings.[29]

The agricultural modernisation project in Merauke, Papua: a brief description

Merauke is a regency located in West Papua, specifically at the eastern- and southernmost tip of Indonesia. The area holds a political significance for the Indonesian nation-building project. Most Indonesian nationalists see Papua as a crucial part of Indonesian sovereignty, completing the national territory between two geographical extremes, from Sabang (in Aceh Province, Sumatra) to Merauke (in West Papua Province, Papua).[30] The regency of Merauke is also regionally important as it adjoins the borders of Indonesia and Papua New Guinea.

Merauke Integrated Food and Energy Estate (MIFEE) has been designed with a view to developing a plantation of 1.2 million hectares for cash crops and biofuels.[31] Merauke was chosen as the location for future food and energy reserves in East Indonesia because of its flat geographical terrain and fertile land. Nationally MIFEE is an integral part of the Master Plan for Acceleration and Expansion of Indonesian Economic Development, launched by President Susilo Bambang Yudhoyono through the adoption of Presidential Decree No 32 of 2011. The Master Plan foresees Indonesia as one of the top 10 major economies by 2025. MIFEE is expected to boost economic development. No fewer than 44,900 jobs in the agricultural sector for indigenous peoples and trans-migrants will be created, leading to an increase of income of up to US$13,500 per household per year.

Nonetheless, this objective is not without challenges. There is a persistent push in the country, especially among the political elites, to prioritise economic development over human rights for achieving political stability in Papua. Delicate political histories between Indonesia and Papua contribute to this perspective.[32] Interventions in the form of development funds in the framework of Special Autonomy have not significantly improved the quality of public services and infrastructure.[33] Indeed, many researchers report that decentralisation in Indonesia has led to political contests between elites over their authority to manage local resources.[34] Researchers from the Indonesian Academy for Science have observed that in Papua the most striking change since Special Autonomy came into effect has been the increase in the amount of development funds, rather than any actual autonomy.[35] Money drawn from the Special Autonomy Fund has merely been used to finance bureaucratic facilities in the new agencies. Despite the dominant capital flows for development, the people of Papua in rural and urban areas are still just spectators, particularly as there is not yet any policy that is truly directed at the interests of indigenous peoples.[36] Nor is there a new paradigm for development processes that would genuinely empower people in Papua, hold the bureaucrats there accountable or transform the paradigm with regard to the position of Papua in Indonesia.

Moreover, MIFEE is argued to be representative of how the expanding agro-industry in Indonesia is being run at the expense of the rights of indigenous peoples.[37] Many who study the progress fear disasters may follow the considerable appropriation of indigenous lands. The Marind – the indigenous people of Merauke – are hunter-gatherer communities, who do not maintain permanent village sites or farms but instead occupy a series of camps in the forest that they use regularly. They primarily subsist by hunting, fishing and collecting sago, and their livelihood and food security are dependent on the health of their forest ecosystems.[38] The conversion of forests into mono-crop agriculture for palm oil, sugarcane and wood for wood chips requires the clearance of the forests; therefore it has reduced the Marind's livelihood options. Furthermore, upon the arrival of corporations in Zanegi village,

for example, many are reported to have experienced difficulties in accessing the forest as a result of the implementation of new entry rules.

Numerous Marind leaders and communities have expressed their concerns about the MIFEE project in relation to existing and future impacts. Additional to the changes to their traditional economy, complaints also consist of the manipulation of communities by investors and state agents seeking to obtain their signatures in order to comply with legal requirements related to showing clear title to indigenous lands.[39] Furthermore, it is estimated that at least two million workers from Java and other islands in Indonesia are moving into Merauke to provide labour for the project, further threatening the rights and well-being of the indigenous peoples.[40] Using qualitative research conducted in Merauke, Zakaria et al have observed significant social and economic challenges, socio-cultural problems, demographic revolutions, and economic and political marginalisation, especially for the Marind, as the main detrimental effects of MIFEE. [41]

The dynamic perspective of right to food norms in Indonesia

The change in power in 1998 overturned the traditional Indonesian disregard of human rights. Since then human rights norms and principles have been incorporated into the Indonesian legal system, directly or indirectly. Legislation has been issued and revised to incorporate human rights norms and the principles of the rights-based approach, such as participation, accountability and transparency. However, some discussion need to be made with regard to the ways that global human rights norms are interpreted and enforced in the context of Indonesian economic development.

Indonesia adopted and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) by Law No 12 of 2005. The right to food is implicitly found in the fourth amendment of the 1945 Constitution, in connection to the right to life and the right to sustainable livelihoods.[42] The corresponding Law on Human Rights No 39 of 1999 also reasserts the right of everyone to life, to sustain life and to improve his or her standard of living.[43] With regard to indigenous peoples the Law grants the protection of indigenous rights as human rights and recognises the different needs of indigenous communities.

Distinctive in the Indonesian system are some substantive and procedural limitations in the realisation of indigenous rights and the enforcement of economic, social and cultural rights. First of all, Article 6 of the Law No 39 of 1999 uses the term 'development of times' to specify the temporal limit of protection pertaining to particular indigenous land tenures.[44] Second, the concept of indigenous peoples remains a contested term in the Indonesian legal system.[45] The law uses the notion masyarakat (community) adat, which is in international human rights fora is understood to have the same meaning as 'indigenous peoples'. *Adat* itself refers to the hereditary customs acknowledged, adhered to, institutionalised and maintained by the local *adat* community.[46] Third, the implementation of human rights is the principle of human responsibility. Human responsibility is defined as considerations of morality, religious values, security and public order in a democratic society.[47] Fourth, a procedural limitation is found in the exclusion of the right to food in the jurisdiction of the Indonesian Human Rights Court, which naturally creates difficulties for sketching a recourse mechanism effective for protecting the right holders' entitlement to economic and physical access to food.

With regard to private actors, as at the global level, corporations have adopted human rights norms by assuming corporate social responsibility (CSR) as a licence to operate.[48] In Indonesia the Law on Investment No 25 of 2007 regulates the implementation of corporate social and environmental responsibility, defined here as 'responsibility mounted in every investment company to keep creating relationship which is in harmony, in balance and suitable to the local community's neighbourhood, values, norms, and culture'. The notion 'environmental' is specific in the case of Indonesia. It functions to impose mandatory standards on specific types of corporations. As explained and regulated in the Law on Corporations No. 40 of 2007 this implies the mandatory inclusion of CSR for 'companies doing business in the field of and/or in relation to natural resources'.[49] This provision has played a significant role in institutionalising corporations' legal obligation in Indonesia and it also enhances CSR's reception and specifies its implementation in the country, at least for the primary target of corporations that directly or indirectly make an impact on natural resources.

In reality the implementation of CSR initiatives adopted by corporations in the field of natural resources has been considered to be patchy and sector-based. Actions primarily concentrate in the areas of charity, education, research, health and natural disaster assistance. Very few cases are directed toward issues of the environment, security, human rights or other social matters.[50] In the areas of ethics and governance, on the other hand, CSR initiatives play a significant role. Globally speaking, there is a tendency for the promotion of corporate-led development and economic models on the ground. In combination with the preferred actions in the areas of charity, education and health, corporations increasingly change the role of the state, and how the state is experienced everyday by citizens. In many places, it is not a new phenomenon that CSR is employed as a tool to justify projects at odds with the human rights of those affected. CSR engagements as such respond to and inform politics and power relations in particular geographical contexts.

These norms and regulations on human rights, *adat* community and corporate social responsibility set the boundaries of a pluralised legal space in which actors are invoking their interests in the right to food in their interactions. Notably the case of agricultural modernisation in Indonesia demonstrates that incorporation and recognition are key features of the process of interlegality. Observed here is also the extent to which the established legal system of the state is being dynamically changed by means of adoption and adaptation of other legal norms, particularly those of international human rights. On the one hand, this suggests porosity between human rights legal orders and state legal orders on food, development and the protection of indigenous rights. Human rights and the right to food are therefore not fixed concepts' rather their benchmarks and meanings are open to interpretation. On the other hand, despite these normative interchanges suggesting a consensus on the right to food according to the Indonesian context, the very consensus also implies a new governance set that utilises the principle of economic and physical access to food. Connections and disconnections in these narratives of law exhibit potential tensions as to how the right to food in its relation to indigenous rights and CSR should be applied by diverse actors with varying levels of power to enact or harm in a large-scale agricultural project.

Public and private actors and their competing interests in the agricultural modernisation of Merauke

Additional to the interplay between norms and legal orders, as mentioned above, interlegality also considers how actors find themselves in a situation of constant transitions and trespass and how they are forced to engage in actions aimed at reconciling potential tensions. Following the recognition of international human rights norms in the Indonesian legal system, the principle of promoting economic and physical access to food is strongly emerging as a defining aspect of the national policy on expanding the agricultural economy in Papua. Engaging in the process of negotiations are national and local governments, private corporations and organised social movements that take an interest in the diverging aspects of the principle by employing various narratives and practices. The following sections address the extent to which the right to food is being reconfigured in such interactions.

National and local government

In the context of economic and physical access to food in Indonesia, agricultural modernisation is connected to a wide range of issues. Under the President Yudhoyono, who came to power in 2004, food security has become a national priority, in order to deal with Indonesia's rising population and global food price hikes.[51] As rice is a staple food for the majority of Indonesians, rice policy is crucial for political stability and national security.[52] Controlling rice exports and protecting the Indonesian domestic market from price competition and export regulations on agricultural goods are therefore two main policy concerns for the national government.[53] Arguments for achieving these goals through a policy of agricultural modernisation, however, consist of more complex claims. At the formal launch of MIFEE in 2010, President Yudhoyono declared a campaign on 'Feed Indonesia, then Feed the World'. In the light of this campaign a member of the president's special committee on food resilience explained: 'we need to expedite the development of new crop-producing regions such as this [Merauke], to strengthen our food resilience'.[54] It is noteworthy that, in addition to the concern over food availability and accessibility, the campaign promotes an agenda towards large-scale and rapid agricultural production, as well as the national interest of placing Indonesia in a prominent global role.

The idea for a rice estate was first proposed by the Regent of Merauke, Johanes Gluba Gebze, in 2003, following the success of a pilot rice project executed in the region.[55] The idea was seriously taken up by Yudhoyono during his visit to Merauke in 2006 to celebrate the Great Rice Harvest (*Upacara Panen Raya*). In this annual state event, which dates back to the New Order regime and was organized in Merauke for the first time, the president showcased the success of Indonesian agricultural development. The event was celebrated with a huge ceremony for Merauke, as a small regency populated by 400,000 people, marking the harvest of 16,339 ha of rice with a production level of 21,632 tons. Ironically rice is not part of the main livelihood system of the Marind, whose traditional ceremonies formed the main part of the celebration. The Marind mostly depend for their livelihoods on a mix of hunting and gathering with the production of staple foods such as sago and tubers. Rice cultivation has been practised by migrant settlers mainly from Java.

During the Great Rice Harvest, Yudhoyono declared Merauke to be the future national breadbasket.[56] Expanding the agricultural economy to Papua has since been gaining

momentum as a better and more effective national strategy for securing economic and physical access to food, to alleviate the heavy economic pressure experienced by Java with regard to urbanisation, population growth and the significant reduction in land available for agricultural production.[57] The policy of importing rice was reviewed in response to the dramatic rise in food prices on the heels of food and energy crisis in 2008. Nevertheless, the government framed the crisis as an opportunity for devising new strategies and solutions in intensifying rice production through large-scale agricultural production. Methods involving small farmers and small land tenure, practised for many decades in Java, are considered ineffective, with promising potential found in 'outer' and 'idle' islands. During the Great Rice Harvest Yudhoyono said that Merauke held a bright future for food exporting thanks to its suitable climate and abundant water for agriculture development.[58] Resonating with Yudhoyono, President Widodo recently reiterated the potential for expanding agricultural modernisation to Papua during his visit to Merauke in May 2015.[59]

The focus on devising an effective strategy to meet the challenges of physical and economic access to food was furthered by tactical decisions on who should be operationally involved. The agricultural modernisation agenda was drawn up in the light of corporate-led development and financing economic development. In the current Indonesian development policy MIFEE falls under the categorisation of 'real sector', which entails the economy of basic goods, agriculture and extraction.[60] Financing this type of economy depends largely on different types of investment, from government budgets, public corporations, to a mix of investments. The latest official data on MIFEE show that out of a total amount of IDR 648 trillion, the investment from private corporations totals IDR 232 trillion, the highest compared with other type of investment. In the context of financing economic development this amount of money would add to the limited government funds for regional development.[61] The policy of decentralisation, implemented after the collapse of the New Order, has restructured the relationship between local and central authorities. The idea of promoting the massive expansion of agricultural enterprises in Papua has therefore been argued by central and local governments to be a logical process. Despite no single and reliable calculation for the amount of government revenues existing,[62] profits deriving from MIFEE are said to secure the funds necessary for the development process in Merauke.

Corporations

As indicated above, corporate-led development implies an active involvement of private actors in financing the implementation of large-scale agriculture. The versatility of this idea is that in practice it creates enabling situations for corporations, which become empowered to take decisions and are unfettered by state mediation. As for MIFEE, this is represented in the ways private actors reconcile tensions arising from their profit-seeking nature while at the same time supporting the state's objective to promote economic and physical access to food.

Powerful transnational and national economic actors have identified Merauke as an 'empty land', which will be transformed into a productive site for fuel and food plantations.[63] Indonesian tycoon and founder of the Medco Group, Arifin Panigoro, used the metaphor of a 'flattening' Indonesia in Merauke.[64] Inspired by the work of Thomas Friedman,[65] he wrote:

> If the idle lands in Merauke were touched by productive hands, our food security would flourish and grow stronger. In fact, those agricultural products could be processed to become renewable energy (biofuel) for domestic needs…Viewing this from Merauke I realise that Indonesia needs

> to work hard and systematically prepare to meet the challenges of a world that is becoming hot, flat and crowded…Thus, we need food, education, and energy…It is our task together to flatten Indonesia.[66]

Panigoro's essay was written after his inauguration as an honorary member of the Gebze clan of the Marind Tribe in 2009. The Gebze clan is one of the seven major clans of the Marind tribe, the native settlers, and is also the clan of Johanes Gluba Gebze, the regent of Merauke. In reaction to this development, some Marind customary leaders consented to land acquisition by the Medco Group within Marind territory, on the condition that the land be used in an environmentally friendly manner. For corporations and local government, this represented a step towards their ambition of dismantling social constraints on land dispossession.[67]

Whether Panigoro's opinion was written in his new role of honorary member of the Marind tribe is difficult to gauge. However, his inauguration demonstrates how political alliances are established. Through a set of calculated story lines he responds to the way the governance of agricultural modernisation is constructed. The use of phrases such as 'productive hands', 'meeting the world's challenges' and 'food, education and energy' invokes ideas connected to the agricultural modernisation promoted by the government. Political and rhetorical alliances such as these can demonstrate how governance practices should be organised and performed on the ground.[68] They can not only influence the policy-making process, but also structure how central actors are being forced to accept agricultural modernisation.

An illustration of this is as follows. In 2011 blunders occurred pertaining to land releases in Buepe village as Medco failed to correctly identify the indigenous ownership of the forest and provided financial payment to incorrect claimants. The population of Buepe village received financial compensation, although, according to customary laws practised by the Marind, forest areas surrounding the village traditionally belong to the inhabitants of the Sanggase village. What is interesting about this case is that claims made using customary Marind laws were no longer deemed exclusively to belong to the indigenous people. The political alliance between the government and Medco was manifested in the inauguration of Panigoro as an honorary member of the Marind tribe to direct the negotiation process. Pressure continued as Medco warned that it would implement customary sanctions and punishments against the Sanggase.[69] Formal meetings at the regent's office eventually ensued, following resistance and protests in the city of Merauke. After a series of meetings, attended by leaders of the Sanggase and CSR representatives of Medco, a settlement was finally reached in 2012. In addition to an agreement to build churches, community centres and schools decided upon within the framework of Medco's CSR policy, an additional financial compensation of IDR 3 billion was made, a tiny fraction of the initial demand for IDR 65 billion.

Agricultural expansion that takes the form of an investment by corporations bearing capital and seeking profit is generally problematic. Corporations operate in a competitive context that compels them to seek maximum profit on the capital they deploy.[70] Moreover, it is observably common that customs have been invoked to obtain consent from indigenous groups to 'release' resources such as land and forest for development projects in contemporary Indonesia.[71] The narratives and practices performed in Merauke are thus neither original nor novel strategies. Arguably they were adopted as a result of the formidable difficulties faced by corporate actors in acquiring large tracts of land for their agribusiness projects. The collective right to land has long been upheld by the land tenure system in Papua, particularly that of the Marind. The Marind's territory, forming an enormous triangle around the Bian River, is carefully divided into *boan* land titles controlled by clans and sub-clans. The right

to use *boan* land is held by the clan, not by the individual headman of the clan, and only a member of the clan can access and use *boan* land.[72]

Organised social movements

Organised social movements are a central interlocutor that adheres to human rights rhetoric in dialectical actions aimed at reconciling socio-political tensions in agricultural modernisation. Following Kennedy's characterisation,[73] these groups of human rights professionals refer to third parties, from individuals to NGOs, who act out of sense of compassion or moral compunction to further the well-being of indigenous communities against the interests of the state or other private parties. NGOs in Indonesia have acquired pivotal positions in the country's social, economic and political landscape.[74] Their role in promoting human rights and in the development, empowerment and improvement of livelihoods has been recognised. In Merauke a network of 22 NGOs, national and international, is currently active, providing assistance to indigenous communities and facilitating the process of negotiations with public and private actors. The rise of social movements against massive acquisitions of indigenous land is not simply an expression of rejection of such projects, it has its own specific language, with key words such as 'rights', 'empowerment', 'development' and 'cultural acceptability', as well as negotiating strategies.

The framing of MIFEE as a violation of human rights and the right to food is observed in the interaction between NGOs and indigenous communities. The process occurs in workshops, training and organised field visits. These events provide a mutual exchange of discourse and practice as well as a transfer of knowledge on the rules and norms of human rights, the right to food and indigenous rights. NGOs representatives consider the value of empowerment by creating awareness and sensitising indigenous peoples to the transformative role of universal rights.[75] In training on the right to food for indigenous peoples organised by a local NGO called SKP Merauke in July 2011, one indigenous community leader stated his agreement with the concept of cultural acceptability of the right to food and the state's obligation to protect this. He said to the trainer from Forest Peoples Programs: 'this is really important for us. Our rights are being violated by companies. The government should protect us.'[76]

Publicising the process of negotiations on the right to food in international fora is another strategy employed. Since 2011 three human rights reports and requests have been written on MIFEE, and presented to the UN Special Rapporteur on the Right to Food,[77] to the Committee on Elimination of Racial Discrimination,[78] and to the 13th session of the Human Rights Council's Universal Periodic Review in November 2012.[79] In these reports human rights and the right to food are invoked prominently in order to formulate representative human rights claims. This implies setting ethical standards useful for considering violations, depicting the process of marginalisation and framing challenges faced by indigenous peoples. It is also important to note that, in comparison with narratives performed by the state and by corporations, the right to food has been approached in its normative sense in these reports. The focus is on the entitlement to land, that is, on who has command over indigenous properties necessary for the Marind to be able to feed themselves.

Additionally, collecting information on the status of the economic, social and cultural rights of the Marind is also performed by several local NGOs. The objective is twofold: first, to inform the indigenous communities of their economic and social rights – including the right to food; and, second, to advance the status of the right to food as a legal norm.[80]

Statistical analysis of complaints submitted by members of indigenous communities reveals a comparable number of cases reported in August 2011, December 2011, August 2012 and December 2012. However, while some concerns receive consistent attention from the people, there are also complaints that fluctuate significantly. For instance, complaints about public service, which consider the quality and quantity of infrastructures such as schools and electricity, constantly range between 15% and 20%. On the other hand, where the submission of complaints on the issue of access to food is concerned, the number of complaints varies significantly, from about 20% in the first two reports to around 5% in the December 2012 report.[81]

The negotiation process that includes transfers of discourse and knowledge, formulations of claims, as well as collection of data to advance the legal status of the right to food may possibly have contributed to the construction of a dialectical process of negotiation – a public dialogue involving the state and corporations – about the meaning, the source and the scope of authority concerning the right to food. It could create political engagement for discussing the relevance of the right to food for the actual realities of the Marind communities who are affected by agricultural modernisation. Nonetheless, optimistic assessments on the use of human rights rhetoric in the process of negotiation need to be made cautiously. The growing dominance of international human rights law and the direct involvement of international NGOs have certainly contributed to a supranational dimension of legal pluralism and have created more possibilities for engaging in a variety of social and political activities. The paradox is that indigenous communities and NGOs continue to find themselves with other actors and constant change with regard to their priorities and preferences inevitably have to be made. Rather than confronting the process of marginalisation, the process of negotiating the right to food could actually reinforce the interests of the powerful.

Ownership of rights in unequal power relations

The discussion on the dynamic of the right to food in the Indonesian legal system and of the various interests of powerful actors shows that understanding the right in a 'common sense' way of improving physical and economic access to food, proves effective at addressing possible social and political tensions between actors. However, as observed above, diverging human rights-inspired practices do not necessarily advance the implementation of the state's obligations, nor do they reflect normative content on the entitlement of rights holders to have physical and economic access at all times to adequate food or the means for its procurement.

Following global and domestic pressure, Indonesia has included a wide range of human rights norms in its legal system. Domestic political dynamics in the country have ensured that susceptible global norms are adopted and adapted into the country's situation. Connecting this situation with interlegality where porosity and compromises constantly occur, implies that some rights, particularly those linked to the development agenda such as economic, social and cultural rights, acquire different representations and benchmarks. Interactions of various forces on the ground, between actors, norms, interests and practices, shape the extent to which actors may agree on the scope of interpretation and their authority in decision-making processes. In other words, the realisation of the right to food in the governance of agricultural modernisation in Indonesia depends on the interplay of many social, political and legal requirements and its implementation relies on the alliance of powerful actors.

In particular, the state now has the comprehension of a possible strategic coexistence between human rights and corporate-led development. Corporations are increasingly confident in combining different discourses as they are enabled by states. A strong alliance between the state and private actors in the case of Papua is displayed in the flexible morality used to achieve the goals of corporate investment. Such flexibility leads not to fundamental tensions between state, corporations and social movements. Rather agricultural modernisation is perceived as compatible with the promotion of the right to food in its broader sense by both the state and corporations. It offers a win-win situation where all actors involved will be benefited. As to social movements, resistance based on the right to food signifies that there is a clear and broad material basis representing dissatisfaction towards how economic development is organised in Papua. However, dissecting layers of their narratives is not a straightforward matter as such resistance remains broad in nature. Social movements' endeavours have not yet substantially been formulated towards addressing the power of capital. In fact, the aspirations of state and private actors are traceable in and at the same time distort the construction of these struggles.

None of these dynamics has therefore challenged the position of the state in executing the agricultural modernisation agenda. The Indonesian government remains in a powerful position to define the extent to which rights ought to be realised and who shall be involved in the governance of natural resources necessary for realising the right to food. Buttressed by procedural limitations, ie the jurisdiction of the human rights court and the consideration of morality, religious values, security and public order prescribed by Indonesian human rights laws, the state can apply a tactical interpretation of the right to food. Despite the domains to which demands were submitted and the persistent insistence on the right to food of social movements, the state manages intentionally to refrain from using human rights rhetoric and to concentrate on wider discourses of food security, agricultural modernisation and economic development. As the governance of access and resources is shared with corporations, legal requirements to integrate ethics and morality in investment practices are demanded by corporations with a view to justifying a win-win solution of creating a harmonious balance, and a suitable relationship between the state, corporations and local communities' neighbourhoods, values and culture.

Keeping the intricacy of realising the right to food as such is key for the state to be able to oversee its resources and the ways through which they are accessed. Controlling the narratives on the right to food based on the different roles of the actors on the ground also represents a tendency of the state to avoid political confrontation on the subject of state obligations. This strategy has secured supports from propitious actors. Positioning themselves as supporters of the state agenda on food security and agricultural modernisation, corporations have partially adopted the indigenous rights narrative, and used it to challenge resistance from the indigenous communities. Moreover, the strategy also maintains the hegemonic position of the state. Other views and contending opinions can be regarded as impractical, though not essentially irrelevant. Such an organisation of roles and narratives allows the state to discipline human rights negotiations within certain fora. For organised social movements, although the language of human rights has prominently facilitated the mobilisation of right-holders and naming and shaming at international level, its significance in promoting human dignity is rather unclear. In sum, one could argue that the invocation of the right to food against such plural normative orders and their corresponding societal and political dynamics in Indonesia and Merauke has reconfigured the meaning and relevance

of the right, that is, who has the command over resources and strategies. Rather than interrogating the state, this phenomenon could gradually lead towards a strengthening of formal state structures.

Conclusions

Interlegality is an unavoidable reality in the age of globalisation, where interests of power and capital increasingly merge into the legal landscape of how the right to food should be and is realized. As a starting point for the analysis, in this article interlegality has been understood as a site of struggle that places actors – whether they are government officials, corporate representatives, activists or ordinary people – in a situation of constant transition and trespass and compels them to engage in actions aimed at reconciling potential tensions.[82] This implies that actors will engage in discursive practices, in which they will be able to evaluate the right to food.[83]

This article has explained how different actors involved in large-scale agriculture enact consistent and contradictory narratives that are emblematic of their interests and together reconfigure the right to food in Indonesia. It has explored how and to what extent tensions regarding the right to food are occurring and resolved. By scrutinising the practice of the right to food this way, the discussion reveals that complex processes are taking place between competing and conjoining interests in agricultural modernisation.

The analysis of the dynamic perspective of the right to food in Indonesia demonstrates that global norms are being incorporated according to domestic political economy situations. The process of adopting and adapting the right to food entails partial integration, as well as avoidance of the substantive and procedural contents of the right to food, which tend to blur benchmarks between rights and duties as well as boundaries for invoking said right. This is not an uncommon challenge when trying to practice economic, social and cultural rights, especially those that postulate more claims on entitlements in development justice. In Indonesia the right to food, indigenous rights and corporate social responsibility are linked together to structure a new set of governance that, on the one hand, enables actors to construct representative claims. Yet, on the other hand, the surrounding legal and political arrangements for the execution of agricultural modernisation are organised such that actors are never free to do as they wish in upholding or rejecting the core premise of the right to food.

The context in which the project analysed operates is a country that has a complex history of prioritising economic development agendas over human rights, in general, and in Papua in particular. Applying interlegality to investigate the flow of norms and practices in such a context confirms how both norms and practices on the right to food are defined and redefined in relation to one another. In the case of Indonesia, examining the flow of norms and practices also reveals how power is unequally organised and is persistently maintained as such. As has been observed in the case of agricultural modernisation in Papua, rather than creating a meaningful dialectic, these interests and their corresponding practices tend to depoliticise the process of realising the right to food. The interplay between actors, norms and practices in the context of unequal power relations can bring about significant administrative procedures that limit the political space to change the very relationship between these actors.

Based on these findings, the article argues that scholarly discussions must move beyond the binary of conflict – state and corporations vs social movements, locals and communities. Instead, inquiries into struggles to realise the right to food need to underscore the power of capital dynamics that not only empower the state and private actors, but also influence the direction taken by social movements. Further examination of the right to food in an increasingly pluralised state order would require prudent evaluation of the paradoxes and pitfalls resulting from competing and conjoined interests in food, land and investments.

Notes on Contributor

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Notes

1. UN, "General Comment No. 12", paragraph 6. Normatively the right to food implies, as the ICESCR recognises, 'the right of everyone to an adequate standard of living for himself and his family, including adequate food…and to the continuous improvement of living conditions', as well as 'the fundamental right of everyone to be free from hunger'.
2. Robison, *Indonesia*.
3. Christensen, "Physiocracy," 84.
4. See, for instance, Tiwari and Jain, *Modernization of Agriculture*, 89; Amanor, *Global Restructuring*, 38; and Watkins, *Agricultural Trade*, 69.
5. For more discussion on this subject, see Bahiigwa, "Right Target, Wrong Mechanism?," 48–485; and Goss and Burch, "From Agricultural Modernisation to Agri-food Globalisation," 975.
6. UNGA, "The Right to Food," A/57/356, August 27, 2002.
7. See the annex to the report of the Special Rapporteur on the Right to Food, Mr. Olivier De Schutter, "On Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge." UN Doc. A/HRC/13/33/Add.2, December 28, 2009.
8. Golay and Biglino, "Human Rights Responses," 1637.
9. Grugel and Piper, "Do Rights Promote Development?," 79.
10. de Sousa Santos, "Law"; and de Sousa Santos, *Toward a New Legal Common Sense*.
11. Hoekema, "Multicultural Conflicts."
12. de Sousa Santos, "Law"; and de Sousa Santos, *Toward a New Legal Common Sense*.
13. de Sousa Santos, *Toward a New Legal Common Sense*, 437.
14. Blomley, "Text and Context."
15. Bowen, "Consensus and Suspicion."
16. Blomley, "Text and Context."
17. Twining, "Diffusion and Globalization Discourse," 513.
18. International Council on Human Rights Policy, *When Legal Worlds Overlap*.
19. Randeria, "Glocalization of Law."
20. Sjoberg et al., "A Sociology of Human Rights"; and von Benda-Beckmannn and von Benda-Beckmannn, "The Dynamics of Change."
21. Tamanaha, "A Non-essentialist Version," 298.
22. Quane, "Legal Pluralism," 677.
23. Randeria, "Glocalization of Law," 312.
24. Mauzy, "The Human Rights and 'Asian Values' Debate."

25. In this regard de Sousa Santos explains that at the local level there are large-scale legalities with meaningful details and relevant features of one activity to be regulated, as opposed to medium-scale legalities and small-scale legalities that exist, respectively, at the state and global levels. In this vein the universality and global nature of human rights norms and the impreciseness of small-scale legalities are faced with a demand for procedural details to fit the large-scale nature of the local level. de Sousa Santos, "Law," 288.
26. de Sousa Santos, *Toward a New Legal Common Sense*, 440.
27. Desai, "Narrating Indigenous Rights."
28. Ibid., 236.
29. Goodale, "Locating Rights."
30. The nationalist song 'Dari Sabang Sampai Merauke' (From Sabang to Merauke) exemplifies the nationalistic feeling towards Papua. Sabang – on the tiny island of We, at Indonesia's most northwestern tip, and Merauke, on the south coast of New Guinea, symbolise two societal, political and geographical extremes: one is located in the devout Muslim province of Aceh or the 'Verandah of Meccah', the other forms part of the Melanesian world of Papua.
31. The Indonesian government forecasts that by 2020 the region will produce 1.95 million tons of rice, 64,000 cows, 2.5 million tons of sugar, 167,000 tons of soybean, 2.02 million tons of maize, and 937,000 tons of crude palm oil annually. The project will be developed in stages, from 2010 to 2014, 2015 to 2019,and 2020 to 2030.
32. Chauvel and Nusa Bhakti, *The Papua Conflict*.
33. Papua gained Special Autonomy Status following the establishment of Law No. 21 of 2001, which legitimises the distinctiveness of Papua and bestows the Province with Special Autonomy status and political and administrative prerogatives, including those related to its indigenousness and development challenges. The Law is intended to correct serious inequality and human rights violations, as well as to refocus the self-determination aspirations expressed by the Papuans.
34. For more elaborate discussions on the subject, see Hadiz,"Decentralization and Democracy"; and Davidson, "Dilemmas of Democratic Consolidation."
35. Widjojo, *Papua Road Map*, 93.
36. Widjojo, *Papua Road Map*, 94.
37. Ginting and Pye, "Resisting Agribusiness Development," 160.
38. Author's field notes, August 13, 2011.
39. Author's field notes, June 25, July 6, and August 19, 2011.
40. Perkumpulan Sawit Watch et al., "Request for Consideration."
41. These include, first, disregard of the low level of education of Papuans, and their hunting and gathering mode of production in the transformation from household farming to corporate–mechanised farming (the socio cultural gap). Second, since the demand for labour for corporate farming is calculated to absorb about 4.8 million new migrants from outside Papua, which will change the demographic in the regency, it is predicted that Papuans will only amount to 5% of total residents. In consequence, the project will lead to displacement and uneven access to economic power, similar to what was experienced by Papuans during a transmigration programme in the 1980s (demographic revolution). Third, agricultural modernisation that provides no space for Papuans will also intensify socioeconomic polarisation, leaving Papuans at the lowest level of the economic ladder (economic marginalisation). Fourth, the greater economic power that would be better accessed by migrants than by indigenous Papuans might also bring migrants better access to political power in government offices and other forms of political leadership (political marginalisation). See Zakaria et al., *MIFEE*, 72–93.
42. Article 28A, Indonesian Constitution.
43. Article 9(1), Law on Human Rights No. 39 of 1999.
44. Article 6, Law on Human Rights No. 39 of 1999 reads: '(1) In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government; (2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times.'
45. De Royer et al., "Self-identification of Indigenous People."

46. The existence of *adat* community is defined by its dependence for survival on a specific territory, environment and natural resources, which are made clear by the physical and spiritual relations of the aforementioned community and its territory.
47. Paragraph J of Article 28 stipulates that 'in exercising her/his rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society'.
48. Utting, "The Struggle for Corporate Accountability"; and Bedi, "Right to Food."
49. This Article was controversial even during the original drafting process. It had been absent from the earlier draft law proposed by the Indonesian government, having only been first proposed by Members of Parliament during the Parliamentary negotiation process and remaining until the final parliamentary decision. As several members of Parliament argued, its inclusion stemmed from the various environmental and human rights cases involving corporations, which have not been resolved. The rationale was that assigning such an obligatory component could be regarded as a preventive action, which would help offset any detrimental effects on society from corporations' behaviour. In the end, it is expected to push forward the implementation of good corporate governance.
50. Waagstein, "The Mandatory Corporate Social Responsibility."
51. Ito et al., "Power to Make Land Dispossession Acceptable," 29.
52. Hadiprayitno, "Food Security."
53. The country currently imports basic foodstuffs equivalent to 5% of the state budget. In April 2014 the Central Logistics Bureau (Badan Pusat Logistik/BPS) observed that rice imports in Indonesia amounted to 31,145 tons or US$13.5 million. The amount of imports continues to increase; in June 2014 it reached 49,539 tons or $22.3 million.
54. Quoted in "Bom waktu," *Tempo Magazine*, April 8, 2012.
55. The proposal was a follow-up to the pilot project executed by Medco's subsidiary company, which is a 'system of rice intensification' (SRI) method of rice cultivation on 20 ha of land near Serapu village. It received support from Bupati Johanes Gluba Gebze to expand SRI cultivation, as Gebze considered SRI to be highly productive and suitable for the area's topography and climate.
56. Quoted in "Menari di Papua," *Rakyat Merdeka*, April 6, 2006.
57. The latest BPS data show that total rice-production estimates declined by 450,000 tons to 70.8 million tons in 2014, a sharp turnaround from a 2.2 million ton increase posted the previous year. "Fall in Rice Output," *Jakarta Post* March 3, 2015.
58. Yudhoyono, quoted in "Menari di Papua," *Rakyat Merdeka*, April 6, 2006.
59. As noted in "President Berharap Merauke," *Kompas*, May 10, 2015.
60. Coordinating Ministry for Economic Affairs, *Master Plan*.
61. The total investment required for the six corridors is IDR 4012 trillion. From this total it is expected that the Sumatra Corridor will receive IDR 714 trillion (18% of total investment), the Kalimantan Corridor IDR 945 trillion (24% of total investment), the Java Corridor IDR 1,290 trillion (32% of total investment), the Sulawesi Corridor IDR 309 trillion (8% of total investment), the Bali-Nusa Tenggara Corridor IDR 133 trillion (3% of total investment), and the Papua-Maluku Corridor IDR 622 trillion (15% of total investment).
62. Obidzinski et al., "Can Large Scale Land Acquisition?"
63. Ginting and Pye. "Resisting Agribusiness Development."
64. The Medco Group, an oil company whose owner Arifin Panigoro was an influential politician with the Partai Demokrasi Indonesia Perjuangan (PDI-P), has an influential role. Typically, Medco is a conglomerate that is involved in energy, agribusiness, finance, manufacturing, and real estate and hotels. Through its subsidiary, PT Selaras Inti Semesta (SIS), it is already developing a 300,000 ha timber plantation in Kurik, Kaptel, Animha and Muting districts. Its woodchip mill, PT. Medco Papua Industri Lestari (MIL), needs 10 million tons per annum for woodchip production and another two million tons annually for pulp production. While waiting for the

timber plantation to mature, which will need eight years, the mills utilise tropical timber from community forests and their concessions.

65. Friedman, *The World is Flat*.
66. "Memandang Indonesia dari Merauke," *Kompas*, August 29, 2009.
67. Ito et al., "Power to Make Land Dispossession Acceptable," 6.
68. Ito et al., "Power to Make Land Dispossession Acceptable," 5.
69. Medco Papua Industri Lestari, *Keputusan Perusahaan*.
70. Li, "Centering Labor," 282–283.
71. Colchester and Ferrari, "Making FPIC Work."
72. Ito et al., "Power to Make Land Dispossession Acceptable," 7.
73. Kennedy, "International Human Rights Movements," 11.
74. Nugroho, "NGOs, the Internet and Sustainable Development," 89.
75. Author's field notes, July 20, 2011.
76. Author's field notes, July 24, 2011.
77. Perkumpulan Sawit Watch et al., "Request for Urgent Assistance."
78. Perkumpulan Sawit Watch et al., "Request for Consideration."
79. HUMA et al., 'Stakeholders' Submission', *Indonesia Universal Periodic Review*.
80. Author's field notes, August 15, 2011.
81. The information is gathered from SKP-Merauke bulletins: "SORAK No. 2, 2011"; "SORAK No. 4, 2011"; "SORAK No. 10, 2012"; and "SORAK No. 12, 2013."
82. de Sousa Santos, "Law," 208.
83. Goodale, "Locating Rights," 24–25.

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