

# Self-identification of indigenous people in post-independence Indonesia: a historical analysis in the context of REDD+

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## SUMMARY

The reform era around the turn of the century in Indonesia has been followed by a revitalization of local claims to political authority and natural resources on the basis of *adat* and indigeneity. In May of 2013, the Constitutional Court acknowledged indigenous ownership of forest territories and declassified them from State-owned forest zones without further conceptualizing the notion of indigeneity and its relation to land tenure and territorial conflicts. Drawing on a historical review of the *adat* discourse, this paper demonstrates how Dutch scholars during the colonial time have supported a definition of indigeneity based on territorialisation. Using a case study from the interior of Kalimantan, we provide evidence that privileging indigenous communities based on the notion of territoriality and prior occupation of the land, supported by a colonial definition of *adat* rights tends to exclude right-holders who do not necessarily fit clear territorial niches. This administrative practice of essentializing the social structuring of the landscape matches the requirements used in the context of REDD+ but ignores the fact that social and territorial boundaries of ethnic groups are permeable and dynamic due to social-political interactions which create contention and conflict especially in the context of the recent introduction of carbon rights and benefit sharing under the context of REDD+.

Keywords: Indigeneity, *adat*, REDD+ social safeguards, benefit-sharing, territoriality

## Auto-identification des indigènes dans l'Indonésie depuis l'indépendance : une analyse historique de la REDD+

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La période de réformes en Indonésie vers le tournant du siècle a été suivie par une revitalisation des demandes locales à une autorité politique et à un droit aux ressources naturelles, se basant sur l'*adat* et sur la notion d'identité indigène. En Mai 2013, la Cour constitutionnelle a reconnu la propriété indigène des territoires forestiers et les a déclassifiés des zones de forêts d'état, sans conceptualiser plus en avant la notion d'identité indigène et sa relation au bail des terres et aux conflits territoriaux. Se basant sur une étude historique du discours lié à l'*adat*, ce papier démontre que les érudits hollandais avaient soutenu une définition de l'identité indigène basée sur la notion de territoire, durant l'époque de la colonisation. En utilisant une étude de cas située à l'intérieur de Kalimantan, nous fournissons des preuves que l'octroi de privilèges aux communautés indigènes, basé sur la notion de territorialité et d'occupation antécédente de la terre, soutenue par une définition coloniale des droits *adat*, tend à exclure les possesseurs de droits ne rentrant pas nécessairement dans des niches territoriales claires. Cette pratique administrative de rendre essentielle la structure sociale du paysage se trouve faire écho aux conditions nécessaires préconisées dans le contexte de la REDD+. Néanmoins, elle ignore le fait que les délimitations sociales et territoriales des groupes ethniques sont perméables et dynamiques, du fait des interactions socio-politiques génératrices de disputes et de conflits, et ce particulièrement dans le contexte de l'introduction récente des droits au carbone et du partage des bénéfices dans le contexte de la REDD+.

## La autoidentificación de los pueblos indígenas en la Indonesia post-independencia: un análisis histórico en el contexto de REDD+

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La era de la reforma en torno al cambio de siglo en Indonesia ha sido seguida por una revitalización de voces locales que reclaman autoridad política y recursos naturales con base en *adat* (derecho consuetudinario) y la indigeneidad. En mayo de 2013, la Corte Constitucional reconoció la propiedad indígena de los territorios forestales y los desclasificó de las zonas forestales de propiedad estatal pero sin avanzar más en la conceptualización de la noción de indigeneidad y su relación con la tenencia de la tierra y los conflictos territoriales. Tomando como base una revisión histórica del discurso *adat*, este artículo demuestra cómo durante la época colonial los académicos holandeses apoyaron una definición de indigeneidad basada en la territorialización. Mediante el empleo de un estudio de caso del interior de Kalimantan, aportamos pruebas de que el otorgar privilegios a las comunidades indígenas en función de la noción de territorialidad y la ocupación previa de la tierra, y el apoyo de una definición colonial de derechos *adat*, tiende a excluir a aquellos titulares de derechos que no encajan necesariamente en nichos territoriales claros. Esta práctica administrativa de esencializar la estructura social del paisaje coincide con los requisitos que se emplean en el contexto de

REDD+, pero no tiene en cuenta el hecho de que los límites sociales y territoriales de los grupos étnicos son permeables y dinámicos, debido a las interacciones sociopolíticas que crean discordia y conflicto, especialmente en el contexto de la reciente introducción de los derechos de carbono y la distribución de beneficios en el contexto de REDD+.

## INTRODUCTION

The narrative discourse about who owns and controls the forest, and the role and the position of customary people's laws (*adat*) within the state law in Indonesia began during the Dutch colonial era, temporarily moved into background after Independence, but returned to foreground after a while and continues until now (Von Benda-Beckmann 2011; Galudra and Sirait 2009; McCarthy 2005; Peluso and Vandergeest 2005; Thiesenhusen et al. 1997).

During President Suharto's New Order regime (1967–1998) the Government of Indonesia designated 120 million ha of forest as State zone (*kawasan hutan*) under the jurisdiction of the Ministry of Forestry (Contreras-Hermosilla et al. 2005). Under this regime, forest communities in Indonesia have experienced strong pressure and marginalization in the name of the national interest (Nanang and Inoue 2000). Government's "encroachment" on the village commons has often been perceived by customary communities as illegal infringement of their *adat* rights (Von Benda-Beckmann 2011).

In the wake of the reform era (*Reformasi*) since 1998 and the subsequent democratization and decentralization processes taking place in the country, there have been efforts to reinstate *adat* as an alternative source of meaning and legitimization for local claims by regional governments and non-governmental organizations across the archipelago (Acciaioli 2008; Bakker 2008; Von Benda-Beckmann 2013). In 2001, the Indonesian Parliament (TAP MPR IX) decreed the reform of natural resources and land tenure laws and policies in accordance with principles that recognize, respect and protect the rights of *adat* law communities. However, it did not give any concrete answer to the historical narrative discourse about the precise role of *adat* in land tenure and natural resources management, its status as customary law or "adat law" (*adatrecht*), and the relation of *adat* institutional orders to the State order (Widiyanto and Mary 2012). Henceforth, the TAP MPR IX concepts did not materialize in ensuing derivative laws that honoured and respected the rights of *adat* communities. It was only in May 2013 that the Constitutional Court (decision n°35/PUU-x/2012) modified a key clause in the Forestry law by removing State claims on *adat* forests now referred to as customary forests (*hutan adat*). This decision implies that indigenous people are now considered legal entities and customary forests have been declassified from State forests. It opens up the necessary space to clarify and settle historical discourse and contestation about customary rights as different from State rights over forested

land, especially in relation to the recent issue of carbon rights and benefit sharing under the context of REDD+ (Lyster et al. 2013; Galudra et al. 2011).

By adopting the UN Declaration on the Rights of Indigenous People, REDD+ social safeguards focus on efforts to ensure that any mitigation programs related to deforestation and emission reductions from the forest do not harm local communities and indigenous peoples' rights, their access to land and aspirations. Unfortunately, the single focus on indigenous peoples generates the problem of potential exclusion of in-migrants who cannot claim historical or *adat* rights to the land they depend on for their livelihood. Another problem is that self-identification of indigeneness may differ from recognition by others, whether the Indonesian state's representatives or non-indigenous communities. Only few studies raise the issue of indigeneity<sup>1</sup> and its relation to land tenure, territoriality and conflicts in the context of REDD+. Particularly in Indonesia, the issue of indigeneity is gaining importance in the context of decentralization (Acciaioli 2002; Davidson and Henley 2007; Von Benda-Beckmann 2013), but it is largely neglected in the climate change and *adat* discourse. Recent recognition of indigenous rights and territories by the 2013 Constitutional Court decision therefore underscores the need to seriously consider the impact of how 'indigeneity' is being conceptualized in relation to land tenure and territorial conflict in Indonesia (Obidzinski 2005; Bakker and Moniaga 2010; Hall et al. 2011). Questions like 'who is in and who is out?' or 'who is considered indigenous and who is not, and why?' are fundamental in the context of REDD+, and cannot be ignored. There may be the danger of puritanism in defining indigeneity as the single prerogative of customary law communities (*masyarakat hukum adat*) at the expense of in-migrating forest dwellers (Bakker 2008: 156; Fisher and Lyster 2013:189) who have lived in the area for many generations. Our ultimate goal in this paper is to critically look at the ways the discourse on indigeneity and ethnic identity is applied by governmental and non-governmental actors as well as by indigenous groups themselves in order to prevent doing harm, and to safeguard livelihood security and rights to those who hold rightful claims to forested *adat* land as well as to those smallholder forest dwellers who belong to groups not classified as 'indigenous' yet equally dependent on the forested land (Galudra et al. 2014).

The paper starts with a literature review of the *adat* discourse in Indonesia from the colonial era until the present followed by a presentation of the study area in the interior of Kalimantan. This review allows us to understand how Dutch

<sup>1</sup> The term indigeneity described by Merlan (2009) is taken to imply first-order connections between group and locality. It connotes belonging and originariness and deeply felt processes of attachment and identification, and this distinguishes "natives" from others.

colonial discourse has supported the recent construction of an indigenous people's rights definition, how it is largely being used by indigenous rights NGOs and articulated by communities in the current revival of the discourse on indigenous people's rights. We will use our research in the upstream Kapuas area, West Kalimantan as a case to illustrate how forest dwellers self-identify themselves as indigenous and "reinvent" their settlement history and land claims in order to justify legitimacy over territories and natural resources. We also demonstrate how the issue of indigeneity may impact horizontal land tenure conflicts, particularly in relation to the concept of social safeguards (Jagger et al. 2012), and discuss how to better understand claims on land rights and tenure security under REDD+ in the modern Indonesian landscape of migration, multi-ethnicity and contested forest and resources.

The case study provides evidence of the fact that customary communities are not homogeneous, and that interests expressed in terms of *adat* may vary within villages and between ethnic groups according to a wide variety of *adat* laws regulating access to land and resources. Our case supports findings from East Kalimantan that a uniform definition of *adat* and *hak ulayat* like the one promulgated by ministerial regulation (MNA/KBPN No 5/1999, in Bakker 2008: 142-43) does not accommodate for this wide variety and sometimes incompatibility of local interpretations of these concepts. This ministerial regulation basically outlines that the recognition of *adat* communities and territories needs to come from district and regent government, but it does not state any clear guidelines for this recognition from the national government. This finding is particularly important in the context of recent uncertainties around legal tenure rights to forested land in order to claim REDD+ payments and carbon rights, when different interpretations of *adat* are increasingly used by indigenous communities and NGOs to harness the global discourse on REDD+ to their advantage in local arenas (Chhatre et al. 2012). The paper concludes with the discussion of an existing Community-Based Forestry Mechanism (*hutan desa*) which could provide a solution to legitimize ownership but also holds clear limitations.

## INDIGENEITY

The notion of indigeneity and the issue of self-identification of indigenous peoples versus local communities is highly relevant in the present debate about who can claim tenure rights to forest land in order to access REDD+ payments. The concept of indigeneity in the often used UN Declaration on the Rights of Indigenous Peoples is rather general: "*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their*

*own cultural patterns, social institutions and legal system*" (Karoba 2008: 106-107). This definition clearly connects the concept of indigeneity to a specific place or territory. It doesn't easily align with current understanding of human history, where all current ethnic groups have been invaders and/or colonialists at some point in the past. This general definition also often conflicts with, and negates the actual practices of indigenous peoples in the interior of the archipelago and the upstream-downstream mobility of in-migrants from elsewhere, or indigenous groups maintaining their identity while migrating to cities. In the Indonesian context where people's mobility, especially in the upland forested areas, has been the rule rather than the exception, this territorialized definition of indigeneity can easily lead to conflicts and competing claims among groups. Belonging to a group and having migrated elsewhere conflicts with the territorialized notion of belonging to a group and occupying the very original (according to living memory) territory of that particular group. The UN Declaration also contradicts in its definition whereby indigeneity is strongly linked to territory while recognizing the right of self-determination, which implies that indigenous groups have the freedom to use their own criteria to declare themselves as separate and indigenous group.

Like in the colonial era, again today the mapping and control over land makes indigeneity and indigenous land rights critical issues to be addressed, particularly in the operationalization and implementation of REDD+ social safeguards (see below). Identifying who is and who is not 'indigenous', and therefore entitled to articulate rights over forested land is a delicate exercise in an era of decentralization which triggers the revitalization of *adat* and ethnic identity claims over land rights.

The notion of indigeneity has become politicized in a local arena under social-cultural and political-economic conditions that vary between districts and regions, as much as between ethnic groups.

We use Li's argument that a group's self-identification as indigenous is not a natural or given status but a "*positioning which draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle*" (Li 2000: 151). Her approach relates to the concepts of articulation and positioning which have been developed by Hall (Hall 1996). Hall suggests in his articulation theory that collective identities, common positions, or a shared interest such as the self-identification as indigenous group need to be seen as provisional and non-permanent. He argues that cultural identities always come from somewhere and have histories but are not externally fixed in some essentialized past. Articulation is not just a connection but a process of simplification, boundary-making as well as creating connections (Slak 1996). Li (2000) uses this theory to demonstrate how certain groups in Indonesia come to identify themselves as indigenous during moments at which global and local agendas have been conjoined in a common purpose, and presented within a common discursive frame, thus realigning the ways they connect to the nation, the government, and their own, unique tribal place, are the contingent products of agency and the cultural and political work of articulation.

However, these groups share a certain relational positioning with the state, whether colonial or post-independence and a relation that has been asymmetrical in power, resource control, and at times ignoring historical antecedents of the relations between these communities and resources within their traditional jurisdiction. As Hall observed, localized groups position themselves, to connect with broader social forces by way of processes of action and imagination that are shaped by the continuous play of history, culture and power. The concept of indigeneity itself may thus serve communities to position themselves securely in communal territories that allow them to benefit from market opportunity, but do not bear the risk of market compulsion because they cannot be dispossessed. In view of REDD+ benefit sharing, self-identified indigenous communities may articulate themselves as the 'true' right-holders to carbon rights and benefit sharing due to their indigeneity related to *adat* social order, history and culture.

In the current context of revitalization of indigeneity and *adat*, discourses focus on access to customary land and recognition of customary rights. Self-identified customary communities are claiming legitimate rights over land and territories, hence the right to benefit from REDD+ based on prior occupation and different definitions of indigeneity. Our case study will show that this happens within village boundaries where some people have special access to resources and challenge the administrative boundaries of villages (*desa*), but also outside village boundaries between ethnic communities contesting each other's ethnic boundaries (*batas suku*) and indigenous affiliation.

### **Adat law during the colonial era**

*Adat* is a broad term commonly used throughout Indonesia to describe a social entity united by morality, customs, traditions, rituals, rules or practices of social life as well as their underlying legal institutions. It is often being translated as custom or customary law which has, until now, conflicting implications that should be traced back to interpretations by different scholars during the Dutch colonial era (Von Benda-Beckmann 2011).

In relation to land and natural resources management, *adat* is a generic concept that comprises a wide understanding of customary and local practices by which people organize access to land and its resources for agriculture, hunting and the collection of forest products. Before the arrival of the Europeans, many of such customary practices existed throughout the archipelago. *Adat* law (*adatrecht*) as described by Dutch scholars at the end of the nineteenth and the early twentieth century represent a limited part of these practices; comprising only those rules that were recognized, defined and codified by colonial authorities and their collaborators, including legal anthropologists led by Van Vollenhoven (Von Benda-Beckmann 2008; 5-6). Van Vollenhoven and his fellow scholars, through a substantial ethnological documentation enterprise, divided the archipelago of the Dutch Indies into nineteen legal regions (*adatrecht* territories) and described them in forty-five volumes (*Adatrechtbundels*). Dutch Borneo

was one of Van Vollenhoven's *adatrecht* territories, known as the Dayak territory (*Adatrechtbundel* Vol. XLIV: Borneo).

Van Vollenhoven has been criticized of interpreting and transforming local rules through an ethnocentric legal conceptual language, mystifying *adat* and rendering it rigid, drawing a sharp line between legal and non-legal aspects of *adat* (Burns 1989). Defenders of Van Vollenhoven oppose this view, arguing that he did not intend to codify *adat* and that he was aware that the term was used throughout the Dutch East Indies to designate a variable unit constituted by morality, customs and legal institutions, without a sharp line dividing legal practices of *adat* law from other popular usages of *adat*. The enterprise of Van Vollenhoven served therefore more to differentiate the institutionalized sets of rules and decision-making processes he discerned as elements of a legal nature (Von Benda-Beckmann 2011).

Van Vollenhoven argued that the *adat* legal communities (*rechtsgemeenschappen*) he was concerned with were autonomous communities which claimed to exercise a right of allocation over land (Von Benda-Beckmann 2011; Burns 1989). However, this recognition of local sovereignty over land control and access was challenged in 1870 by the Agrarian Law and the underlying Domain Declarations (*Domeinverklaringen*) which addressed the issue of land rights. The Agrarian Law acknowledged all land to be State owned besides land previously alienated to private holders under the civil code. All other land was considered State land (Peluso and Vandergeest 2001). Following the issuance of this law, there were intense debates about the desire of creating a uniform law for the Dutch East Indies to replace the co-existence of different laws for various population groups in order to facilitate development. Van Vollenhoven was criticized for opposing the introduction of the uniform law and for his insistence on the variety of *adat* laws, which according to his opponents, did not have the status of law but only of imprecise customs. According to them only private rights to land similar to the Dutch notion of ownership were recognized under the Domain Declaration. Neither the right of avail of the village nor communal rights of villagers on village commons (*ulayat*) conformed to these criteria of private ownership. Van Vollenhoven argued that such interpretations were based on a misunderstanding of the nature of the socio-political control of the right of avail which had both public and private characteristics and should therefore fall under the protection of the Domain Declarations (Von Benda-Beckmann 2011; Burns 1989). Nevertheless, his ideas convinced some colonial administrators to support *adat* law institutions. The project of legal unification was abandoned and *adat* law became widely recognized as the law of the Dutch Indies.

As a result of *adat* codification, the Dutch administrators legalized the formation of territorial institutions called 'village' and the notion of 'village land' over which a village head had the authority to allocate use rights. In that exercise, an *adat* law community needed to be associated with a circumscribed territory within the colonial schema. Territorialization therefore involved the mapping of the administrative territory (*landschap*). This demarcation process of forestland marked the beginning of a long forest delineation process

throughout Indonesia which is often still being challenged, and may threaten the implementation of REDD+ and land rights security of forest dwellers. By fixing landscapes on maps, colonial government as well as modern Indonesian government impose a stereotyped notion of local group identity on a variety of social realities (Peluso and Vandergeest 2001, Burns 1989).

### Evolution of the notion of indigeneity in post-independence Indonesia and revitalization of *adat*

In the struggle for independence of Indonesia the concept of a unitary state was highly politically charged and the Dutch support for a federation of separate entities was seen as a 'divide and rule' strategy. Emphasis was on commonality of all Indonesian people in contrast with foreigners. Outside Java the perspective on this commonality was not shared and not accepted politically.

During Suharto's New Order regime, the official discourse was that of a nation where all native Indonesians (*pribumi*) were in a sense indigenous so there were no 'indigenous people' as such. Native Indonesians were differentiated from *non-pribumi* (Chinese and other migrants) and cultural differences were accepted as long as they were in line with the unification motto of "unity in diversity", a process of "Indonesianization". Claims to *adat* were discouraged and efforts were made to restrict *adat* to the cultural domains of marriage customs, kinship and art. Developmentalist discourses under the New Order regime instead gave special attention to vulnerable populations that were considered remote and backward. They were collectively designated as isolated tribes (*suku terasing*) or remote *adat* communities (*kommunitas adat terpencil*). This classification negatively labelled isolated rural groups as "backward", squatting on state forest land. The government viewed these communities as contradictory to the desired norms of a modern Indonesian way of life. They were perceived as a challenge to capitalistic principles and were accused of embracing communist ideologies through communal owned and managed land use systems. Their ethnic identity, cultural distinctiveness, and livelihood practices relying on natural resources historically tied to the place they occupied were presented as a developmental deficit (Moniaga 2007, Li 2000, Wawrinec 2010). It was the land on which they were living that the State wanted to seize for its own commercial goals. The three decades of New Order government were marked by evictions, dispossessions and resettlements for the sake of the State's interest. *Adat* claims for land and territorial or *ulayat* rights by village heads and others were subject to intimidation (Hauser-Schäublin 2013). Ethnic differences were ignored and rural communities were assumed to have homogenous family and village lives within uniform administrative structures. International regulations towards indigenous peoples were ignored as long as the international community did not recognize Indonesia's exceptional situation as a country whose indigenous peoples allegedly make up ninety-eight percent of the population (Persoon 1998).

The fall of the Suharto regime in 1998 generated widespread reform processes of political decentralization,

regionalization and democratization providing a fertile ground for the self-identification of communities as 'indigenous', and debates about 'indigenous rights' claims throughout the archipelago. These claims nearly concern access to natural resources and especially rights to land (Steinbach 2013). This wave of reforms opened up the political space and chance of negotiation for many indigenous peoples. An *adat* movement began to resurface throughout the archipelago (Henley and Davidson 2007, Acciaioli 2007). It was a time which provided the opportunity for indigenous peoples to recover from the injustices and dispossessions which they had suffered under the New Order regime. With the establishment of the Alliance of the Indigenous Peoples of the Archipelago (AMAN) in 1999, *adat* communities expressed their wish that the State respect their traditional affiliations to their respective lands (Li 2001). Meanwhile, this wave of claims was supported and strengthened by a discourse on indigeneity in activist circles and influenced by international indigenous peoples' movements and imported ideas carried by NGOs and other international advocacy groups.

Many examples of self-identification throughout Indonesia have surfaced, such as the case of the Wana in Central Sulawesi who have in recent years adopted an indigenous people's discourse to position themselves closer to NGOs and the indigenous people's movement to escape the risk of eviction from their land by the government and palm oil companies. Their claims as indigenous people are rooted in their historical struggles for the land. They are used both as a tool of resistance and as a means to 'market' their new identity (Trumbly 2013). Another case comes from Jambi (Sumatra) where marginalized minorities as well as landless in-migrants and agrarian movement activists have allied themselves to strategically self-identify as *Suku Anak Dalam* in the context of land disputes with an oil palm company (Steinbach 2013). They have collaborated to serve their common goal to get access to productive land and receive a track of land from the oil palm plantation, as a plot where they can farm according to their own will. Through the concept of indigeneity and their positioning that relates their claims to global discourses, they have attracted attention and recognition (*idem*). Many such examples occur throughout Indonesia and are expected to increase in the wake of customary forest recognition by the Constitutional Court. Implementation of REDD+ provides ample ground for local contention and conflict between groups in terms of indigeneity and territoriality.

### Confusing terminology and risks of territorialization

In the wake of *reformasi* since 1998 the term *adat* community (*masyarakat adat*) has been promoted by activists, member-based indigenous peoples' organizations and networks and NGOs to define indigenous peoples. The term is purposely different from the colonial term *masyarakat hukum adat* (*adat* law community) which carries the risk of suggesting that the indigenous peoples will only be those owning measurable *adat* law practices overlooking other realities of indigenous peoples, such as their belief systems, cultures,

political systems, and other elements defining the identity of an *adat* community as *masyarakat adat* (Arizona and Cahyadi 2013).

In 2003 the request for a special law on indigenous peoples was formulated for the first time in Indonesia. Ten years after, in April 2013 the Bill on the Recognition and Protection of the Rights of Indigenous Peoples (RUU PPHMHA) was presented to the government and adopted as draft-Law. The draft-Law has not yet been approved by the parliament but public consultations are ongoing throughout the country. However, the term that has been chosen to describe indigenous peoples is *masyarakat hukum adat*, and not *masyarakat adat*, despite its colonial connotation. It seems that this more legal term was adopted since it is frequently used by policymakers and appears in the legal jargon. Indonesian academics also tend to use it because it is a literal translation of the Dutch word *adatrechtsgemeenschappen* described by colonial legal scholars. While the difference only lies on the word law (*hukum*) it has generated a debate on whether it refers to the same or to two different subjects of law (Arizona and Cahyadi 2013). Furthermore the draft-Law suggests five indicators in order for indigenous people to be officially recognized as a customary law community. They need to have 1) a shared history, 2) own customary land, 3) *adat* law, 4) specific property relations and inheritance or *adat* artefacts, and 5) a customary governance system. The RUU PPHMHA defines a legal *adat* law community (*masyarakat hukum adat*) as:

*A group of people who have been living in a certain geographical area for generations in the territory of the Republic of Indonesia because of the ancestral connection and a special relationship with the land, territory and natural resources, who own a customary governance system and adat law order on their territory.*

The clear reference to *adat* law and affiliation to territory in the draft-Law is in line with the AMAN definition which stipulates that indigenous people are:

*Communities that live on the basis of their hereditary ancestral origins in a specific customary territory, that possess sovereignty over their land and natural resources, whose socio-cultural life is ordered by customary law, and whose customary institutions manage continuity of their social life (AMAN 1999).*

The strong focus on the very notion of *adat* law and affiliation to territory (*hak ulayat*) in trying to establish a definition for indigenous peoples carries risks to be used by well organized groups to justify their legitimate land claims over less powerful groups. The confusion over a clear identification of indigenous peoples in Indonesia has already been advocated by various marginalized communities, tribal or non-tribal, who fear that the definition of the term could be used by the State to exclude certain groups. Heterogeneous groups with no particular ethnic affiliations have started to use self-identification as 'indigenous' to reposition themselves and reclaim land (Bertrand 2011; Steinebach 2013).

There is an on-going debate about claims to *adat* territory. Bakker (2008: 143) addresses this problem of *hak ulayat*, citing its definition as included in the first chapter of the ministerial regulation of the 1999 'Guideline to solving the problem of *adat* communities':

*Hak ulayat and similar adat law community constructs (hereafter called hak ulayat), are rights that according to adat law are enjoyed by a specified adat law community to a specified territory that is the everyday environment of its members to exploit the profit of its natural resources, including land, in the aforementioned territory, for the benefit of their survival and daily needs, which are made clear by physical and spiritual relations of descent between the aforementioned adat community and said territory.*

However, there are conditions to the existence of *hak ulayat* and claims can be limited if the land is owned by a third party, according to the State or the Agrarian Law (*idem*). These are very important to consider in the case of global intervention through the State, whether at central or decentralized government levels, like in the case of REDD+ implementation of social safeguards.

## REDD+ SOCIAL SAFEGUARDS

Another important concept, particularly in relation to different conceptualizations of indigeneity and the issue of self-identification, is the notion of social safeguards. It is being developed and operationalized by global, governmental, non-governmental, and private actors who claim to act on behalf of indigenous and vulnerable communities by protecting them from infringement on their rights, knowledge and aspirations, and to protect non-carbon forest values. Particularly financial institutions such as the World Bank refer to measures to prevent and mitigate undue harm from investment, while the recognition by the United Framework Convention on Climate Change (UNFCCC) that REDD+ could exacerbate social injustice and environmental challenges has led to the approval of the Cancun Agreement in 2009 that specifies the adoption of social and environmental safeguards to prevent adverse consequences (Jagger et al. 2012). Such safeguards are a direct response to critiques and protests from civil society organizations, member-based indigenous organizations and communities themselves about the potential social risks resulting from REDD+. They have been influenced by and built upon available international instruments, especially the UN Declaration on the Rights of Indigenous Peoples, and are expected to generate long-term social co-benefits, to prevent negative outcomes, ensure better livelihoods, and avoid harm to local communities (McDermott et al. 2012, Chhatre et al. 2012, Visseren-Hamakers et al. 2012, Steni et al. 2010).

In order to substantiate our discussion of the relevance of contesting notions of *adat* and identity in the context of legal rights to land tenure and the promise of social safeguards through REDD+ implementation, we will now turn to the actual case study of Kapuas Hulu, West Kalimantan.

### Ethnic identities and livelihoods in Kapuas Hulu, West Kalimantan

The data on which this article relies is derived from field work carried out in 2011<sup>2</sup> in two villages located in the Kapuas Hulu regency (*kabupaten*) in the province of West Kalimantan, bordering Betung Kerihun National Park (de Royer 2011). The villages of Menua Sadap, home to Iban Dayak communities and Pulau Manak, inhabited by Embaloh Dayak groups, are located in the upstream area of the Embaloh river, a tributary of the Kapuas river. They practice swidden cultivation to produce rice and form mosaics of agroforestry plots in different maturity stages. Administratively both villages are divided into hamlets (*dusun*) which each consist of a longhouse (*rumah betang*) with its own forested territory to which the longhouse community holds exclusive customary land rights. These communal houses contain several individual households in separate apartments built under one long roof. The hamlet's territory is usually distinguished from that of the neighbouring longhouse by natural features. Both villages were targeted for the implementation of a pilot REDD+ kind of project at the time of research. The first author carried out extensive interviews and Focus Group Discussions with villagers. We also include secondary data collected during interviews with local government representatives and NGOs.

The Embaloh Dayak of Pulau Manak is a sub-division of a broader ethnic group known in the anthropological literature as the Maloh Dayak who mostly inhabited the upper Kapuas region for at least twenty generations (King 1976: 54). Embaloh Dayak are settled along the Embaloh river and live in nine communities (Wadley 2000). They practice dry rice cultivation on the plains of the fertile Embaloh river and are defining themselves as the original inhabitants of the watershed. Their villages are usually located on flatlands bordering the river. The good quality of the soil through siltation allows them to return to the same land after a short fallow period. Because their lands are being located on flat land with easy access to watercourses, they have recently turned to irrigated wet rice agriculture practices and their swiddens have been converted into pond-fields. Usually Embaloh prefer to clear secondary forests rather than virgin forest and concentrate their efforts on low-lying areas. They are permanent, well-established agriculturalists.

Iban Dayak, the other community, is spread all over north-western Borneo, inhabiting large portions of the Malaysian state of Sarawak, with a smaller population along the border in the province of West Kalimantan. Based on literature and testimony collected during fieldwork, the Iban who settled in the upper Kapuas region are direct descendants of migrants from the up-river Iban communities of Batang Lupar river in Malaysian Sarawak, who settled there some hundred years ago. This migration of Iban from the British ruled province of Sarawak to West Kalimantan (at that time Dutch Borneo) started to take place at the end of the nineteenth century

(King 1976). King (*idem*) describes the hostilities in which upriver Iban of Batang Lupar were engaged with downriver Iban and other Dayak groups. Raiding Iban communities took advantage of the political boundary between Sarawak and Dutch Borneo to engage forays and seek refuge on the other side of the border. King also advanced the theory that Iban land and vegetation resources were hard-pressed in their homeland and the population needed to expand into virgin land in the hills. Iban Dayak livelihood is based on swidden cultivation of rice in the uplands, usually on hill side gardens in long-fallow forests (Wadley 2007). They are usually located further upriver where land is higher and more sloping. Iban have usually been described in anthropological literature as integral swidden farmers (Wadley 2007), meaning that they are engaged in swidden systems including pioneer cultivation (cultivating large portions of old growth forest in close relationship with their social, economic and ritual life) as well as established swidden fields (largely located in secondary forest of various stages).

Both communities are longhouse people and have enjoyed peaceful relations through generations based on trade and intermarriage. More recently, the two villages have also become home to 'outsiders' who settle in the villages through marriage affiliation gaining uxorilocal post-marital residence. These new-comers may be either non-Dayak or have a Dayak origin affiliated to another sub-division. The staple food of both communities are rice and forest products, while the main source of cash income comes from the tapping of jungle rubber and the seasonal collection of *tengkawang* nuts (*Shorea ssp*) for the production of *illipe* oil. Most villagers are small landholders. Swidden cultivation is still commonly practiced and implies that households circulate every one to three years, generally returning to previously cultivated sites after a fallow period of variable length. Interviews and FGD's show that for a long time the agricultural system was based on a pure shifting and land clearing system, meaning community members were opening new forested areas every year with a frequency varying between 20 to 25 years. However, recent demographic changes have accelerated competition over land, shortening the frequency of rotation and burning of forest. Pressure on the land has been accompanied by the introduction of pesticides and fertilizers during the last few decades, pushing households to adapt their practices and cultivate fewer plots of land in a rotational system (de Royer 2011).

Besides being skilled cultivators, both communities are highly dependent on access to forest and forest gardens for secondary occupations and livelihood. Since the complete ban on illegal logging was implemented in the area in 2004, the economic situation has drastically deteriorated. Employment is almost non-existent in the region, and many villagers have to seek wage labour opportunities on the other side of the border in Sarawak as labourers in palm oil plantations, much conform their long-term history of using their ethnic identity to facilitate circular labour migration across the international

<sup>2</sup> Field work was carried out for four months in the frame of the first author MSc thesis at Wageningen University/the Netherlands

border in Sarawak (Eilenberg 2009, Ishikawa 2010). Due to this lack of employment opportunities, people are highly dependent on subsistence strategies, which make them even more reliant on access to their forests since forest products provide them with the means for their subsistence and daily needs. Forest products are rarely exploited for commercial uses and are mainly used in order to cover households' needs and domestic uses.

### Access to land, resources and territory (*ulayat*) in Kapuas Hulu

Field research (de Royer 2011) has made clear that access and rights to forest lands and village territory in the Kapuas Hulu villages have for generations been – and still are – arranged through *adat* rules and territorial (*ulayat*) practices. These rules and regulations provide privileged access to resources to historically well-established households, sometimes excluding others who have been integrating into the community more recently.

Previous anthropological work, especially the studies by King, has shown that Embaloh permanency could be related to their land-tenure system whereby the first clearing of virgin forest established rights in land, passing it down to all its descendants. This implies that every individual belonged to a number of property-based descent units where shared rights in property resulted in a complex web of relationships which connected a large number of individuals. Although a man is moving from his natal village he might still retain rights over property there (King 1976).

In contrast, Iban rights to land and property were – and still are – held independently by each family head which is the person from whom the ownership and inheritance rights of all the other members of the family ultimately stem. He has specific authority or rights of control and transfer over the household's common assets. When a member moves away from his longhouse to marry uxorilocally elsewhere, he must relinquish his rights to the property of his natal family. Iban inheritance and ownership is thus in line with their greater mobility (King 1976, Cramb 2007).

Consequently, as was verified during fieldwork, some households still hold forest patches that are managed by the family head in the name of the patrilineal descent group; these are plots of communal heritage land passed down from generation to generation within the descent group. Like in other swidden cultivation systems (Visser 1989) the right to use the land is strongly linked to ancestral relations of the decent group with the land, but it is not individually owned. Only the produce of the land is owned by the household. The extensive land use includes fallows and cultivated swiddens; those managed fallows are often planted with rubber trees (*Hevea brasiliensis*) sometimes mixed with other fruit trees and perennial cash crops planted in a cultivated forest territory. Individuals inherit rights of use on the basis of their membership of a group, rather than as individual property. The rights to these forest lands are known through collective memory of the community, recognized and expressed by *adat* leaders or 'lords of the land' (Visser 1989). Although today,

these 'indigenous' households thus do not hold formalized cadastral ownership certificates, newcomers to the village rarely hold such privileged access to land.

During research in 2011 a hamlet (*dusun*) in Kapuas Hulu was still affiliated with one longhouse and held claim to large forested areas where fruit trees were planted, mainly old-grown mature durian trees (*Durio zibethinus*) mixed with other species. As these agroforests are heritage land from previous generations attached to the longhouse, the living generation has a strong feeling of ownership and identity linked to them. A longhouse territory is shared and all forests within this territory come under the territorial rights of the longhouses (*hak rumah*) (Dove 1985). Even at the time of our research, these forests were perceived as inalienable goods and identity markers of the entire group as defined by a longhouse.

They are a testimony of people's claims as the descent group of a particular longhouse. The members of the longhouse community see themselves as the lawful *adat* unit exercising the communal rights of avail, allocation and disposal over these forest patches that are affiliated to strong spiritual values because they are seen as the sacred home of the spirits of the longhouse ancestors.

Participatory mapping exercises have shown that villages also have designated forested areas where rules about access and use of forest resources, like timber are strongly controlled and monitored by *adat* rules. These forest patches (*pulau*) are distinguished into two kinds. The first type relates to the recognition by the community of the environmental services provided by the tree cover in certain areas surrounding the villages, such as water catchment and soil erosion prevention. These forest patches are located on certain hills, near springs and on riverbanks used by the village for water supply. The second kind of *pulau* relates to religious and spiritual values and can be defined as sacred forests. It comprises a variety of sites which are either places of human deaths and burial sites, old settlements or areas inhabited by non-human spirits (de Royer 2011). These patches mark important historical and mythical events providing villages with meaningful connections to the landscape (Wadley and Colfer 2004). While felling trees and farming are prohibited, they may provide important forest products such as fruits, leaves, medicinal plants, and game.

Last but not least, the village customary forest (*hutan wilayah adat*) is a communal forest which belongs to the entire village and its affiliated longhouses. These areas are large, well-preserved pristine forests located far away from the villages and hamlets, hence difficult to access. These forests were described by the Dutch as 'free land' and fell into State control under the *Domeinverklaring*. After independence they remained under the ownership of the State until the present. During interviews the definition of *hutan wilayah adat* was sometimes imprecise since all forests belonging to the village including the different types described above, are locally considered to be ruled by *adat* and belonging to village territory or *ulayat*. The major difference of this particular category of communal forest is its distance from the village, its age and pristine quality. Existing *adat* arrangements to control and



regulate access to village forest land and natural resources are a good example of the notion of *ulayat* in the sense of the right of avail as described by the Dutch *beschikkingsrecht*. So, on one hand, there are well established and controlled longhouse/hamlet and village land tenure systems regulated by *adat* institutions and their functionaries, which clearly identify privilege of access and use over forest resources based on patrilineal descent and affiliation to a longhouse. On the other hand, there are large patches of pristine forest that are administratively owned by the State, but at the same time regarded as *ulayat* falling under the control of the indigenous *adat* communities of the villages (Bakker 2008).

### Local perspectives and knowledge about REDD+

In the villages not everybody knows about REDD+. While community members have practical knowledge about climate change, locally grounded and based on their observation of changes in the physical aspects of their environment and landscape, the relation between carbon sequestration and forest is not very much a concern among villagers. Issues about CO<sub>2</sub> production, forest-climate relations and carbon are often blurred. Carbon is seen as a foreign, irrational idea referring to some part of their environment; sometimes they think it applies to trees, wind, rocks, and even animals. Those who are most aware about REDD+ notions are the village leaders and villagers who act as intermediaries or brokers having close connections with local government representatives and NGOs.

While knowledge remains limited, villagers do understand that industrialized countries have an interest in paying them for not cutting down the trees. They clearly understand that the North is ready to pay for maintaining the forest cover in their area. A commonly shared myth among villagers that is widespread throughout Kalimantan (including government circles) holds that the air from their forest environment will be extracted and taken away to supply industrialized countries with oxygen; leading to the suffocation of the people in the forested areas. This kind of commonly shared views leads to all kind of imaginations and images about REDD+, which inform their attitude toward the government 'selling' their health in order to fulfill the obligation to 'participate' in REDD+ projects because of an international concern for the remaining forest and its protection (de Royer 2011). Yet, villagers are indeed aware that they could generate money and receive other benefits from preserving their forest capital. The lack of a proper socialization or knowledge democratization about carbon sequestration among local communities clearly shows that the official requirement of *Free Prior Informed Consent* is not yet implemented effectively.

### Indigeneity, migration history and contested forest claims

Earlier research shows that during migration movements in the Upper Kapuas watershed, Iban Dayak migrated to ecological niches further upstream left unoccupied by the Embaloh Dayak. Embaloh already possessed areas of the fertile

alluvial lowland of the Embaloh river and Iban were more interested in exploiting uninhabited tracts of mature forests for their swidden agriculture. The Iban opted for sites where the hills were accessible and where large areas of virgin forest were available. Their territorial choice appeared to be complementary to the territorial preference of the Embaloh. This condition enabled the development over decades of peaceful relationships between both communities that were formalized by various *adat* laws and by-laws (King 1976: 56).

However, during our fieldwork in 2011 we found that, forest boundaries and ownership over forest resources are sometimes highly contested. Different interests of Iban and Embaloh Dayak and the friction between them are kindled by recent discussions about the possibility to obtain financial or economic profits from standing forest stocks through the possible implementation of REDD+. As soon as the topic of potential credit payments from village forests and surrounding agroforests is brought to the table, tensions arise. Embaloh argue that Iban Dayak are only guests and that they are not the legitimate owners of the forested land, due to their migration history into the area. Reversely, Iban often claim that Embaloh owe them eternal recognition for their support during Iban conflict engagements with Melayu groups. In other words, both communities reconstruct and reinvent their history related to migration and settlement to justify their present and future legitimization over forest lands and resources, particularly in view of their new value in terms of potential carbon benefits.

According to an *adat* agreement between Iban Dayak and Embaloh Dayak, both communities are sharing the upper Embaloh river starting from a naturally defined border known in local dialect as *Batu Peti* up to the entrance of Betung Kerihun National Park. The land covered to a large extent by old mature forest is communally owned and designated as common property (*hak milik bersama*) by both communities. Administratively, however, most of the forest is located on the upstream land of the Iban village of Menua Sadap. As a result, Iban villagers claim that they should be the major beneficiaries from a REDD+ scheme. In fact, Embaloh Dayaks believe that REDD+ carbon credits are already flowing and benefiting Iban communities. This is definitely misinformation and misinterpretation of the reality. Land is encroached, appropriated, and boundaries are often contested and challenged. Besides claims over legitimate land use related to migration and settlement histories, each of the two groups are also convinced that they are in the best position to be the guardian of the environment. Embaloh accusing Iban of squatting on more land than they are entitled to, and to deplete forest resources through unorganized farming practices. These accusations are not new. Dutch colonial officials already described Iban swidden farming as 'plunder farming' due to their rapid depletion of forest and soil fertility (Wadley 2007, Padoch 1982). Today's contestations are in line with the historical accusations that Iban, through pioneer agriculture practices are depleting land resources, depicting them as 'mangueurs de bois' or forest eaters because, unlike the more sedentary Dayak groups, their pioneer practices led to massive forest degradation. As a result, the dominant Embaloh

group who are socially well structured and long-established, applying more sedentary agricultural practices, use external projects such as REDD+ to strengthen claims of superiority over what they see as more marginalized, less organized groups of descendants of migrating communities who are relying on the State's administrative boundaries to claim legitimacy. Long-lasting affiliations to the land, recognition of *adat* law and the notion of territoriality may thus be used to justify and corroborate the self-identification of being indigenous of one group, at the expense of others who settled in the area more recently.

Besides feelings of uncertainty and insecurity as a result of potentially inequitable benefit-sharing, field data also demonstrates that both groups are claiming more land, disregarding the *adat* agreement of shared ownership. Due to the new commercialization of their forests there is an increased demand for fixed rather than fluid boundaries. Unfortunately, local government (nor NGOs) have so far been able to undertake an effective spatial planning of the area in order to clearly map village boundaries, while apparently the communally agreed but fluid *adat* boundaries do not seem to be acceptable any more. Furthermore, scarcity of certain resources in the area, and the pressure on land experienced by people is also a driver of land claims and disputes. Claiming more land is seen as a strategy in order to safeguard future livelihood security in a context of resource scarcity. New hopes from REDD+ validate a forward looking strategy to claim more forest to secure access and benefits from carbon sequestration rewarding activities. Expected payments for environmental services and social safeguards under a REDD+ scheme thus stimulate ethnic identity contestation and friction over village boundaries.

### **Benefit sharing and tenure security through *hutan desa* or *hutan adat*?**

While discussing potential benefit sharing mechanisms under REDD+ villagers often insisted that they should be compensated for their role in forest conservation. Villagers perceive themselves as active agents of conservation having established strong resources management systems based on their knowledge and *adat*. They cleverly adopt environmentalists' jargon in pursuit of their agenda for more secure tenure and financial rewards. REDD+ carries hopes for them to be included in a conservation-like scheme based upon well-established *adat* management systems.

However, it is naïve to assume that all villagers have equal rights or identical interests; in this sense they are not a homogeneous 'community of interest'. For reasons we have explained above, the settlements in Kapuas Hulu are far from homogeneous and inequalities persist in terms of access to resources both within and between these *adat* communities. Assuming that communities have a single set of interests runs the danger of encouraging the capture of future REDD+ credits by a strongly represented, wealthier local elite in the name of 'the community' as a whole (Peskett et al. 2008). Well-established households in favour of individual REDD+ payments are often those with assets and privileged access rights to resources recognized through *adat*. Their concern

is whether certain 'non-forest' categories such as agroforests and jungle rubber gardens, relevant for their livelihoods and food security, may be included in a REDD+ architecture. People holding access rights to these tree-based assets are convinced that they are the only legitimate REDD+ beneficiaries based on their *adat* rights. They belong to modern, economically rational, individualistic categories of households who do not feel particularly committed to community life, and who are in favour of a household-based REDD+ benefit sharing scheme using 'self-identification' as indigenous for their personal benefit.

Village communities are not homogeneous because they also include newcomers. Embaloh and Iban nowadays increasingly engage in marriages outside their village and/or ethnic group. Many of these marriages are uxorilocal, in the sense that the non-local husband is a newcomer to the village. These male in-laws do not obtain any right to forest land and are not allowed to plant perennial crops on *adat* land through their marriage affiliation. Because of their exclusion from access to forests and trees at household level, their interest therefore lies in a REDD+ benefit sharing scheme at community level where they can be included. Evidently, these social facts complicate the implementation of a fair and equitable benefit-sharing scheme.

Besides, REDD+ social safeguards stress the importance of secure tenure and use rights for the successful implementation of any forest carbon program to be beneficial for local communities depending on forest ownership and access for their livelihood, and as a precondition for participation (Jindal et al. 2008; Wunder 2009). Consequently, under a REDD+ scheme service providers (carbon sellers) need to become individual or communal land owners, recognized occupants or lease holders. Clear access to the forest and its surrounding biodiverse agroforests, as well as recognition of communal *adat* rights are major concerns among villagers. It is therefore essential in order to secure existing livelihoods that *adat* rules of communal ownership and access are officially recognized and that inclusive village communities are legitimized as carbon credits beneficiaries. A potential option could be through the community forestry scheme known as *hutan desa*.

Village forests (*hutan desa*) are widely promoted throughout Indonesia by civil society organizations and NGOs as a community forestry scheme holding promises to collectively legitimize villagers as future beneficiaries under a REDD+ mechanism in State Forest zones. Areas targeted for the implementation of *hutan desa* are to be managed by a village community through a village-based organization that plans and allocates benefits derived from the forest for a period of thirty five years. The arrangements are renewable for the same period of time, and subject to approval of annual work plans (Akiefnawati et al. 2010). Their management does not only consist of utilization of forest products but also includes the responsibilities to preserve the life-supporting functions of the forest. Areas which can become *hutan desa*, must be administratively part of a village and can include protection forest and production forest as long as there are no existing concession rights. *Hutan desa* involves long and cumbersome approval procedures which may take up to two years. It

allows villages to develop their own regulations, and requires them to prepare annual work plans that must be approved and monitored by the district government. The drafting of these technical work plans is however difficult to be undertaken by communities themselves without strong external support from NGOs, governments and international organizations. It is designed in such a way that communities cannot participate without external support.

Secure user rights through *hutan desa* may legitimize village communities as carbon service providers, meanwhile satisfying their historical claims over *adat* land ownership and access. The advantage of this approach is that communities' self-identification as indigenous community is recognized by law. The precondition for such a scenario, however, implies that local and central governments consider carbon credits as no different from other forest resources such as trees, to which *adat* law communities hold communal rights of access and ownership (Corbera et al. 2011). The formal recognition of *hutan desa* can be seen as a crucial readiness process for any future carbon credits initiative and a low-cost, but essential precursor for REDD+ schemes at village level. Besides providing security, identifying clear boundaries, *hutan desa* is a way to exclude State claims on village lands as the State should not be issuing any permits for the forest that has been established as *hutan desa*.

*Hutan desa* is however a technical definition of the forested land surrounding a formal village settlement including its multi-functional landscape of agroforests and rubber gardens, and it is based on village administration. Under Suharto, the New Order government in its unification process introduced a standardized village (*desa*) model throughout Indonesia replacing and destroying different locally well-established village organizations and authorities. In Kapuas Hulu, several autonomous longhouse governance units were clustered into one single village unit. Under *hutan desa*, the targeted forested land in the governmental management plan differentiates from the original village and longhouse-hamlet lands. As this article shows, claims within village boundaries are different according to people's assets, while the inclusive *desa* is rather seen as an imposed administrative unit than as a representative of *adat* communities who are living in the subordinate hamlets-longhouses that have a strong sense of land-related identity. The hamlet boundaries of the different longhouse communities are perpetually under pressure of shifting village boundaries claimed by various groups living in the village. In order to articulate this friction between groups within village boundaries, an important note should be made about the differences of interest between village inhabitants including newcomers, and the descent groups inhabiting the longhouses-hamlets. When we discussed potential benefit sharing under REDD+ with village leaders and notables, they appeared to take the governmental view in favour of compensations that enable the development of the village as a whole. Meanwhile, when raising the issue with longhouse *adat* heads in a particular hamlet, they wanted the benefits to return directly to their longhouse *adat* community, instead of payments being done at the overarching administrative village unit. This relates to the strong sense of

ownership of some trees and gardens attached to a specific longhouse community. The strong territorial identification of a particular longhouse community appears to be dominant over their claim to a legal status as indigenous people for the ethnic group as a whole, whether Iban or Embaloh. This difference in territorial interests and self-identification is causing conflicts between *adat* leaders and administrative village leaders that can often explode in power struggles over the village *hutan desa* and its natural resources. It constitutes one of the most contentious issues between the indigenous people and the village administration.

The recognition of customary forest (*hutan adat*) and its official declassification from State Forest by the Constitutional Court potentially hold promises for the legal recognition of indigenous communities as carbon rights holders and future beneficiaries. However, as our above argumentation demonstrates, claims within and between *adat* communities are contested and interests vary. Especially, giving rights of decision and control over *adat* forest land based on the very definition of *adat* by longhouse leaders carries the risk of exclusion of those villagers who do not belong to a longhouse community, thus exacerbating conflicts of interest within the village as an administrative unit. We have demonstrated that the concept of indigeneity is linked to prior occupancy of the land and communities are claiming their indigeneity primarily through their affiliation to ethnicity and territory. The risk of promoting the *hutan adat* concept is the artificial articulation and invention of 'indigenous identity' which generates precisely the kind of boundary struggles we have described between the resident Embaloh Dayak and the in-migrating Iban Dayak in Kapuas Hulu.

Favouring the concept of *adat* and formalizing community exploitation and management of forest in keeping with *adat* practices runs the risk to include only particular ethnic groups who have historically been occupying discrete and exclusive territories. Formalization of customary tenure arrangements through *hutan adat* can thus exclude 'non-indigenous' groups within and outside a village community, pushing them further into marginal livelihoods and positions of social, cultural, and economic inequality. Losers would include those who fail to fit a clear ethnic and territorial niche, and villagers whose family background or patterns of geographic and class mobility have removed them from any material connection to a specific ethnic identity. Here, REDD+ needs to ensure that promoting *hutan adat* is 'inclusive' of other communities who do not fit under the label of 'indigenous' people, but do hold rights to, and depend on the designated customary forest. The term 'inclusive' in relation to these communities includes (i) ownership of natural resources, (ii) power to manage and develop natural resources, and (iii) sharing of natural resource revenue (Njogu, 2014).

### **Discussion: indigeneity, territoriality, and land ownership**

Ethnic classification and territorialization have been common practice during the colonial era, but have all but been abolished in independent Indonesia. In Dutch Borneo the

identification of multiple legal systems affiliated with different ethnic groups created social units on the basis of customary law (*adat*rechtsgemeenschappen) which has further fixated and territorialized identity. The creation of these legal categories has resulted in privileging certain local practices and institutions perceived as indigenous or 'native' customary rights and certain lands as 'native land' under the authority of particular longhouses (Peluso and Harwell 2001; Peluso and Vandergeest 2005).

However, this colonial administrative practice of essentializing the social structuring of the landscape ignored the fact that in earlier times as well as today, the social and territorial boundaries of ethnic groups are permeable and dynamic, witnessing changing social-political interactions, and creating contention and conflict. Ethnic groups attached to a particular land and perceived by colonial authorities as the original inhabitants, often originated elsewhere, had their histories rooted in migration, intermarriage, trade or raids moving into new territories, as in the case of the Iban Dayak. Nevertheless, it is also true that certain communities identified with particular territories had extensive histories of control over the lands. Some groups identified themselves by the names of local rivers, like the Embaloh Dayak who were named after the Kapuas tributary along which they settled (Wadley 2000; Peluso and Harwell 2001).

Self-identification of indigenous groups does not necessarily fixate them to a particular territory, like the example of migrant swidden cultivation communities shows. Unfortunately, this essentialized, narrow description of territorialized indigeneity is widely encountered in the current international indigenous rights discourse and policy framework trying to define indigenous peoples. Indigenous identities are commonly defined by their strong ties to specific territories as stipulated in the UN Declaration on the Rights of Indigenous Peoples definition (Nair 2006), a notion that is further strengthened by contemporary popular media. Nevertheless, modern anthropological studies provide ample evidence that show the need to counter a territorial definition of identity, highlighting the social and geographic mobility of many indigenous peoples, as opposed to old-fashioned notions of ethnic identity as being rooted in static place and territorial boundaries (Li 2000; Davidson and Henley 2007; Acciaoli 2008; Persoon and Osseweijer 2008; Visser and Adhuri 2010; Hauser-Schäublin 2013).

In the recent struggle over recognition of *adat*, AMAN plays a major role in advocating the rights of indigenous peoples. AMAN describes indigenous peoples as "*communities which have ancestral lands in certain geographic locations and their own value systems, ideologies, economies, politics, culture and societies in their respective homelands*". Li (2007) has pointed to the fact that there is strong confusion to whom this definition applies. If we prioritize the very restricted notion of geographical boundaries it would only refer to those living in isolated areas and still adhere to the unrevised lifestyles of their ancestors. These conditions apply to only a very restricted number of the population in Indonesia. However, if we apply the notion that customary lands are dynamic spaces, seasonally occupied and used, abandoned,

shared and conquered, then the definition of indigenous people would refer to tens of millions of rural Indonesians.

In the wake of *hutan adat* recognition in Indonesia, it will be important to move away from the colonial legacy of the conceptualization of identified 'tribes' and 'native' lands with specific, culturally and geographically bounded peoples by taking a more flexible approach to customary communities. In the Indonesian context this will be particularly relevant since very few groups have inhabited a similar space throughout history. The problem with current advocacy is that indigenous groups, like 'Dayak' are too often constructed as homogeneous and harmonious groups. This article shows how dangerous it can be to ignore the histories of internal differentiation and mobility between Embaloh and Iban Dayak, and within their communities between villagers and longhouse members. The territorialization of identity by the State is particularly problematic as it risks to provide certain individuals' or households' privileged access to land and forest resources and power, excluding their direct neighbours with whom they have a shared history and sometimes established strong kinship ties and social relations.

## CONCLUSION

The importance of safeguarding social attributes has been recognized as a critical element for the success of REDD+. Under the REDD+ social safeguards discourse supported by indigenous people's advocates and international NGOs, tenure security has been recognized as a major issue to be addressed in order to protect vulnerable indigenous groups. It is seen as a way to demarcate clear boundaries and resolve conflicts over contested land (Chhatre et al. 2012). However, this article has shown that the situation of the uplands of West Kalimantan is more complex and dynamic than an imaginary and static definition of indigeneity makes believe. Giving absolute priority to indigenous communities based on the notion of territoriality and prior occupation of the land, following the colonial definition of customary rights (*hukum adat*) tends to ignore and exclude an entire range of inhabitants of villages in the interior of the archipelago who are not necessarily holders of *adat* land rights, but equally vulnerable. Their livelihoods are similarly dependent on forest resources as those of self-identified indigenous groups. REDD+ failure to include these villagers in its objective to safeguard them from any infringement on their rights and livelihood aspirations could seriously threaten sustainable forest management and climate change.

The demise of the Suharto regime and increased regional autonomy led to renewed struggles to regain control over village land (*ulayat*) and *adat* claims to forests. It did not take long after the issuing of decentralization laws in 1999 and 2004 for ethnic groups and local communities to start strengthening their claims on indigenous identity and settlement history. This newly found political space allowed greater community and local rights but such transition often became exclusionary, neglecting or ignoring long-term migrants, and rekindling old feuds (Levang et al. 2005; Yasmi et al. 2007; Bakker 2008; Hauser-Schäublin 2013). In most regions, the

revitalization of *adat* does not only involve political, economic and spiritual values, but also feeds into identity politics and can make the issue explosive especially in regions hosting highly heterogeneous population groups.

In Kalimantan, assigning statutory rights is a challenge that has a long history of being unresolved. Assigning user-rights to villages as inclusive social units recognized by the State under a village forest (*hutan desa*) scheme may be a way forward, as it potentially removes the State from the prerogative of single claimant to forest lands. The advantage of this mechanism is that all villagers, *adat* right holders as well as long-term in-migrants and other village members, will be included in the management plan for a potential distribution of REDD+ related carbon credits. If carbon rights are not exclusively become attached to *adat*, there will be less danger of inter-ethnic identity conflicts within village boundaries. The disadvantage is that carbon rights distribution through *hutan desa* does not fully cover the complexity of *adat* claims, especially the different interests of villagers and longhouse descent groups, like in Kapuas Hulu.

The village forest or *hutan desa* scheme thus risks applying the notion of *adat* in an essentialized, technical manner by simplistically using an administrative definition of *adat* and community. Administrative village boundaries are being used for demarcation that do not represent the more fluid longhouse *adat* claims over their forest lands (*ulayat*). Moreover, *hutan desa* does not guaranty long term ownership of the land since it is merely a management plan granted to a village for a limited duration. Another challenge with *hutan desa* is that it is a governmental scheme and technical planning facilitated by local governments with limited involvement of village community members. In addition, collaboration in formal government institutions usually favours the local elite who have the educational and financial capacity to engage with outsiders. Such scheme, just like any other participatory forest management, has been subject to serious power struggle as well as conflicts between forest officials and communities over valuable timber resources and land rights. Moreover, there has been little 'real' transfer of management and use rights and decision making power from the state to local communities (Arts and Visseren-Hamakers, 2012).

The recent Constitutional Court decision (2013) carries great hopes to fully legitimize indigenous groups as statutory rights holders by transmitting full right of access and ownership to communities. Theoretically indigenous communities are now eligible to retrieve their rights over their *adat* forests. It holds the potential to end fights over lost access to lands, which has sometimes resulted in violent conflicts over the last decades. However, how this will be implemented in practice remains to be seen. More work is needed to recognize and legalize indigenous communities' rights through and concrete plans and actions on the ground are needed in order to map the territorial claims of *adat* communities. Evidently, the very exercise of mapping will kindle contestations of self-identified indigenous groups and territorial rights (*hak ulayat*) (Bakker 2008).

Until today, neither the Indonesian government nor NGOs and advocacy groups have been able to identify groups as

indigenous. The Indonesian State is still contesting the definition of indigenous peoples on the basis that there are no identifiable 'original' Indonesian people, and all citizens are therefore indigenous to the State. Another challenge which appears in the discussion of the draft-Law on Indigenous Peoples is the colonial legacy of the conceptualization of *adat* and *adat law* which obstructs the fulfilment of the demands of indigenous peoples to implement it in a way that provides sufficient space for local variation and contextualization of the rules. This dilemma is highlighted by the use of the term *masyarakat hukum adat*, rather than *masyarakat adat* in the draft-Law.

The lesson learned from our West Kalimantan case is that implementation of REDD+ and its social safeguards needs to pay serious attention to the real-life multi-ethnic or social composition of village communities, their internal differentiation and historical *adat* agreements. New negotiations and shared decision making about boundary marking between all forest users who have access to a specific territory are conditional to an equitable and fair distribution of benefits *within* 'the local community'. If this condition is not fulfilled, REDD+ will likely become a conflict generating machine. If distribution of benefits from a potential REDD+ scheme is implemented before clear arrangements have been made between villages and *adat* communities, including mutual clarification and agreement on territorial boundaries, REDD+ could generate the same negative impacts as the ones experienced in the past from delocalized forms of forest concessions which have exacerbated conflicts within and between villages and ethnic groups (Levang et al. 2005). The present situation is precarious where indigenous people as well as migrants take advantage of unclear and contested boundaries to appropriate more land, and justify their legitimate ownership rights over land. As the State and successive governments have taken advantage of granting permits to companies without verifying existing rights, we may see yet another wave of exclusionary practices and social unrest, now between communities instead of between State and society. Here, social safeguards play an important role to ensure the inclusiveness of '*hutan adat*'.

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