TRADITIONS, LAND RIGHTS, AND LOCAL WELFARE CREATION:

STUDIES FROM EASTERN INDONESIA

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The research sets a focus on the current economic impact of traditional systems of land distribution and user rights among households, clans and the government. Sites for research are selected in two of the poorest provinces of Indonesia, Nusa Tenggara Timur and Maluku. One main objective of the research is to reveal local social and political mechanisms behind preserved social and gender injustice and barriers to economic progress. Another goal is to discuss political and administrative alternatives for dividing and governing productive land to meet new needs in the management of agriculture and forestry and for the development of modern infrastructure and businesses. A mixed research methodology is applied: both qualitative, in-depth interviews with a variety of key informants, and a quantitative approach including survey interviews with a total of 600 randomly selected respondents from households at nine different study sites in each of the two provinces. Preliminary findings indicate that an increasing number of land conflicts occur in the study areas. Our policy recommendations include a transfer to formalized and taxable clan ownership with specified and registered family user rights.

**Key Words:** ‘sleeping land’, communal ownership, land conflicts, user rights
1. Introduction

In Indonesia, as elsewhere in Asia, Africa and Latin America, nation building and economic modernization have paid little respect for local traditions of land ownership and cultivation. After the fall of Suharto in 1998 and the dramatic decentralization reforms in 2001, Indonesia has moved into an intensifying discussion of the land rights issue and a search for alternatives to either central state ownership and control, or privatization and full exposure to free market mechanisms. In our view, there is a need to find formal ways of certifying land user rights, which combine the facilitation of local economic growth, livelihood security, and conflict avoidance. With the diversity of Indonesian cultures and strong and various traditions of communal land ownership, formalization of rights should be based on local traditions in order to gain legitimacy under a non-authoritarian political system. This view is in line with recent research, which based on empirical insights from various parts of the world finds benefits in shifting the emphasis from the central state to local communities in processes of land reforms (Sikor and Müller 2009).

Only five percent of the Indonesian land area is formally registered for private ownership or user rights (Yusuf 2011). A minor share of this is freehold property. A big but unknown percentage of the total area is unregistered land with disputed claims. The national government by the Ministry of Forestry legally claims ownership right over more than two-thirds of land currently or previously under forests. Customary and communal land ownership mostly lacks formal legal recognition. Especially in the peripheral areas of Indonesia, the formalization of land user rights lags behind. This is mainly where the central government claims control over forests and where intensive logging has been going on for decades. This is also where pressure on productive land, and thereby marketable land values, have hitherto been low due to low population density and strong customary regulations of land use.

With increasing local demands for material progress, population growth, external commercial interests in mining and palm oil plantations, and international willingness to pay for environmental services (PES), conflicts over land are escalating in these areas. The eastern provinces of Indonesia, like the Maluku and Nusa Tenggara Timur, where the empirical data for this study are collected, are among the poorest parts of the country. The central government is concerned about the increasing geographical gap in gains from national economic growth and aims to speed up the development process in these areas. This is also where population growth is highest, with total fertility rates close to four in the two case provinces. Mining companies are expanding their exploration and pressure on land on Indonesia’s ‘outer islands’. The same accounts for palm oil plantations. As regards PES, Indonesia will likely be the second largest receiver, after Brazil, of international government financial support or private business carbon off-sets in schemes for mitigating greenhouse gas emissions by reduced deforestation and forest degradation, REDD+. 


Livelihood security has for long been threatened for millions of people in eastern Indonesia as a consequence of extensive commercial logging and mining. Another question is what happens to ordinary, poor people in rural areas when customary user rights are neglected and communal land is privatized, driven by economic incentives and an interest in avoiding high transaction costs associated with collective property rights (Bottazzi et al. 2014). From other rapidly modernizing parts of the world, research gives ambiguous answers to the question if privatization of land enhances welfare or reduces livelihood security (Lesorogol 2008; Metcalfe and Kepe 2008). A conclusion from one study is that ‘the elites in India are taking over the life-sustaining resources of the poor and pushing them into a further marginalized state of living’ (Meher 2009: 457). An advice from another research is that ‘attention to local contexts and histories can contribute to a better understanding’ of market liberalization and land ownership (Van Hue and Scott 2008: 62). Li (2004) represents one example of such efforts of valuable contextual understanding in parts on Indonesia.

Land conflicts were escalating in Indonesia after the fall of Suharto and the New Order regime in 1998. Land issues increasingly become core parts of local political debates, especially triggered by realized or potential non-local investments. There has been a powerful local mobilization of people after the end of the authoritarian system and as an impact of the subsequent implementation of regional autonomy. A substantial share of land conflicts are among or within adat (customary) communities, and with weakened central government authority, new mechanisms are needed for conflict avoidance and solution.

This paper aims to contribute in the discussion of organizing and formalizing land ownership and user rights in ways that enhance land efficiency, secure local livelihoods, and recuce risks of conflicts. We realize that markets, government and adat all have roles to play to reach these goals. Can any balance be found between the stimulating effects of free markets, the authoritative regulation of national government institutions, and the tradition-based protection of adat laws? Our research is based on a multidisciplinary approach, combining the respective authors’ disciplines of law and development economics.

After his introduction, the paper continues with a general literature survey, followed by a more specific discussion of formal national laws versus local customary regulations of land rights in Indonesia. The methodological approach is briefly described in section 4 together with a presentation of the two main study sites, the islands of Flores and Seram in Eastern Indonesia. We present and discuss the empirical data in section 5, and the paper is closed by a conclusion and some policy recommendations.

2. Land Efficiency, Livelihood Security, and Conflict Avoidance

- Land rights and efficiency

Two main theoretical streams have dominated recent academic discussions on land distribution and user rights, specifically in economically poor but resource-rich countries. One is represented by market-friendly private ownership advocates, following long traditions
of Western philosophy of societal progress based on individual freedom and responsibilities. The other is based on literature on common property regimes and common-pool resource management, which emphasizes the role of local communities and shared responsibilities for sustainable stewardship of land and natural resources. There is also a growing literature in favor of the need to combine elements from the two mentioned theoretical lines.

The free-market and privatization stream of theory emphasizes the enhanced adjustability and profitability made possible by private land ownership. Individual access to financial credits based on land collateral opens for utilizing emerging business opportunities. In addition, private ownership and individual responsibility are regarded to cater better for environmental sustainability and long-term progress. The concentration of benefits and costs on individual owners creates incentives to utilize resources more efficiently, and a primary function of individual property rights is actually that of ‘guiding incentives to achieve a greater internalization of externalities’, according to economist Harold Demsetz (1967: 248). Privatization proponents suggest that when property rights are well defined and easily enforced, markets efficiently determine the best way of organizing the allocation of resources among production options, between investment and consumption, and over time. Land reforms in economically poor countries in recent decades have often followed the outline of property rights theory based on formalization and individualization, and Western donor institutions regularly support them. A huge stream of recent theoretical and more policy-oriented literature describes advantages of privatizing land ownership; for an overview see Deininger and Feder (2009).

Main arguments against the free-market and privatization policy of land management deal with prevailing market failures, especially related to non-internalization of externalities (Delacote 2012), costs of establishing and operating effective land tenure systems (Hanstad 1998), and the normally limited future discounting in business calculations, which may lead to short-term profit seeking and unsustainable resource use (Norgaard and Horworth 1991).

The common property regime theories typically take Mancur Olson’s and Garrett Hardin’s works as starting points. Olson (1965) concluded that economically fruitful collective action is possible only if motivated by personal gains, while Hardin (1968) warned of resource overuse, environmental degradation, and the tragedy of commons, due to selfish actions of individuals. Many have taken Hardin’s warning as an argument for either privatization or government regulation of commons. Based on advanced research, however, Elinor Ostrom and others have identified site- and resource-specific preconditions for economically and environmentally efficient utilization of common-pool resources by communal management (Ostrom 1990, Ostrom, Gardner and Walker 1994, Ostrom 2010).

Various common-pool resources need different social arrangements for regulation of their consumption and preservation. They are generally characterized by being *non-excludable* and *rivalrous*. Ostrom’s (1990) eight-point list of prerequisites for sustainable common-pool resource management is widely discussed. It includes clearly defined boundaries, congruence
between rules and traditions, user participation in decision-making, and effective monitoring and sanctions mechanisms.

There are several general arguments against common property regime arrangements. One is related to the frequent lack of local community coherence and justice (Agarwal 2001), another focuses on limitations in monitoring and sanctioning systems (Coleman and Steed 2009), and a third emphasises the fact that local communal institutions are often based on traditions and social arrangements that are incongruent with modern needs for welfare creation and current threats to environmental sustainability (Li 2002). Daniels (2007: 570) explains the prevalence of ‘tragic institutions’ in the commons with the fact that ‘stability becomes rigidity’ and that responsiveness to changing societal conditions and individual needs are neglected.

Opposite to the warnings of common-pool resource overexploitation, Fuentes-Castro (2009) discusses the problems of underuse of resources in common-pool regimes. He follows Heller (1998), who popularized the expression ‘tragedy of the anticommons’. According to Heller, the ‘tragedy of the anticommons’ is identified with a prevalent underutilisation of resources in common property regimes because multiple owners each have a right to exclude others from usage. Managers of common resources typically have both usage and exclusion rights. When no manager or user is able to exclude any other from access to resources, free-riding and overexploitation may occur, while there is a chance of underuse if any user is able to enforce the right of excluding the others. Fuentes-Castro’s main addition to Heller’s arguments is on the issue of internalizing or externalizing social costs, which he regards to be specifically the potential negative effects of resource use on the natural environment. When users are united in a responsible community and coordinating their interests, they have to recognize the total external effect as a real cost. They will have an interest in avoiding resource overexploitation, and then the social cost will likely be effectively internalized. Fuentes-Castro (2009) concludes that common resources are typically underused when users compete in exclusion of others and at the same time internalize the social costs.

There are also arguments for more systematically combining market mechanisms with the advantages of common property regimes. Solving free-rider or overuse problems in common-pool resource management is, for instance, theoretically possible by introducing marketable catch quotas, pre-determined user fees, or by the auctioning of user rights. Libecap (2007) thus sees potentials in linking private and social net benefits in decision-making, but also warns against the complicated institutional design and implementation problems. An auction approach, for example, is promising in many kinds of common property regimes but raises huge challenges in the establishment of reliable regulating institutions and in the avoidance of collusion and corruption (Burtraw et al. 2009).

How problems of over- and underuse of resources in common-pool regimes may be overcome by hybrid systems is hitherto mostly debated by laboratory experiments and game theories and still lack empirical underpinnings and discussions of adaptation to specific resources and socio-economic contexts (Hackett 1992, Libecap 2009, Heller 2011, 2011).
Buchanan and Yoon 2012). This paper presents empirical research that clearly points in the direction of under- rather than overuse of resources in Indonesian commons, and then discusses how user rights may alternatively be organized to stimulate economic efficiency while maintaining livelihood security and contributing to low conflict levels.

- Livelihood security

More than 50 per cent of Indonesia’s population live in rural areas, and more than 17 per cent of them are officially recognized as poor by the Indonesian government. This figure is significantly higher in the study areas of this paper (BPS 2013). The share of agriculture in the national GDP is steadily declining, and there are strong arguments for enhancing agricultural efficiency as a means to reduce poverty. Rural and peripheral areas of Indonesia offer small chances for alternative employment. Land efficiency in Indonesia could probably be enhanced by privatization and by reducing areas under communal land ownership, at least in a shorter time perspective. Palm oil in Indonesia, for instance, may create an annual gross value of 3 000 USD per hectare if professionally managed in larger plantations (World Growth 2011), which is likely more than under current land-use systems in most of these areas.

However, there are strong arguments against monoculture as a substitute to traditional farming. From Ghana, Schoneveld et al. (2011) concludes that converting peasants’ land into plantation monoculture may significantly worsen rural poverty as communities will lose access to vital livelihood resources and get vulnerable to price fluctuations on single commodities. Also from Africa, Pritchard (2012) finds that the implementation of land registration and crop intensification has significantly reduced the land tenure and food security of subsistence households.

In general, people in eastern Indonesia also strongly react against considering land as a commodity, which can be traded in free-market transactions. This is clearly in contradiction with the ‘land-as-commodity framework’ normally advocated by the World Bank and other powerful global institutions (Narsula 2013). In our study areas, people perceive land more like a father or mother, - that is where one comes from and ends up, and that is where previous generations have always been able to make a living. People tend to feel secure and proud about that perception, which may also have a big value in itself. Studies among local people in other ‘non-modernized’ areas have similarly documented the substantial non-monetary value in the security and traditions of non-commercial land (Polishchuk and Rauschmayer 2012: 103), talking about the ‘multidimensional framework for human wellbeing as an alternative to mainstream utilitarian and opulence perspectives’ and ‘people’s freedoms to lead lives they have reason to value’.

Livelihood security deals with the chances of economic, social and ecological sustainability in people’s ways of living. Losing land in many contexts means a permanent loss of both economic income and social values. In Indonesia, hidden unemployment is very high, and
people in rural areas with low education have small chances to make a living outside the 
primary industries. Environmental, socio-cultural and longer-time economic considerations 
must also be made to judge livelihood security. Few believe that negative externalities, such 
as environmental degradation, breakup of communities, or loss of social identity and pride, are 
internalized in private mining or palm oil businesses’ decisions on future land use. There 
seems to be an increasing awareness among local peoples in eastern Indonesia, as elsewhere, 
about the threats to livelihood security from external business interests searching for 
productive land. This also leads to social mobilization, and conflicts arise many places.

- Land-use regulation and conflict avoidance

There are two main triggers of conflicts related to land. One is increasing land values as a 
result of higher land-use efficiency and demand (Deininger and Castagnini 2006, Lavigne- 
Delville 2000). The other is unclear borders (CIFOR 2006, World Bank 2003). The question 
then is how land-use rights may be distributed, justified, and regulated in ways that allow 
increased land values without escalating conflicts. According to FAO (2002), secure land 
tenure is defined as the certainty that a person’s rights to land will be recognized by others 
and protected in cases of specific challenges. To secure land tenure and reduce conflicts, land 
administration in Indonesia, as elsewhere, should likely be improved by revised systems for 
authoritative, legal recognition of land ownership or user rights, transparent and participatory 
processes of land registration, mapping and cadastral surveys, and land administration procedures whereby all information about land ownership and user rights is efficiently and consistently managed (Steudler et al. 2004, Zevenbergen 2002, Williamson 2000, Williamson et al. 2010).

Economists typically argue that economic efficiency requires clear definitions of ownership 
rights and marketable transfer of property. Ambiguity in definition or rights enforcement will 
lead to increased land transaction costs. However, tenure certification and legal dispute 
resolution procedures also have a cost, which may ‘put them beyond the means of many 
citizens’ (Henrysson and Joireman 2009). On a general basis, Otto (2009) concludes that 
inconsistency of many law reform initiatives in developing countries, which begin with the 
interests of the poor based on their user rights, often end up with increased opportunities for 
the rich, based on their access to formal land titles. Similarly, Benjaminsen et al. (2008) 
conclude that poor people’s lack of access to land ownership formalization may turn out to be 
an advantage for those with power and access to information and economic resources.

Also from Indonesia, Resosudarmo et al. (2014: 80) find that when de facto tenure is not 
supported by de jure, it will be easier for outsiders to ‘intervene, impose upon, and 
manipulate’. Following this argument, they conclude that communities need first to 
understand the weak de jure position of their de facto tenure, in spite of a strong conviction 
that their de facto tenure is secure based on customary rights. When it comes to avoiding and 
solving conflicts, Bakker and Moniaga (2010) find that the lowest levels of government offer 
the best chances of success in conflict resolution, but that the security of implementation in 
the longer run increases with higher administrative levels of judicial ratification.
A high number of studies made over the last 20 years support the argument that land user rights distribution and jurisdiction are better made at local levels and based on community participation and respect for traditions (Holden et al. 2013). However, research also indicates that traditional, local regulations of land rights are not always in accordance with democratic principles and human rights. Community-based natural resource management in uplands Southeast Asia offers a problematic basis for justice, according to Li (2002: 278). ‘It runs the risk of replicating old patterns of discrimination in new, environmental garb’. The issue of elite capture of participatory initiatives for land distribution and jurisdiction has actually gained substantial attention (Lund and Saito-Jensen 2013). As an example, women are often excluded from communal decision-making on land-use issues, which also tends to weaken the self-sustaining collective action and conflict-solving ability of such communities in a modern world context (Westermann et al. 2005).

Before we go on to look more in detail on legal aspects of land ownership and user rights under ambiguous Indonesian laws and contradicting judicial systems, we shall summarize the foregoing theoretical discussion in a number of propositions, which will be investigated in the empirical part of this paper:

1) Demands for privatization and land-use efficiency may challenge customary land ownership.

2) Requirements to land efficiency and livelihood security may be incompatible.

3) Land disputes intensify as a result of demographic pressure and increased demand for land-based goods (agricultural products, mining, and carbon storage).

4) Customary law may be a more respected instrument for organizing land user rights and solving land disputes than national laws and judicial institutions.

5) The rules and operation of traditional law and its institutions may not be in accordance with a democratic ideology and modern expectations to gender and social equity, and may be unsuitable to solve new types of conflicts.

This theoretical overview and subsequent propositions lead us to the central question for further discussion in this paper:

- How can central government laws and local traditional rules (adat) be coordinated and harmonized to obtain a combination of livelihood security and conflict avoidance along with increased economic efficiency and land values?

The leading question is illustrated in the following model:
3. Land User Rights under Ambiguous Indonesian Laws

Land ownership in Indonesia is tainted by diverse interests of logging concessions, industrial forest plantations, commercial agricultural plantations, mining concession, settlement programs, infrastructure development, and local population pressures. The history of marginalization of locals and adat people started even before the Indonesian independence. People who were accustomed to ‘justice’ as the end product of their adat laws were forced to change their perception to ‘legal certainty’ introduced by the Dutch colonial power.

Competing for resources and the booming of development have put more pressure on local communities and indigenous people in the rural areas. Although in Indonesia’s Constitution of 1945, Article 33 states that, ‘Land, water and natural resources in it are owned by the State and used for the people’s prosperity’, the reality is different. The spirit of this law article, which originally was to protect the rights of the people and land as a common property, has shifted and been used as an appropriation tools by corrupt actors.

Legal protection of land ownership in Indonesia is mainly stipulated in the Law 5 1960 on Basic Principles of Agrarian Law (BAL). BAL regulates the types of land rights (rights of ownership, of cultivation, to use building, to use land, to lease, and to clear land and collect forest products). BAL actually overruled most of the old Dutch colonial agrarian law and provides a hierarchical system of land ownership:

1. The nation’s right forms the premier right in land ownership. This brings back the land ownership to Indonesians as a communal owner of land, water and space. The right has private and public consequences. This means that land and the natural resources of Indonesia do not only belong to the direct owners, but also to the whole nation. The nation’s right is eternal and will follow the nation of Indonesia as long as the country of Indonesia is still intact.

2. The state’s ‘ownership’ right is strictly public and the state is positioned as the ‘manager’ or ‘authorized body’ of the land, – not as the owner. ‘The state is authorized in the interest of the people to manage and organize the ownership, usage, utilization and maintenance of land’ (Article 2).

3. Ulayat rights / adat rights / traditional rights. These rights include public and private aspects. Although these rights are clearly defined and acknowledged in the BAL, there is a caveat on the acknowledgement of this right. The adat right must have an ‘existence’, align with national and state interests, be based on unity of the people, and cannot be inconsistent with other related laws and regulations.

4. Individual land rights. Such rights are given based on the state’s ownership rights and include civil rights of hakmilik (freehold ownership right), hakgunausahaan (cultivation rights), hakgunabangunan (building rights), hakpakai (user right), hakmembukatanah (land clearing rights), and memunguthasilhutan (forestry rights).
BAL is still problematic because it is overlapping with other laws, regulations and policies. For example, there is a huge overlap between ‘agrarian land’ and forests. Forests and forest areas are regulated in Law 41 1999 (Basic Forestry Law, BFL), which contains provisions relating to the sustainable use and multiple functions of forests. BAL and BFL are overlapping in several ways. For instance, the rights of millions of forest-dependent people who have lived for generations in or near Indonesian forests as adat (indigenous) or non-adat people are falling between the BAL and BFL laws. Tenure security has very little clarity in forests and surrounding areas. People who believe that they have rights on their cultivated land from generations, most often undocumented, thus become vulnerable to land appropriations by the state or other parties. The problems then arise when administratively the local people are in need to have their land licensed. If they are cultivating in an area classified as ‘forest area’, although de facto the land has been a cultivated land for decades, they would have to ask the Department of Forestry for the license. On the contrary, if the area is forested but not classified as forest, they have to contact the National Land Agency (BPN) for certification issues.

Adat peoples’ recognition by the government has to go through a long and winding process before they can be legally acknowledged. The acknowledgement and respect of adat communities is listed in the 1945 Constitution (amendment): ‘The State acknowledges and respects the unity of adat law communities and their traditional rights, as long as they are living and align with the development of the community and the principle of the Republic of Indonesia and regulated by the Law’. This article gives constitutional rights for the adat community and a blueprint for the State on creating a relation with adat law community (Zakaria 2013).

There are also laws in relation to adat law community. One of the most prominent is the Law on Human Rights (39/1999), highlighting that: (1) In the event of human rights enforcement, the differences and needs of adat law community needs to be fostered and protected by the law, the community and the government. (2) Cultural identity of human rights of the adat law community is protected, including land rights of the adat law community. In the explanation of the Human Rights law, ‘adat rights’, which are living law in the adat law community, have to be respected and protected as parts of Human Rights Protection and enforcement. Furthermore, this article also stresses that it is a must for the law, the community and the government to respect the diversity of identity and culture of adat communities in Indonesia. The denial of this diversity, such as acts of uniformity of values of adat, is trespassing human rights.

Other laws, such as Law of Regional Government (32/2004), stated the rights of adat law community to develop a political and governmental system in accordance with the local adat. For example, Article 3 of the law explains that ‘the election of village head in an adat law community, where law is still acknowledged by the local community, is enforced by a Government Regulation’.
Still, the real problem is the implementation on the ground. The mentioned laws are good, but the fact that the adat law community has to get acknowledgement from the lowest level of the government, the desa (village), and then kecamatan (sub-district), kabupaten (district), and province creates problems. Only based on the decision of the province will the central government decide whether or not they will acknowledge the adat community. Not only does this process take a long time and demands a lot of energy, but if the community does not have funding for ‘greasing money’, the acknowledgement will be stalled and even rejected. Corruption is a major problem in Indonesia and it has spread systematically within the bureaucracy of the government from top to bottom.

Moreover, the implementing institutions of BAL (in this case: BPN: National Land Agency) and BFL (in this case: Department of Forestry in Jakarta and Dinas Kehutanan or Forestry Office at the province and district levels), have very limited coordination. Mostly, they coordinate based on projects, or based on overlapping activities. There are no routine or regularly scheduled coordination meetings between these agencies.

4. Methodology and Study Sites

This study is empirically based on information collected from study sites in two provinces in eastern Indonesia, Nusa Tenggara Timur (NTT) and Maluku, which are the economically poorest among Indonesia’s 33 provinces. Triangulation of data and methodological approaches allow for both quantitative and qualitative analyses. In each province, researchers from UGM, a leading university, had an initial seminar with local academics. In-depth interviews were made with approximately 50 purposely selected key informants in each province, - from heads of departments at province and district levels, to traditional leaders and ordinary citizens at the selected rural and peripheral study sites.

Finally, a total of 640 questionnaires were filled in during trained enumerators’ interviews with randomly selected ordinary people at the nine village study sites in each of the two provinces. The questionnaire was based on previous interviews with the smaller number of key informants. Both men and women have been represented by at least one third of the approximately 35 respondents at each of the 18 local study sites. The enumerators have strictly followed the structure and wordings of questions in a six-page questionnaire. Each interview took approximately one hour. The data collection was made in NTT in November 2013 and in the Maluku in December 2013 and January-February 2014. The selection of study sites is made to get close to a representative picture of land ownership, land efficiency and land conflicts in rural areas of Eastern Indonesia.

In the province of NTT, the main data collection was made in three sub-villages (dusun) in three different sub-districts (kecamatan) in each of three districts (kabupaten) on the island of Flores. There are huge varieties in traditions and legal systems among, and also within, these three districts. Flores firstly came under colonial rule by the Dutch only 100 years ago and has a history on non-united small political units of remote villages, often in conflict with each other. Five different languages are spoken on the relatively small island. The specific study
sites are Dhawe, Mulakoli and Maukeli in Nagekeo district, Seso, Wangka and Ruto in Ngada district, and Compan Dalo, Narang and Robek in Manggarai district.

In the Maluku province, the nine local research sites (dusun) for the survey were selected in three sub-districts in only one of the three districts on the island of Seram, Seram Bagian Barat (SBB). In-depth interviews have been made also in the two other districts of Maluku Tenggah and Seram Bagian Timur. The reason for concentrating the quantitative data collection in Seram in one district is that we wanted to cover different ethnic, religious or heritage compositions of people and the possible subsequent social stratification within villages or ‘kingdoms’ (negeri). Villages on the north, south and west coasts are included, with domination of both Muslim and Christian communities. The similarities in political organization and social structure among the three districts in Seram are strong compared with the huge variety among Flores’ eight districts. This is partly explained by the common history of being under the Ternate sultanate from the 13th till the 19th century. The specific study sites are Luhu, Liaela and Saluku in the western Huamual sub-district; Karmel, Eden and Nasaret in the northern Murnaten; and Kawatu, Rumberu and Waimital in the southern Rumberu area.

5. Findings

All the 18 study sites are located in peripheral parts of Indonesia. They are all several hours’ travel by road or sea from their respective province capitals. Commercial activities and employment alternatives are limited, and livelihood is economically still totally dominated by traditional agriculture. Agricultural land mostly belongs to clans (suku / marga) or the village itself (negeri). Individuals or families have stable user rights but generally no chance to have formal freehold title certificates. The only main exceptions are paddy fields based on government-funded irrigation schemes.

Survey respondents generally have low education; 60 percent in Flores have only primary education (6 years) or less, while the corresponding figure in Seram is 45 per cent. The families of most respondents (62 per cent) have lived in their respective villages since they were firstly populated, and only 20 per cent of the families have lived there for less than three generations.

Close to 90 per cent of respondents say they have access to agricultural, grazing or forest land. The average land size at disposal per family for agricultural activities is 2.6 hectare, somewhat bigger in Flores because of huge pastoral lands in some of the study areas. The median size of productive land at disposal is 1 hectare for respondents on both islands. There is no significant difference in productive land size at disposal for groups of families according to the length of their families’ stay in the villages. Those who don’t have access to land mostly make a living as workers, traders or government employees in Flores, and in Seram as fishermen or by remittances from migrant family members.

In the remaining of this section we make use of the empirical data collected from the two provinces to compare and discuss land ownership systems and regulating institutions, land-
use efficiency, livelihood security, and land conflicts based on the propositions presented in section 2 of the paper.

**Proposition 1: Demands for privatization and land-use efficiency may challenge customary land ownership**

Generally, people in the study areas don’t want privatization of productive land in the meaning of having freedom to buy and sell land based on individual preferences. However, in Seram, as much as 98 per cent of respondents are of the opinion that productive land should be ‘certified’ for private individual or family ‘ownership’. The corresponding share of respondents in Flores is 60 per cent. The real meaning of ownership for most respondents (76 per cent) is ‘permanent user rights’. The main motivation for land certification would be future conflict avoidance for most of them (95 per cent). The possibility to sell the land after certification is mentioned as important by less 4 per cent of the respondents.

In Seram, 72 per cent of respondents say there is unused or underutilized land within the borders of their villages, while the comparable percentage in Flores is 47. Overall, almost 80 per cent say people in their villages have enough land or other employment opportunities to make a ‘decent living’. However, most respondents also point to population growth as reasons for steadily decreasing areas of productive land per family and for sending family members out of their villages to search for alternative employment.

A major share of respondents, 77 per cent in Flores and 62 percent in Seram, say their village could have produced more economic value from agriculture, grazing land or forests if the land was distributed in another way, either by more intensive land-use or by planting and harvesting other crops and new trees. Average annual earnings are 13.6 million rupiah per hectare (1 170 USD) for all study sites, - calculated on the basis of respondents’ information on annual harvests, animal slaughtering and logged trees, and on current local commodity prices. The combination of relative poverty, huge areas of unused land, and relatively low productivity on cultivated land clearly calls for discussions on changes of land-use and land user right systems.

Respondents in most areas have experienced external business interests trying to establish a foothold in their villages by investments in palm oil plantations, pasture land, or mining activities. Several villages in Seram, for instance, plan to rent out parts of their communal land to external oil palm investors. They are typically offered a sharing of 30 per cent of net income to the village and 70 per cent to the investing company.

We conclude under this proposition that the traditional land ownership systems are likely challenged by population growth, requirements to land efficiency and economic growth, and external market pressure. Local people are clearly skeptical to full privatization, however, and they see clear advantages in continued communal land ownership and management of some kind.

**Proposition 2: Requirements to land efficiency and livelihood security may be incompatible**
The study areas have in common limited alternative employment opportunities within their borders. They are still fully dependent on agriculture and other primary economic activities for the livelihood of their citizens, but most places still have huge areas of ‘sleeping land’. Survey respondents generally see small problems related to environmental sustainability in their neighborhoods. As much as 84 per cent say the current land-use in their village is not harming nature permanently in any way. Skepticism to commercial forest logging and mining activities are very strong in all study areas. However, as land is still abundant, renting out some land for oil-palm plantation or commercial pasture is not seen as threats to local livelihood security anywhere. On the opposite, many talk about advantages in additional employment creation.

In conclusion under this proposition, increased land efficiency and livelihood security do not seem to be incompatible and can likely still be combined in our study areas.

Proposition 3: Land disputes intensify as a result of demographic pressure and increased demand for land-based goods

Respondents in all areas tell about tendencies to intensified land conflicts. Conflicts are reported to be mainly of two kinds:

1) Within families that cannot agree on the principles of heritage of their limited land. Traditional principles may be based on a freer access to new land for new family members, and there are increasing numbers of quarrels about the sharing of limited or already cleared or irrigated land among siblings and also among cousins.

2) Among villages where old borders have caused no problems until new economic opportunities arise through logging, plantations or mining activities. As expressed by one village leader: ‘The border is not clear anymore when investors come with money.’

Conflicts among clans and between indigenous and immigrant families currently seem to represent a minor problem in our study areas, but the proposition is supported: Land disputes tend to intensify.

Proposition 4: Customary law may be a more respected instrument for organizing land user rights and solving land disputes than national laws and judicial institutions

On average for Flores and Seram, around 90 per cent of respondents with access to agricultural land say that that the land belongs to ‘me or my family’. In spite of the individual or family ownership claims, less than 40 per cent of respondents say they have a formal land certificate on their productive land. For those who say they have a certificate, it normally covers only a minor fraction of the total land at disposal, typically an irrigated rice field or an intensively used agricultural plot close to the village center. As for the housing plots, the certification of productive land made by the National Land Agency (BPN) covers a much smaller share than reported by the respondents. Other kinds of certificates are issued by judicially informal institutions, such as clan elders or village leaders. In spite of the limited
formal and national certification, 97 per cent of land users in Seram are of the opinion that their user rights are permanent, and as much as 99.6 per cent say that their user rights are secured. These shares are somewhat smaller but still high also in Flores.

As much as 90 per cent of survey respondents say that productive land in their village is distributed according to ‘fair principles’. Communal consensus and obligations to ancestors are mentioned as the most important land distribution principles. At the same time, clear majorities of respondents, 52 per cent in Flores and 97 per cent in Seram, say that land in their village could have been distributed more equitably or given on more reasonable conditions. The main argument used for another system of land distribution is to have land user rights spread more evenly among all village families. In Seram, 53 per cent of survey respondents also say that land user rights should be distributed more evenly among genders.

Asked who should be responsible for dividing land and deciding ownership borders in a certification or land redistribution process, most survey respondents clearly point to the traditional land guardians, mosalaki or raja. Communal assemblies also have much higher trust among ordinary people in such tasks than government institutions in both provinces.

In both provinces, the most respected dispute settlement mechanisms are also based on adat, and the adat courts are born from the needs of the adat law community. This type of settlement is perceived to give more justice and legal certainty for the locals. The involvement and impact of the adat courts’ decision are felt and obeyed more by the locals than the decision given by the government-established courts. In Flores, there are mosalaki, which are adat leaders chosen by the adat community. The authority of mosalaki and the council of elderly in the adat law system include legal dispute settlement efforts in the village and acting as judges in inter-villages conflicts. In Seram, there are saniri and lattupati. Saniri is a village-level court, focusing on land dispute settlements, and lattupati is a forum of village heads or kings (rajas), focusing on inter-villages disputes.

We conclude the discussion under this proposition by stating that customary law is clearly a more respected instrument for organizing land user rights and solving land disputes than national laws and formal judicial institutions.

**Proposition 5: The rules and operation of traditional law and its institutions may not be in accordance with a democratic ideology and modern expectations to gender and social equity, and may be unsuitable to solve new types of conflicts**

Female land ownership or formal user rights are only accepted in one of the 18 studied villages. (Ruto village in Ngada district in Flores has a matrilineal succession system.) As mentioned, in Seram, more than half of respondents also say that land user rights should be distributed more evenly among genders.

The total lack of transparency in the distribution of communal land income among clans and families in villages that rent out their land for palm oil plantation or other economic activities creates increasing tension and dissatisfaction many places. Many people complain that only
the dominating clans in the villages draw advantages of such modern economic transactions with external businesses.

In one village, the raja says that the communal forest is better taken care of by the government through the Forestry Ministry than by the local community, because many local people have cooperated with illegal loggers and caused deforestation and reduced possibilities to harvest non-timber forest products. This community did not have the monitoring and sanctioning mechanisms to hinder deforestation, and now the forest is more effectively protected by government institutions.

These are only three examples supporting proposition 5 and indicating a need to modernize local traditional institutions to meet new demands for participation and democracy and new principles of justice.

6. Conclusion and Legal Policy Recommendations

A leading question in this research is how central government laws and local traditional (adat) rules can be coordinated and harmonized to obtain a combination of livelihood security and conflict avoidance along with increased economic efficiency and land values. We conclude that traditional rules for land ownership and user rights are still strong and highly diverse in eastern Indonesia, that people pay more respect to adat rules than to national laws, that the number of land conflicts escalates, and that the issue of land privatization is increasingly relevant as external business interests are getting stronger. Rather than natural resource overuse and environmental degradation as results of communal land ownership, we find clear tendencies to under-utilized land and substantial potential economic gains for changed land-use patterns and modified land user rights.

In the typical adat communities in the study areas, the land is owned, distributed and managed communally based on traditional principles of justice. The concept of individuality is still foreign for most Indonesians. The Dutch, occupying Indonesia for 350 years, introduced the very different principle ‘legal certainty’, based on individualism. Instead of promoting justice for all as the adat law did for hundreds of years, the new colonial laws promoted legal certainty for individuals. Adat law has certainly survived, and there is still a big gap between the two systems of adat and nationally adopted western law. The legal pluralism theory states that there are layers of law, which take place on different levels of domains, like in the public and the private (Lindsey 2000). A main problem faced in land administration in Indonesia is that there are different legal perceptions in one domain, namely that of land ownership.

One main challenge is therefore the combination of two legal perspectives into one land ownership system, which should bring benefits and justice to the people of Indonesia. We see two main alternatives:

1. Communal land certificate for adat people:
The idea is that, instead of individual certification for land ownership, the government can include a ‘new’ system, which acknowledges communal ownership.
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Strengths:

a. Participatory mapping by adat law community and supervision from governmental officials.
b. Acknowledgement from local and central government will be easier to achieve.
c. Possibility by the adat law community to have MoUs with third parties.
d. All management done by adat leaders who are highly respected by the local community.

Weaknesses:

a. All individuals in the adat area have to agree to have one certificate for all.
b. This process might take longer time for discussion and getting everybody onboard.
c. The government (in this case BPN) is using a western perspective on land ownership, so changing individual ownership to communal ownership means changing the whole system.

Opportunities:

a. Considering that communal ownership is the original type of land ownership in Indonesia, most of adat law community would support this idea.
b. This type of ownership has been regulated by the Dutch (in terms of tax payment documents), such as in ‘Seri A’ in Flores. So there is a legal history on communal taxation in Indonesia. There is an opportunity to leverage the type of communal taxation into communal ownership.

Threats:

a. The current legal formal apparatus in Indonesia does not acknowledge communal ownership. Most of the BPN agency officials interviewed were opposed to this ‘communal ownership’ idea, because communal ownership does not give ‘legal certainty’. Whilst in fact, communal ownership does give legal certainty, - just not to individuals, but for a community group.

2. Individual land certificate with a binding ‘nontransferable’ clause:

Strengths:

a. No need to change the current system.
b. Individuals have their own certificate, but in the certificate it is clearly written that transferring their land rights have to be approved by his/her adat community.
c. Possibility to use the certificate as economic tool.

Weaknesses:

a. All individuals in the adat area have to agree to have one certificate for one person, but that the land cannot be sold unless agreed by all members of the adat.
b. Adat members should be educated and consented to the importance of certification as a legal certainty in the future.
c. This process might take time for discussion and getting everybody onboard.

Opportunities:

a. Individual ownership is currently the only ‘legal’ type of land ownership in Indonesia, so the government would support this idea but adat communities will need to be introduced to the idea.
Threats:

a. The adat law community currently does not think that individual certification is needed.

b. Based on the research, once there is pressure from the markets, the local community tends to sell or rent out their lands, and this escalates the possibility of conflicts (between themselves, and between neighboring villages).

Currently there are only few conflicts between adat communities and other interests on land in our study areas. With increased economic value of land, however, we also see the increased possibility of conflict. In the current situation, the adat law communities still think legal certainty by formal land certification is negligible for their land ownership. But with the increased pressure of economic interests and needs, sooner or later they need a formalized legal proof that they own the land and hence can manage it in accordance with their needs.

Turning back to our research model (p. 9), and based on referred theory and our empirical findings from eastern Indonesia, we see important roles of adat to protect, government to regulate, and markets to stimulate. Institutions of the three spheres of society are needed to strike the balance between local peoples’ needs for livelihood security and sustained social and cultural values, economic growth and improved material conditions, and the avoidance or reduction of land conflicts. We have presented some policy suggestions for combining the adat and government spheres of law especially for land conflict reduction, but further analyses of theory and empirical findings are needed to discuss more in detail also the roles of various adat, government and market institutions for enhanced land-use efficiency and livelihood security.
References:


BPS (2013). BadanPusatStatistik. BPS 2013


Figure 1: Research model (pg.9)

Land Issues in Indonesia

MARKETS

ADAT

GOVERNMENT

Livelihood security

Land efficiency

Conflict Avoidance