

# Hot Spot of Emission and Confusion: Land Tenure Insecurity, Contested Policies and Competing Claims in the Central Kalimantan Ex-Mega Rice Project Area

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Southeast Asia





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## **Disclaimer**

This report summarizes the findings of a RATA (Rapid Tenure Claim Appraisal) study aimed to inventory the various claims to land tenure and use rights, in the context of historical developments and policy decisions at national, provincial and district level, interacting with local communities, NGO's and private sector stakeholders. Our report does not provide formal legal opinion (and cannot be constructed to be such) about the validity of any or all of the various claims. Such validation checks will require considerable further analysis of the respective priority of the various rules and regulations to which the claims refer, in the light of incomplete or inconsistent implementation by the government of its own rules. In 'legal pluralism' mode, the de facto power to impose or sabotage rules, modification and use of natural resources is ultimately a political process of contest where legality of one's own and illegality of others' claims is used to justify action. A comprehensive settlement and negotiation process may be the most pragmatic and fair solution. We hope our findings contribute to the mutual understanding between the various claimants. Efforts to reduce the carbon dioxide emissions from this 'hot spot' will depend on success in resolving the 'hot spot' of contested rights (local, customary, and statutory) in an area where former policies and national program in an era of limited public political space had undermined the ecological integrity of this peat dome.

## Contents

1. Background and Objective.....	2
2. Research Methodology .....	4
3. Policies and Regulation: From Past to Present .....	6
3.1 Emergence and Recognition of Adat Law in Pre-colonial and Colonial Times .....	6
3.2 The Rise of the Forest Concessions and the Demise of Adat Law .....	7
3.3 The Mega Rice Project: Planned Disaster.....	10
3.4 The Aftermath of the Mega Rice Project during the Decentralization Policy: an Era of Open Access.....	12
3.5 A Recognized Hot Spot: Local Government Reaction toward National Revitalization Policy .....	15
4. The Impact of Policies in Practice .....	18
4.1 Clear as Mud: So Who Rules the Land?.....	18
4.2 Existing Land Conflicts and Disputes.....	20
4.3 Land Rights and Carbon Rights: Both may be Insecure .....	21
5. Conclusion and Ways Forward .....	23
References.....	25

## Summary

The Kalimantan Forests and Climate Partnership (KFCP) is a new initiative to explore and hopefully demonstrate effective ways of reducing emission from peatlands as part of broader efforts to reduce emissions from deforestation and degradation ('REDD'). Current negotiations seek consensus on the most effective methods and incentives for REDD in the local context. This study summarizes a rapid appraisal of the multiple claims of land tenure and use rights. Clarity on the bundle of rights and responsibility is seen as a basic prerequisite for success in REDD.

The area described here became a hot spot of conflict over land-use rights when the central government initiated the Mega Rice Project in 1995. This project did not fully recognize the land-use rights of existing local communities in that area, and brought in new stakeholders with claims derived from central authority. Consequently, conflicts erupted. Historically, the rights of the local community had been recognized and legalized during Dutch Colonial rule, at a time that external interest focused elsewhere. However, in the 1970s, an agrarian study conducted by the government found no evidence let alone proof of local community land rights in the area. Based on this study, the government issued logging concessions and then began a peatland conversion project without considering local community land-use rights as legitimate rights. When the Mega Rice Project was axed in 1999 to become the Ex Mega Rice Project, no government institution was in place to manage the area and coordinate. The local government initiatives encouraged oil palm investors and passed two local regulations on spatial land use planning, in 2002 and 2003. Consequently, several oil palm plantations commenced operation. After wider public debate and international attention for the high emission estimates for drained peatland in 2007, the central government passed a decree that limited the operations of oil palm plantations and targeted the area as a pioneer for ecological restoration and emission reduction. This condition created uncertainty regarding who actually owned the rights to use the land. Multiple claims on land-use rights occurred not only between the government and local communities, but also among the local communities and between local and central government. Contestation over various aspects of rights pervaded through many entities and scales of government.

A business-as-usual approach (a top down approach by not taking into account existing institutions and practices and conflicts) to forest policies and governance cannot be an option if climate change mitigation is to be achieved by reducing emissions from this ex-forest landscape that still contains substantial tree cover and ecological value. REDD cannot be effective in such a peat dome landscape unless a governance and collective action scheme emerges that acknowledges rights and claims that derive from the various phases of local history. International development and recognition of REDD mechanisms must include tools to monitor the implementation of governance and other reforms necessary for the recognition of local rights, negotiated relations and rights, along with incentives to support an alternative development pathway.

# 1. Background and Objective

As host of the 13<sup>th</sup> Conference of Parties ('COP') in the international climate change convention in 2007 that committed to a 'Bali Road Map', the Government of Indonesia is committed to piloting schemes to reduce emissions from deforestation and degradation ('REDD'), to build a national framework for long-term implementation and to resolve outstanding methodological issues. The 15<sup>th</sup> COP in December 2009 is expected to sanction international REDD schemes and provide international funding mechanisms. Details are still under negotiation and include the 'scope' of mechanisms that so far have been based on the concept of forest (deforestation and forest degradation) that may or may not apply in peatland areas. Activities to reduce emissions from land use, including forest and peatland modification and conversion, will need to collect, improve and review spatial data and analyze the current forest estate. This will include appraising the quality of the remaining forest cover and peatlands, and projections of emission baselines, in the context of current and proposed permits, and forest, concession and community-land boundaries.

The Kalimantan Forests and Climate Partnership (KFCP) is a key initiative to explore and demonstrate effective ways of reducing emissions. It aims to bring peatland emissions into the emerging REDD schemes. While the international rules on REDD are not yet clear and emissions from peatlands may or may not be covered, there is a widespread consensus that this type of emission reduction is technically feasible, urgent (high emissions) and probably cost effective. As the emissions from peatlands come from a relatively small area with a small local population, the social aspects may seem to be manageable. Hence, they are not trivial and deserve full attention. Emission reduction here implies ecological restoration, reversing on government plans for a landscape transformation that is now understood to have brought little 'development' relative to its environmental destruction. The various stages of government policy and program that entailed mobility of people, however, have left a trail of stakeholders with claims of 'rights'. New layers of claimants have been added without the resolution of previous contestation over rights.

Due to their low accessibility and fertility, the peat domes that developed in Central Kalimantan on the interfluves of a number of rivers have been late entrants to the development process. Historically, the rivers have been the only entry points for human use, with a string of settlements and a tradition of upstream-downstream mobility of the various ethnic groups, practicing 'swiddens' along with shifting village locations. Specific ownership claims over parts of the riverbanks and hinterland depended on details of the settlement history. The construction of drainage canals for the ex- Mega Rice Project and establishment of transmigration settlements not only brought a new influx of people with claims on land ownership, but also changed the communities' institutional arrangements and existing land tenure system. Furthermore, the local government policy to invite oil palm and mining companies to this area not only caused problems and changes to the land tenure system, but also contradicted the shift in national policies and the decision to conserve and protect the peat dome from land use. These two policies have caused multiple claims over the forested land and resources rights.

REDD and expectation of 'carbon markets' have brought new issues on 'rights'. Key issues in the REDD debate are: (1) who has, or can claim, the right to 'sell carbon' or ask for co-



investment in emission reduction efforts (local communities, concessionaires, forest management units, local government, national government); and (2) who has, or can claim, the right to receive payments for avoided damage. These issues demand clarity and procedural justice on resolving land tenure and forest management rights and stakeholders' rights over forested land and resources. This clarity does not yet exist in many landscapes. In a peat dome landscape a specific form of collective action is needed as drainage of the 'sponge' through any side affects the hydrology of the dome as a whole. So far no institution or concept of rights and responsibilities has emerged that matches the scale of the resource. From a patchwork of claimants and rightholders, a new way of interacting with the land resource will have to emerge.

As issues over land use and forest management rights are prominent throughout Indonesia as well as similar countries while legal procedures for settling conflicting claims are slow and are based on a legal framework that is itself contested, an appraisal method was developed to inventory the multiple claims in a limited time period in a cost effective way. The Working Group on Tenure has tried to gain a better understanding of the complex dynamics and contestation over rights, concurrent and historical (Warta Tenure, 2009). The RATA procedure that emerged from previous studies was documented by Galudra *et al* (2006), Sirait (2007) and Galudra *et al* (2008).

In the first half of 2009, a new RATA study was conducted in the Ex- Mega Rice Project (EMRP) area of Central Kalimantan. This paper summarizes the study and focuses on clarifying rights in the context of emission reduction and REDD implementation. The paper aims:

1. To unearth the land tenure and forest use claims and rights in the Ex-Mega Rice Project area,
2. To increase understanding of the role national and local government agencies have had and have in the formulation of regulations and policies in the ex- Mega Rice Project area.
3. To explain and analyze factors that drive and cause the multiple claims on land-use rights.

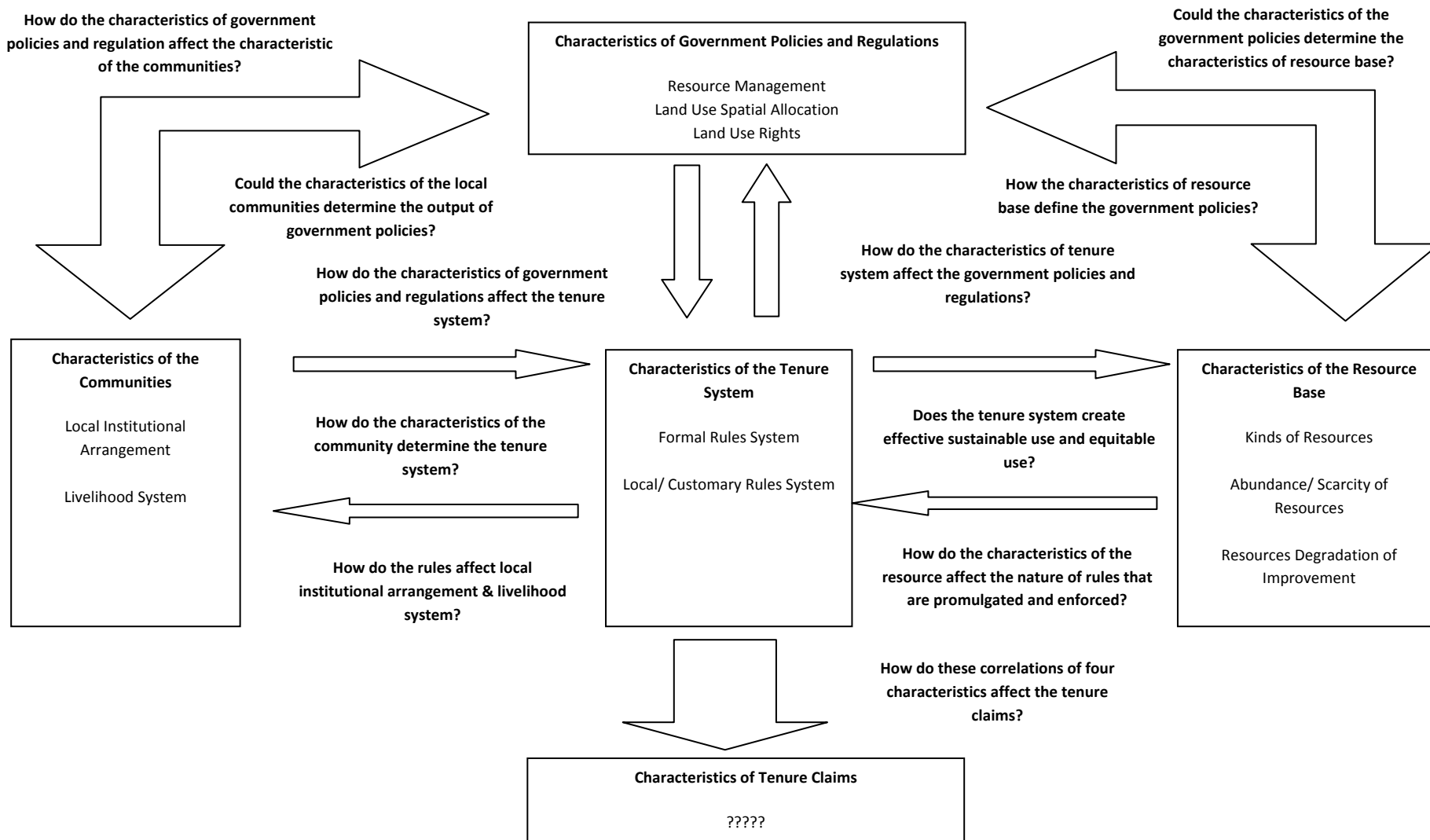
## 2. Research Methodology

In line with the RATA procedures, the research was complemented by and combined with different approaches, such as stakeholder analysis, land tenure system and claim analysis, and an exploration of historical policy analysis. These approaches were utilized in different phases of the study.

1. ***Stakeholder analysis*** was used to determine and understand the positions of associated individuals and institutions with respect to the competing claims. Four strata of analyses were conducted to understand the parties' positions and interests at: national, provincial, regency and village levels. Based on the strata analyses, several important groups of stakeholders were interviewed, who directly or indirectly were involved in disagreements over competing claims in the Central Kalimantan ex-Mega Rice Project area.
2. ***Land tenure system and claims analysis*** was used to analyze the driving factors that have caused the changes in the land tenure system and how the changes have resulted in the existing multiple claims. The multiple claims from different stakeholders may cause conflict. The analysis used some methods from Rapid/Participatory Rural Appraisal, such as participatory mapping, conflict matrix, focus group discussion (FGD) and semi-structure interviews.
3. ***Historical policy analysis*** was used to explain and analyze the policies that have determined or justified as justification for stakeholders' access to and use of the ex-Mega Rice Project area. The policies collected were mainly concerned with topics, such as land use management, ownership rights, and institutional arrangements.

An analytical framework (Figure 1) was developed to analyze the vast amount of information that had been collected during the field study. The framework organized the descriptive information into five categories: (1) characteristics of government policies and regulations, (2) characteristics of the communities, (3) characteristics of the tenure system, (4) characteristics of the resource base, and (5) characteristics of tenure claims. The framework helped the researchers to use the information to explain the causes and implications of the multiple claims on sustainable resource management in the Central Kalimantan ex-Mega Rice Project area.

The researchers considered, for example: (1) which government policies and regulations were important in defining land-use rights and the land tenure system and how, in turn, the existing tenure system and the characteristic of the resource base affected policies and regulations; (2) how the characteristics of the tenure system might create incentives (and disincentives) relating to resources use; (3) who had access and use rights to the resources; (4) how the nature of the resource base influenced the tenure system; and (5) as resources became scarcer, for example, whether the tenure system adapted and policies and regulations on land use became stricter. The relationships among these four characteristics were expected to explain the characteristics of the multiple tenure claims. These multiple claims are embedded in the larger socio-economic forces such as transmigration program, government policies and state-locality nexus and central-local government relations and perceived jurisdictions.



**Figure 1.** Analytical framework developed to analyze the interactions between the evolving tenure system, characteristics of the local communities and its resource base interacting with shifting government priorities and policies

### 3. Policies and Regulation: From Past to Present

#### 4.1 Emergence and Recognition of Adat Law in Pre-colonial and Colonial Times

The interface with global trade and local resource use in Kalimantan during the last 2 millennia followed a pattern of coastal kingdoms with limited control over the upstream area where local institutions and ethnic identities could develop. In Central Kalimantan, the emerging village structure level recognized the *Damang* (a adat council) as an *Adat* Judicial Institution<sup>1</sup>. Dutch colonial rule came late to large parts of Kalimantan, as the limited resource base was not deemed worth the effort required. Control over the coastal areas and its trade had priority over territorial claims. In the Tumbang Anoi negotiation in 1894 between the Dutch Indies colonial government and local powers, the role of the *Damang* was extended to provide help and support for the governance role. Both roles as a judicial institution and government support were recognized and legalized by the Dutch Colonial Government as part of a peace treaty, settling conflicts and wars between the colonial and Dayak communities at that time. The *adat* land-use rights, however, were not explicitly part of the legalization process. It was not until 1928 that the *adat* authority over land use rights was recognized by the colonial government.

Following recognition, the *adat* institution could issue land use rights (*surat segel*) to the local community and its households. Several *adat* land-use rights that existed and were recognized during this period were<sup>2</sup>:

1. *Eka Malan Manan Satiar* is a right for a local community to hunt animals, open the forest for cultivation, and collect non-timber forest product such as *damar*, *gemor*, *jelutung*, rattan, and *panting*. The area, designated as land used by the community, typically covered five kilometers around the community settlement.
2. *Kaleka* is an ancient *adat* community settlement that had been abandoned and returned to secondary forest. The area was considered a sacred area and determined as having communal *adat* land rights.
3. *Petak Bahu* is an ex-swidden that has been returned to (agro)forest, mostly planted with *durian*, *cempedak*, rubber and rattan, along with natural forest regeneration. Only the previous cultivator, based on *hak terdahulu*, could use and collect the forest products.
4. *Pahewan/ tajahan* and *sepan* are sacred forest areas, where the local community had rights and obligations to protect the areas from any land use activity.
5. *Beje* is a fish pond made by the local community to trap and store fish during the dry season. The pond may be owned either privately or communally.
6. *Handil* is the right of a local community to construct small drains to open up land for shifting cultivation. The work is usually based on a group and each member of the group receives two hectares of land alongside the small drainage banks. Ownership was considered communal.

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<sup>1</sup> Biro Pemerintahan Desa (1996)

<sup>2</sup> Usup *et al* (2008); WALHI (1997); Biro Pemerintahan Desa (1996); field interviews and focus group discussion

7. *Tatas* is the right to construct small drains to collect timber and non-timber forest products in forested land and for fishing. The *tatas* holders could levy a tax or toll on any forest products collected by local communities that crossed the drainage canals. Usually, the levy collected is not greater than 10% of the value of the forest products being transported.

In the initial period following independence of the Republik Indonesia, the status quo on local rights persisted. In 1953, the new government continued to endorse *adat* jurisdiction. Later on, the central government tried to limit *adat* authority to the settlement of disputes on community household affairs and reduce its role in natural resource management. However, *adat* land-use rights were still recognized and legalized within the Government of Indonesia legal framework through Agrarian Law No. 5/1960. This law stipulated that any *adat* land-use rights that were given before the law's endorsement would be respected and acknowledged under state law, while otherwise, any rights that were decided after the laws endorsement would not change the land-use rights from those that applied normally on state land. As the 1960 Agrarian Law has not been repealed, these clauses are important for current debate on 'legality', as subsequent laws provided different interpretations.

Despite the limited role of the *Damang* and confusion about the standing of *adat* law under state land law, the land-use rights of communities were at least being respected and its institutional basis legalized. During that period, the government tried to integrate the land-use rights of the existing communities harmoniously into the state land law. The 1965 emergence of 'New Order' shifted power to the central government.

## 4.2 The Rise of the Forest Concessions and the Demise of Adat Law

During Soeharto's reign (1965-1998), the government gave out many permits to international and national companies allowing them to exploit forested land, even though there was the unsettled question of how the government would consider *adat* land-use rights under the state law. The government realized that when they issued permits covering the use of forested land to logging companies the *adat* rights would be a major obstacle and perhaps the cause of potential conflicts. A study, conducted by the Directorate General of Agrarian Affairs in the 1970s, investigated the existence of *adat* land-use rights in Central Kalimantan and declared that the *adat* institution had been diminished. In the end, this declaration meant that existing community land use could not be recognized as land-use rights<sup>3</sup>, so the diminution of community land-use rights continued. In the late 1970s, the government promulgated a law, which consequently abolished the traditional process and replaced the role of the *Damang* as a community leader with the government-appointed village (Desa) leader<sup>4</sup>. After the enactment of this law, the *Damang*'s role of issuing land-use rights was taken over by the village leader. The *Damang*'s control was limited more and more to the community's cultural and ceremonial activities. This new law broke the *adat* systems of law and decision making, and undermined people's confidence in the *adat* institutions.

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<sup>3</sup> Abdurrahman (1996).

<sup>4</sup> Law No. 5/1979 on Village Government

Several scholars have challenged this interpretation and believed that although the *adat* institution had been degraded and many communal lands had been converted into private land, the local communities still followed and upheld *adat* law<sup>5</sup>. However, the government still adhered to their position that *adat* land-use rights could only be recognized if there was still an existing *adat* institution that governed the community<sup>6</sup>, and that absence of such institution justified ‘concessions’ issued by the central government. The study, and enactment of the 1982 Forest Allotment Consensus (*Tata Guna Hutan Kesepakatan*), gave a basis for the government to designate Central Kalimantan forested land as state land. The ‘consensus’ (the term refers to harmonization among government line agencies rather than genuine local consultations) not only classified forested land as state land, but also authorized the Ministry of Forestry (MoF) to administer the land based on Forestry Law No 5/ 1967. In the same year, several notes issued by the Ministry of Home Affairs and Ministry of Agrarian Affairs, instructed the governor to support the consensus<sup>7</sup>. These policies laid a strong basis for the logging companies to operate on the forested land.

To support the operations of logging companies, several regulations were issued to deal with *adat* land-use rights. Government Regulation No 21/1970 stipulated that the existing *adat* land-use rights within the concession area must not interfere with the company’s logging operation, giving priority to a timber-centric policy and the economic benefits derived for the central government. To use their land, an *adat* community was obliged to receive clearance from the logging company and when necessary, the community’s rights could be terminated by the concession holder. The limitation of the *adat* community’s land use in the forest concession area was also supported by several ministerial decrees<sup>8</sup>. Within the power structure of the time, these regulations provided a legal basis for the logging concessions to control the *adat* community’s activities and gradually overthrow their land-use rights<sup>9</sup>. The 1960 Agrarian Law, with different stipulations, was considered out-of-date, but was not formally repealed.

Another government regulation further restricted *adat* community land-use rights. Shifting cultivation (swiddening), cutting, harvesting, unauthorized occupation or working of forests were all made criminal offences and the forest police were given authority to investigate violations and prepare cases against offenders<sup>10</sup>. However, these regulations were not the last conquest by the forest concessionaires over *adat* community land-use rights.

In 1984, the Ministry of Home Affairs passed a decree that cancelled the authority of village and sub-district leaders (*camat*) to provide formal statements on land ownership (*surat*

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<sup>5</sup> Abdurrahman (1996); Mahadi (1978); Yanmarto (1997)

<sup>6</sup> This belief was endorsed into the Basic Agrarian Law of 1960. This law did not clarify many terms and their apparent contradictions. On the one hand, it recognized the existing *adat* land-use rights, but on the other hand, it maintained the state’s superiority (as the true representative of the people of Indonesia) and interest over *adat* rights

<sup>7</sup> Ministry of Home Affairs No. 26/1982 dated on 13 May 1982 and Ministry of Agrarian Affairs No. 586/1982 dated 17 July 1982

<sup>8</sup> Ministry of Agriculture Decree No. 749/ 1974, Ministry of Forestry Decree No. 194/ 1986 and No. 251/ 1993 on procedures for community land-use rights in forest concession areas

<sup>9</sup> A. Pramono (1990)

<sup>10</sup> Government Regulation No. 28/ 1985 on Forest Protection

*keterangan tanah*) to local communities<sup>11</sup>. Before this decree was enacted, many local communities used the formal statement to protect their claims over their land from operations under the forest concessions. Since many of these formal statements overlapped with the forest concession areas, the central government stopped the process. Consequently, the communities no longer had legal protection over their historical land-use rights and their land fell more and more under the control of the forest concessions as many concession areas overlapped with community land-use areas.

An example of the change in land control was the ‘consensus’ agreement made between the local communities and the logging companies. The logging company was required by the community to respect the *eka malan mana satiar* right, but in return the local communities had to sell any trees logged in the area covered by that right to the logging company at a fixed price. Moreover, many sacred and communal areas mostly were occupied by the logging companies and now have been converted into private ownership as many local communities opened the forest under *handil* rights<sup>12</sup>. Thus, a major impact of the forest concessions was the abolition of sacred and communal rights over specific areas and the conversion of those rights into private rights.

The later part of the Suharto period covered the demise of *adat* sovereignty and the rise of the forest concessions as powerholders, with direct and indirect links to influential families and army leadership. The role of the state in reconfiguring property rights and relations is quite clear. What is seen is the gradual displacement of *adat* institutions and relations, supplanted by state actions. *Adat* also is not static and constantly evolving and at times have strong elements of feudalism in certain areas. What we cover by way of multiple claims is the complex dynamics at place over time and social relations evolving as proactive and reactive forces to internal dynamics and external actions, mainly those of the state and companies.

At the end of 1995, the government had allocated 715 945 ha of forest land in the study area to 12 forest concessions (see Table 1).

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<sup>11</sup> Ministry of Home Affairs No. 593/5707/SJ dated 22 May 1984.

<sup>12</sup> Field interview

**Table 1.** List of forest logging concessions in 1995 in the study area

No	Forest Logging Concession	Ha
1	PT Mangkatip	55 000
2	PT Barito Makmur Utama	61 271
3	PT Inhutani III ex PT Pusaka Jaya Agung	64 199
4	PT Kahayan Lumber	150 000
5	PT Inhutani III ex PT Sumber Alam Ramin	50 000
6	PT Daya Sakti Timber	40 000
7	PT Djajanti Djaya	134 000
8	PT Salawati Makmur	65 000
9	PT Arjuna Wiwaha	56 000
10	PT Setia Alam Jaya	6883
11	PT Sipo Jaya Timber	17 892
12	PT Andalan Raya	15 700
13	Non Forest Concession	339 700
	<b>Total</b>	<b>1 057 375</b>

Source: Central Kalimantan Forestry Regional Office (1995)

### 4.3 The Mega Rice Project: Planned Disaster

Self sufficiency in rice production, a goal achieved in the early part of the New Order and considered a strategic national interest, slipped away in the early 1990s. In 1993, the Indonesian government had to import about 2.5 million tons of rice and there was a fear among government officers that the amount of imported rice would increase each year and became a threat to national stability<sup>13</sup>. To ward off this threat, president Soeharto's provided strong support to the idea to build a 'mega project' in Central Kalimantan by converting logged-over peat forest into a paddy rice field, through a network of drainage canals and transfer of Javanese production systems, facilitated through a transmigration influx of people from outside the area. The project became known as the Mega Rice Project and was endorsed in 1995 through Presidential Decrees No. 82 and No. 83. The project covered 1.4 million ha of land that was considered to be forest and cost around 5 trillion rupiah (US \$ 500 million) over the period 1995-1998<sup>14</sup>.

Because the area previously had been designated as forest area and around 715 945 hectares were located in active logging concession areas, there was a need to clarify legal aspects of the land-use status necessary for the conversion with regard to operational activities in the forest concessions. From a 'selective, sustainable logging' management regime (at least on paper), a switch could be made to a 'salvage logging' or clearfelling regime through a decree in 1996 by the Ministry of Forestry. This decree excised approximately 1.4 million hectares of forested land for non-forest use (*areal penggunaan lain*)<sup>15</sup>. Consequently, all forest concessions had to cease all operational activity under Ministry of Forestry control. Logging rights were transferred to project developers of the Mega Rice Project.

<sup>13</sup> Departemen Kehutanan (1996) and Departemen Kehutanan (1997)

<sup>14</sup> Hidayat (2008)

<sup>15</sup> See MoF No. 166/ 1996. Bappeda (1997)



Through transmigration programs, the Mega Rice project planned to bring 316 000 households to the area, up until 2002. However, in reality the project only managed to bring 25 000 households. Moreover, the project also planned to convert 638 000 ha of forested land to irrigated paddy field by 2002<sup>16</sup>. Ironically, one of the major reasons for the implementation of the Mega Rice Project was because the area was considered to be state land and thus to be free of land use claims and rights held by the local communities. The government believed that converting the land use and changing the land status of the area would not cause any problems<sup>17</sup>. This belief certainly was not based on the reality on the ground.

Vast areas of forest were cut to implement the project, causing periodic forest fires. Areas that were used by many communities for rattan forest, sacred forest, *beje*, and shifting cultivation were destroyed during this process. No forest was left standing by this project<sup>18</sup>. The government did not try to compensate the communities for their loss of land use opportunities. Between 1997 and 1999, many demonstrations by communities occurred, demanding that the government compensate them for their land and respect and rehabilitate their land rights<sup>19</sup>. Expression of these sentiments became possible in the period of 'Reformasi' that marked the end of the 'New Ordre' in 1998 and the return to democratic procedures. It was perceived as a second liberation, and a new phase of independence. The collapse of central government power leads to a substantial shift in authority to local government agencies, and freedom to express opinions that would have been considered as counter to national interest before. New laws on decentralization shifted power to the regencies, rather than the provinces, as the fear for 'separatism' remained strong and strong provinces were feared to be a potential risk.

A new Forestry Law was passed, that distinguished a 'forest function' regulation from 'state ownership'. A legal process of gazette, clarifying that there are no valid competing claims, was instated as condition for 'state forest' status. Up till now, only 11% of Indonesia's land area has this legal 'state forest' status, but a further 52% of the country is considered by the Ministry of Forestry to be under their jurisdiction, not only for forest function, but also as land owner. Hence, the state is seen as the largest landowner.

In 2001, the Kapuas Government Regency issued a decree that ordered the National Land Regency Agency and other regency government offices to inventory community land uses that had previously been exploited by the Mega Project and authorized them to give the communities a 'fair' compensation for the loss of their land<sup>20</sup>. However, the government only inventoried and compensated areas that were within 90 meters for community plantations and 150 meters for *beje/tatah/ handil* of the drainage-canal banks developed under the Mega Rice Project<sup>21</sup>. This policy certainly disappointed the local communities who had been using the land

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<sup>16</sup> Hasanuddin (1997)

<sup>17</sup> Pemda Kalimantan Tengah (1996)

<sup>18</sup> Field interviews and focus group discussions

<sup>19</sup> Field interviews and focus group discussions

<sup>20</sup> Regency Head (*Bupati*) Decree No. 17/580.1/BPN.42.2001 dated 1 April 2001

<sup>21</sup> Yayasan Petak Danum (2002)

well beyond these distances, particularly as the National Land Regency Agency in 2003 had acknowledged community land use and occupation beyond the compensated area (See Appendix 1 for Land Status Map)<sup>22</sup>.

The inventory process was difficult as many of the natural boundaries that had helped to delineate areas under community land use had been destroyed by the construction work of the Mega Rice Project. Conflict surrounding this issue has still not been settled and many communities are still demanding that the government provide 'just' compensation for the loss of their land-use rights<sup>23</sup>. The consequences of the Mega Project for the communities have not only been the loss of community livelihood, but also the uncertainty of continued community access and use as well as their rights.

The Mega Rice Project itself had also used shortcuts to the prevailing forestry laws and policies. After the reserve decree had been issued as first step for conversion, the government legally had to undertake a forest delineation process (*penataan batas*) and then issue a decree that the area could be converted to a non-forest zone (*pelepasan kawasan hutan*). After this process was finalized, then the government could clear the forest and develop non-forest activities. However, this process was not being followed by the government<sup>24</sup>. The project thus operated in a legal vacuum with respect to forestry law, that could not be contested in the political climate of the time. The project also violated environmental laws when activity commenced without an environmental impact assessment (*analisis dampak lingkungan*)<sup>25</sup>. There was clear awareness of the technical and environmental risks of the undertaking at the time in university circles and among scientists in government agencies, but no space to express these concerns. The lack of legal basis for government sanctioned activities caused a problem later, when central policy objectives shifted.

#### 4.4 The Aftermath of the Mega Rice Project during the Decentralization Policy: an Era of Open Access

After the end of Soeharto's reign, through several presidential decrees<sup>26</sup>, the central government decided to stop the Mega Rice Project permanently and handed the management rights to the provincial government. This heralded the commencement of a period of 'local autonomy'. The government issued Regulation No. 62/1998, granting authority for a number of forestry affairs to the regency heads (*bupati*). Law 22/1999, on regional administration, and Law 25/1999, on fiscal balancing between central government and the regions, were issued to support greater regency government autonomy to formulate policies and obtain a larger share of the revenues

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<sup>22</sup> Field interview

<sup>23</sup> Field interviews and focus group discussions

<sup>24</sup> Field interview

<sup>25</sup> See Environmental Law No 23/1997

<sup>26</sup> Presidential Decrees No. 80/1998, No. 74/1998, No 133/1998 and No. 80/1999 on Main Guidelines for Planning and Management of Peat Land in Central Kalimantan

from the forest. When the policies came into effect in January 2001<sup>27</sup>, the Kapuas Regency Government was quick to issue as many small-scale concession permits as possible, and started to impose charges on existing companies (see Table 2). During this period, several regulations were enacted that allowed the *bupati* and the governor to give annual timber harvesting permits of 100 ha and small forest concessions of 10,000 ha to private land owners, communities and *adat* forest owners<sup>28</sup>. The Kapuas Regency Government also began to levy fees on all manner of forestry sector activities, collecting timber fees, log export taxes and timber transportation fees, amongst others<sup>29</sup>. The area of the ex-Mega Rice Project at that time was thus subjected to further severe loss of forest cover and degradation of forest quality by these policies, as around 41 small forest concessions operated in the ex- Mega Rice Project Area.

**Table 2.** Number of Small Scale Forest Concession Permits issued in Kapuas Regency.

No	District	Small Scale Forest Concession Permit		
		1999	2000	2001
1	Kapuas	25	60	-

Source: McCarthy (2001)

Under massive and fierce criticism of the ‘deforestation’ and ‘illegal logging’, the Ministry of Forestry (MoF), in February 2002, withdrew the authority of the regency head to issue small scale concession permits<sup>30</sup>. In June 2002, the MoF effectively took back authority, through a government regulation<sup>31</sup>, from the Regency to grant forest concessions. Subsequent regulations issued by the central government effectively reaffirmed its perceived authority over forest matters<sup>32</sup>. These regulations restored the authority of the MoF to issue new forestry concessions rather than to the local government. However, none of the regulations for the area mentioned ex-Mega Rice Project management issues, especially regarding allocation rights. The book on this period was considered to have been closed, and the excision from forest areas and transfer to provincial government authority was considered to have been illegal in the first place.

The legal tug-of-war between the central and local governments on natural resource access is ongoing and Central Kalimantan is one of only two provinces in Indonesia where provincial land use plans and central government forest function designations have not been reconciled.

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<sup>27</sup> Decree of People’s Consultative Assembly No. IV/MPR/2000 on policy recommendations in the implementation of regional autonomy

<sup>28</sup> Government Regulation No. 6/1999; Ministry of Forestry and Crop Estate Decree No. 310/1999; Ministry of Forestry Decree No. 5/2000

<sup>29</sup> Several Regency Regulations have been imposed as a response to autonomy policy by the central government such as Kapuas Regency Government No. 11/2000, No. 13/2001, No. 12/2001, and No. 4/2002 on the procedure for issuing small scale forest concession and forest industry; Kapuas Regency Government No. 11/2001 on wood supply plans for the logging industry; and Kapuas Regency Government No. 6/2000, No. 10/2000, No. 12/2000, No. 14/2000, No. 2/2001, and No. 3/2001 on collecting timber fees, log export taxes and timber transportation fees.

<sup>30</sup> MoF Decree No. 541/2002

<sup>31</sup> Government Regulation No. 34/2002

<sup>32</sup> MoF Decree No. 6886/2002; MoF Regulation No. P.03/2005; MoF Regulation No. P.07/2005

In 2003, a Provincial Government Regulation No. 8/2003 was issued on Provincial Spatial Planning that gave a legal basis for regency government activity to use and allocate the forest zone for oil palm plantations and mining activities. After the failure of rice, oil palm production on already deforested lands was seen as the best way to provide for the local economy and revenue to local government. The regency government in 2002 had already passed a regulation on this same issue<sup>33</sup>. After the central government took back regency authority to allocate small forest concession permits, the regency authority resorted to different regulations to exploit the land that still had forest cover. Around 369,000 ha of the ex-Mega Rice Area were subjected to oil palm concessions, while about 41,536 ha were allocated for mining concessions (See Table 3 and Appendix 2 for more detail). Interestingly, both permits overlapped causing confusion for the permit holders (See Appendix 3 for the overlap of mining and oil palm concessions).

The policy adopted by the local government to exploit the ex-Mega Rice Project area was in contrast to the central government's policy. In fact, the regency government claimed scientific support for its position. Based on a study by the Agricultural Research and Development Office in 1998, around 327 853 ha and 345 340 ha of ex Mega Rice Project land were considered suitable for cultivation for oil palm and rubber plantations, respectively<sup>34</sup>. This study certainly affected the regency government policy and also was in line with its interests. However, it contradicted many national regulations.

**Table 3.** Number of Oil Palm Plantation and Mining Permits Issued in Ex-Mega Rice Project Area (by Kapuas, Barito Selatan and Pulang Pisau Regencys).

No	Permits	Year					
		2002	2003	2004	2005	2006	2007
1	Oil Palm Plantation	-	-	-	2	10	5
2	Mining	1	-	1	-	7	4

Source: BP KAPET DAS KAKAB (2009)

The post-Mega Rice Project era was also the beginning of the recognition of the *adat* institution. The regency government passed a regulation that recognized the existence of the *adat* institution (*kadamangan*) and gave several governance roles to the institution. However, the recognition was similar to the result of the Tumbang Anoi negotiations hundred years before in 1894 and the decree itself did not contain any clause that related to *adat* land-use rights<sup>35</sup>. In 1998, the governor of Central Kalimantan province released a statement saying that a distance of five kilometers from the river banks should be given back to the communities under *adat* land-use rights, although his statement did not have any legal standing<sup>36</sup>. Consequently, it was uncertain what level of protection the statement gave to *adat* land-use rights during this period of policy confusion, which appeared to be one of open-access competition and the start of multiple claims over the area. Everyone had their own interpretation of who should rule and use the land in the

<sup>33</sup> Regency Government Regulation No. 3/2002

<sup>34</sup> Balai Penelitian dan Pengembangan Pertanian (1998)

<sup>35</sup> Kapuas Regency Government Regulation No. 14/1998

<sup>36</sup> Field interviews

ex-Mega Rice Project area. At the policy level, the central and local governments were competing and had their own views on allocation rights to the area. Such ongoing conflict further complicated the land tenure system in the area. It was also one of the major constraints impeding the recognition of *adat* land-use rights.

#### 4.5 A Recognized Hot Spot: Local Government Reaction toward National Revitalization Policy

Publication of estimates to the carbon dioxide and other greenhouse gas emissions from Indonesia put the country on the spot as one of the largest emitters in the world, with more than half of the emissions from peatland areas. The 1997/8 'forest fire' episode was considered to be the combination of El Niño conditions causing prolonged dry seasons, and the increased vulnerability of peatland by drainage and forests through logging. Even before the fall of the Soeharto regime, the Ministry of Environment publicly displayed a picture of the canals in the Mega Rice Project as source of the smoke and haze that was causing embarrassment with Indonesia's neighbor as well as substantial local damage to health and economy. After an initial reaction of denial, the preparation for the Bali meetings in December 2007, when the Government of Indonesia hosted the 13<sup>th</sup> conference of parties in the international climate change convention, required decisive action, even if it was largely symbolic at the time. The expectation of substantial international monetary flows certainly helped.

In 2007, the central government passed a Presidential Decree No. 2/2007, which concerned managing and allocating ex-Mega Rice Project areas for conservation, rehabilitation and plantation (See Table 4). To support the decree's initiative on conservation and rehabilitation, in 2008, the MoF passed a ministerial decree that contained a master plan for conservation and rehabilitation of peatland for 10 years (2007-2017)<sup>37</sup>. However, the MoF's master plan only focused on managing what was considered to be the forest zone (1,050,400 ha), while management of the rest of the area was still uncertain as it was waiting for plans to be proposed by the Ministry of Agriculture (MoA) and Ministry of Transmigration (MoT). The two decrees showed central government's control over the area by placing the area under their conservation and rehabilitation programs. However, they certainly overlapped with the interest of local government. Under the new decrees, only a small amount of the area could be allocated for crop-estate plantation, with 10,000 ha for oil palm and 7,500 ha for rubber plantations, compared with the 2003 Central Kalimantan Spatial Planning Regulation, which allocated around 369,000 ha for oil palm and 41,536 ha for mining. On the other hand, the central government focused on restoring and rehabilitating 897,000 ha of peatlands (See Appendix 4 and 5 for Provincial Spatial Planning Map and National Revitalization Map).

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<sup>37</sup> Presidential Decree No. 32/1990; Presidential Decree No. 80/1995; Ministry of Agriculture No. 14/2009;

**Table 4.** Size of Ex-Mega Rice Project allocation based on Presidential Decree No. 2/2007

No	Designated Area	Size (ha)
<b>Protected Area</b>		
1	Conservation Karsts	87,700
2	Forest <i>Gelam</i>	76,300
3	Mangrove Conservation	27,100
4	Conservation Flora Fauna, Air Hitam Ecosystem, Hydrology, Thick Peat	706,300
<b>Total</b>		<b>897,400</b>
<b>Plantation Area</b>		
1	Forest Plantation	153,000
<b>Other Uses</b>		
1	Irrigated Paddy Field	43,200
2	Dry Paddy Field	177,400
3	Annual Trees/ Horticulture/ Fruit Trees	132,000
4	Fish Pond	12,500
5	Community Forest	41,800
<b>Total</b>		<b>406,900</b>
<b>Grand Total</b>		<b>1,457,300</b>

Source: Presidential Decree No. 2/2007 and Ministry Decree No. 55/2008

To stop the overlapping interests from spreading, in July 2008, the Provincial Government circulated a note to the Provincial and Regency National Land Agencies, ordering both not to process any request for land certificates/rights until conflicting land use allocation in Central Kalimantan had been settled<sup>38</sup>. Although most of the oil palm concessions were waiting to process their land certificates, the note did not automatically stop a concession from becoming fully operational.

Due to this national policy, the regency government annulled several oil palm concession permits<sup>39</sup>, an action supported by the provincial government<sup>40</sup>. However, not all of the concessions were cancelled (See Appendix 5 for details). Closing down the operational activities of all the oil palm concessions would have been a difficult task for the regency government because many of them had already received location and land use permits (*arahan lokasi* and *ijin pembukaan lahan*) long before the provincial government's note was circulated. Before they can be legally operational, oil palm plantations need three types of permits, to be obtained in succession. Reasonable claims to compensation can be made if the permits are cancelled, the more so the further process has come. Several policies concerning crop estates provided a legal basis for the concession holders to operate if they had already finalized the land use permit (*ijin pembukaan lahan*) process with the regency crop-estate office and the national

<sup>38</sup> Field interviews and focus group discussions

<sup>39</sup> Kapuas Regency Government Decree No. 89/2009

<sup>40</sup> Central Kalimantan Provincial Government Note No.525/05/EK dated 20 January 2009

land reGENCY agency<sup>41</sup>, while some had already been legalized by the MoF itself (See Appendix 6 for more detail).

Ironically, only a small number of the concessions had finalized their environmental impact assessments (*Analisis Dampak Lingkungan*), which is a further legal requirement, managed by another Ministry (See Appendix 6 for the status of the oil palm concessions). A ministerial decree demanded that a concession holder had to finalize the assessment before becoming fully operational<sup>42</sup>, but it seems that neither the reGENCY government nor the oil palm concession holders adhered to this policy<sup>43</sup>. Certainly, the policy that restored the authority of the central government and cancelled the local government's allocation rights in the ex-Mega Rice Project area did not solve the problems associated with the existing multiple claims, but rather worsened the situation. It highlighted the fact that both parties were competing for control of the allocation of land-use rights in this area. In line with the preceding history, neither the central nor the local government policies discussed *adat* land-use rights.

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<sup>41</sup> Law No. 18/2004; Ministry of Agriculture Regulation No. 26/2007; Central Kalimantan Provincial Regulation No. 3/2003; Central Kalimantan Provincial Regulation No. 154/2004; Kapuas ReGENCY Government Regulation No. 10/2003

<sup>42</sup> Ministry of Environment Decree No. 5/2001

<sup>43</sup> Field interviews and focus group discussions

## 4. The Impact of Policies in Practice

### 4.1 Clear as Mud: So Who Rules the Land?

The preceding account of the peatbog subject to ineffective policies may demonstrate that the area is not only a hot spot for CO<sub>2</sub> emissions, but also a hot spot for conflict in the triangle between local communities, local government and central government actors, each sanctioning others to use the area for resource extraction or resource conservation, in alternating phases. “Legal issues are as clear as mud”, as some of our interviewees remarked, but partly as a legal pluralism process<sup>44</sup>.

The historical contest between policies and institutions transformed the pre-colonial land tenure system to a high degree of land tenure insecurity for all stakeholders in the Central Kalimantan ex-Mega Rice Project area. The current impact of the policy changes is confusion regarding who actually rules the land and holds the rights to allocate the land. Claims of illegality abound, but there is no authority respected by all to provide settlement. If efforts to reduce emissions from ongoing peatland oxidation are to be successful, a resolution of these conflicts may well be the highest priority, requiring an approach that is sensitive to all perspectives, but finds ways to let higher level goals be reconciled through negotiation. Reference to ‘legality’ by any stakeholder is as such not sufficient to make a change on the ground.

In the past, the area was under the control of an *adat* institution, which allocated several rights to local communities to access and use the forest land. The allocation rights were respected and recognized by the Dutch Colonial Government and also by the new republic. However, the rights were gradually changed subsequently, especially when forest concessions began to operate in the area. Several policies in the 1970s and 1980s reduced the authority of many *adat* institutions, so that the concessions could operate easily. A study by the government in the 1970s successfully influenced many policies after that time, so that the *adat* institutions in the communities gradually perished and became nonexistent. This led to a policy that replaced the *adat* institution with formal institutions such as village and sub-district government. It obviously disrupted the authority of the *adat* institution on rights allocation and consequently, many communities distrusted the land-use rights that were issued by the *adat* institution. The government did not realize that many local communities still held on to *adat* rights and had upheld *adat* institution authority until this time. Certainly, it caused confusion as to who had the rights to use the land - the communities or the forest concessionaires. Operators of the forest concessions at the time had the power to remove any *adat* land-use rights and claims. However, no conflict at that time was recorded<sup>45</sup>.

The impact on the area was that many local communities saw new opportunities to challenge existing land access regime and joined with the forest concessions to open up and cut the forest. Many communities then constructed small drainage systems to transport the logs from the forest, consequently obtaining *handel* and *tatah* rights from such work, which certainly changed the land tenure situation. Prior to this, many communities only had ownership rights not more

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<sup>44</sup> Wollenberg *et al*, 2005.

<sup>45</sup> Field interview



than five kilometers from their settlements, but the drainage works extended land ownership much farther than this and certainly changed the previous land tenure system<sup>46</sup>.

The most destructive period was after cessation of the ex-Mega Rice Project. Land use practices of many communities were destroyed by this project and ironically, no compensation was given at that time simply because the government believed that the communities did not hold any land-use rights over the land within the area. However, when the ex-Mega Rice Project was halted and the government tried to give 'fair' compensation to communities for their lost land-use rights, the boundaries that identified where the rights had existed had been destroyed by the project, resulting in difficulties for the government and the communities to resolve the land-use rights issues and ownership. Many people had claims over the same piece of land. This condition led the government to restrict compensation to the land owned and used by the communities within 90 meters and 150 meters from the river banks for plantation and drainage works, respectively. This policy obviously frustrated the communities because many land rights were actually owned beyond these limits, especially during the forest concession era. Many land claims by the communities increased in size each year and some of them had obtained a formal statement of land ownership (*surat keterangan tanah*) from the heads of villages.

Even though the local government had acknowledged the existence of *adat* land-use rights in 1999, recognition was never converted into practice. According to government rules, *adat* land-use rights could only be recognized if they conformed to three categories; *adat* law, *adat* institution and *adat* territories<sup>47</sup>. These three categories certainly hindered *adat* recognition in the area because many *adat* territories and boundaries had been destroyed by the forest concessions and the Mega Rice Project.

The confusion over who ruled the ex-Mega Rice Project area was also evident among policy makers at the local government (regency and provincial government) and the central government level. In 1999, the government handed the ex-Mega rice Project management rights over to the provincial government, who used their newly acquired power to allocate areas for mining and oil palm concessions. However, the government then took back these rights in 2007. Confusion reigned as much of this land had been already allocated by local government for mining and oil palm concessions since as early as 2004, with some areas under active operation. Then, in 2008, the central government allocated land for conservation and rehabilitation purposes. To date, there is still considerable uncertainty on the best means to settle the confusion over management and allocation rights. It would seem that the only way to settle matters is by finalizing the Central Kalimantan Provincial Spatial Planning process, which is currently underway. However, it is still far from being finalized. The central government has urged the provincial government to propose a new spatial planning process, different from the previous one<sup>48</sup>. This would certainly prolong uncertainty in this area.

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<sup>46</sup> Acquiring rights was linked to labour and investment used for drainage works in this case. In the study of bundle of rights, the various aspects and types of rights become important: the acquisition and reproduction of rights, transfer of rights, duration of rights, and associated duties and sanctions towards those rights.

<sup>47</sup> Ministry of Agrarian Affairs No. 5/1999

<sup>48</sup> Field interview

## 4.2 Existing Land Conflicts and Disputes

The major impact of the different interpretations and competing policies has been conflict and competing tenure claims that has occurred between and within the communities of the ex- Mega Rice Project area. Consequently, these conflicts and competing claims have affected the land tenure system and caused land tenure insecurity. Recent conflicts can be grouped into three categories: conservation and access rights, oil palm concession and community land-use rights, and village border conflicts.

### 4.2.1 Conservation and access rights

In 2001, a group of activists from a conservation NGO, together with several police officers, entered Petak Puti village and took several people into custody. The people were arrested simply because they had been caught red-handed cutting trees, transporting logs and catching fish. The activists claimed that the local communities had been trespassing on conservation and protected management areas. There were strict rules for communities not to use the forest or the non-forest products from the protected areas. About 377,000 ha of ex-Mega Rice Project area were claimed by the NGO as conservation management area<sup>49</sup>. Similar conflict also occurred in several villages located within the conservation area, including Lawang Kajang, Tubang Muroi, Katunjung, Mantangai Hulu, and Kalumpang villages. The local communities resisted the charge and believed that the area was part of their ancestral lands. They sought help and consultation regarding the problems from the regency legislature. Unfortunately, no resolution attempts have been made by either conflicting party, so that although the conflict was simply the result of a misunderstanding of the situation, there is now fear among the local communities that this situation could become worse in the future.

### 4.2.2 Oil palm concession and community land-use rights

In 2004, an oil palm plantation company (*PT Sumber Rejeki Alam Semesta*) used some land located within the area managed by the Mantangai Hulu, Kalumpang and Sei Ahas villages. The main concern from the communities was that the concession involved land two to three kilometers from the river banks that certainly overlapped with land-use claims by the communities over land within five kilometers of the river. Cultivated areas and *tatas* belonging to many communities had been destroyed by the concession. Therefore, the communities demanded the company compensate them for the loss caused to their land-use rights. The conflict worsened as much of the concession land had not only been planted with oil palm, but it also had been distributed to people from outside the villages (migrants). Thus there was the potential for horizontal conflict in these areas between the local communities and the migrants. The communities had tried to consult on this matter with the regency legislature and the *bupati*, but no resolution had been achieved.

This sort of conflict has not only happened in the three villages mentioned. Many oil palm companies are operating in villages within the ex-Mmega Rice Project area and these companies are in conflict with the villagers. The companies are *PT Graha Inti Jaya* in Mantangai Hilir village (Kapas Regency), *PT Fajar Mas Plantation* in the border of Pulang Pisau and Kapuas Regencys, *PT Sepalar Yasa Kartika* in Basarang Sub-District (Kapas Regency), *PT Kapuas Maju Jaya* in Pujon Sub-District (Kapas Regency), *PT Globalindo Agung Lestari* in the

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<sup>49</sup> Field interview

transmigrant areas of Kapuas Murung and Mantangai Sub-Districts (Kapuas Regency), *PT Duta Barito* in Dusun Hilir Sub-District (Kapuas Regency), *PT Kalimantan Ria Sejahtera* in Timpah and Pujon villages (Kapuas Regency) and *PT Karya Luhur Sejati Estate* in Bahaur village (Pulang Pisau Regency) (See Appendix 6 for comparisons). These companies cover around 55,000 ha of land<sup>50</sup>.

#### 4.2.3 Village Border Conflicts

In 2001, Petak Puti and Arok villages were in conflict due to different interpretations of village boundaries. The disputed area, around 25 ha, at the time was under the Petak Puti villagers' control. Both villages had historical land-use claims and it was decided that natural borders instead of village boundaries would be used to determine village ownership. Despite success in this case, there are other unsettled experiences relating to conflict over village boundaries.

Several conflicts concerning villages boundaries have been reported in villages including Mantangai Hulu, Kalumpang, Sei Ahas and Katunjung. After the ex-Mega Rice Project was halted, the local communities began to use the abandoned land for cultivation. Previously, the communities had opened up and used the area through *handel* and *tatah* rights dating back to the forest concession era. When they heard that their cultivation areas had been allocated to oil palm concessions by the regency government, members of the local communities raced to strengthen their claims over land by receiving formal statements on land ownership (*surat keterangan tanah*) from the head of their village. Unfortunately, many of the formal statements cause conflicts between the villagers because they were issued without considering village boundaries. Thus, there was an urgent need to demarcate village boundaries. Negotiations among the villagers have been held to settle the overlap in land ownership and the resolution process is still underway.

### 4.3 Land Rights and Carbon Rights: Both may be Insecure

The study has shown that tenure insecurity is a major issue in the area. Tenure security is a fundamental element of climate change mitigation. The study has also highlighted the role of uncertain land rights and tenure in causing conflict in the ex-Mega Rice Project area, as the land tenure system that rules and governs the area is still uncertain. Local communities hold several *adat* rights on the use of and access to the lands, but these rights are not being recognized by the government. Some of the local communities hold formal land ownership from village leaders (*surat keterangan tanah*), but these rights somehow overlap. Conflicts between villages have occurred because the rights issued by the village leaders did not consider the village boundaries. These unresolved and disputed tenure rights may hinder the REDD scheme.

Although the *adat* rights are being acknowledged by local government, the acknowledgement does not provide any legal protection for the communities. The oil palm concessions have used part of the land without community consent. Conflicts have occurred in many places. The *adat* rights are also not being included within the Provincial Spatial Planning process, resulting in many mining and oil palm concessions operating in conflict with *adat* land-use rights. *Adat* rights are excluded from the Provincial Spatial Planning process because there is no recognition by the government of these rights. The government has failed to recognize the collective

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<sup>50</sup> Field interviews

customary rights of indigenous peoples over their ancestral forests, or has recognized only a small portion of their traditional lands, legally defining the remaining forests as so-called 'State Land'.

Confusion regarding land rights has also occurred among policy makers. The local government and the central government are currently in dispute over how to use the ex-Mega Rice Project Area. The local government has indicated it prefers to use the area for developmental purposes by inviting operators of mining and oil palm concessions to the area and has provided legal protection for these concessions to operate. The local government has a legal claim to manage and allocate rights in this area. On the other hand, the central government has allocated the area only for rehabilitation and reforestation purposes. The central government intended to protect the peat dome from any land-use activities, since fire hazards were common. The central government has withdrawn the perceived local government' rights over the area. It is currently uncertain when this conflict will be settled.

## 5. Conclusion and Ways Forward

The Ex-Mega Rice Project area involves many problems, such as different interpretations of, and overlaps between, policies on allocation rights between local government and central government, institutional arrangements, uncertain recognition of *adat* land-use rights, land conflicts and management caused by competing policies and unrecognized *adat* land-use rights, and the livelihood strategies of local communities.

Based on these problems, the researchers have pinpointed a number of critical issues and key recommendations for sustainable, effective and fair REDD policies. These may well be of the highest priority if REDD efforts are to lead to actual emission reduction from the area.

### ***REDD policies must clarify governance and tenure rights***

Climate change mitigation efforts include international stakeholders to the already complex mix of actors and agencies. International stakeholders derive their legitimacy from links with the national government and the Government of Indonesia has been justifiably keen to assert its control over external support for land use change ‘locking up’ carbon in forests or peat soils. International stakeholders, however, are bound by international conventions to respect local rights as well as those of national authorities. Their entrance to the local political-economic-ecological system is constrained by the existing governance structures. At the very basis of the current environmental problem, however, is that governance structure with its contest between levels. Can the process that caused the problem be turned around to provide the solution? Not unless the full complexity is recognized and accepted. The land use planning and forest classifications are still in dispute, and may cause a delicate problem for the REDD scheme. The policies that the government in the past and more recently has conducted in the ex-Mega Rice Project Area have exacerbated land conflict. Land grabs over community land have become common practice in the area. Clarification of tenure rights should be a part of the social assessment procedures, and such a study should also identify customary rights, including customary property, access and use rights and propose actions to respect and protect these rights and identify negotiation processes and conflict resolution mechanisms.

### ***REDD policies and actions must settle overlapping rights and recognize rights***

The core message from this paper is that respecting and recognizing *adat* rights or rights of the forest people is an essential precondition for effective REDD policies in the ex-Mega Rice Project Area, as it has been recognized elsewhere. The history of government planning for the area, however, creates an additional and probably exceptional level of complexity. An effective way to protect forests from loss of forest cover and loss of hydrological integrity is to secure the collective land and resource rights of customary people and forest dwelling communities. To this end, the REDD strategies must, inter alia:

- Contain measures to recognize rights and improve governance
- Monitor and measure rights, governance and equity impacts and not just carbon
- Require legal and policy reforms to recognize customary and collective rights
- Ensure respect for traditional practices of forest peoples

In the text so far we have been cautious to avoid the terms deforestation and forest degradation, as their current ‘legal’ international definition in the UNFCCC Kyoto Protocol is at odds with the way the words are understood in public discourse. As ‘temporarily unstocked’ areas of what is considered by the government to be forest are not ‘deforested’, the only deforestation that took place in the area was when land was excised from the forest estate for the Mega Rice Project. Later re-interpretations of the process and procedure, however, declared this to have been invalid. This absence of ‘deforestation’ can be used to construe the argument that all peatland emissions still fall under the ‘forest degradation’ clauses of REDD. Peatland emissions, however, differ from those on mineral soils in the temporal pattern. Emissions due to drainage can continue for decades or centuries after loss of forest cover and avoiding further losses requires ‘restoration’ of hydrological integrity of the peat dome, regardless of its forest status. Partial management will not suffice. The EMRP case study in emission reduction from Indonesia’s land base, thus sits on the edge of currently negotiated international agreements and can contribute to the rationale of a more comprehensive approach to emission reductions from all land use, embracing current REDD schemes.

### ***Many policies are heading in the uncharted and possibly wrong directions***

Policy reform for the area will have to provide tenure security and clarification of rights in this area, with adequate compensation where perceived rights are annulled. However, the current policy discussion does not appear to take this route. Rather, it tries to assert central government authority and as such may in fact worsen the situation, through implementation of outdated forest policies, strengthening the demarcation of the protected forest area, which in the first place may not have resolved the multiple claims within that area. Specifically, our study found that many policies:

- Adopt a business-as-usual approach to forest conservation and management,
- Reassert and strengthen state ‘ownership’ and control of forest lands,
- Consistently fail to acknowledge unresolved claims to customary lands,
- Fail to address customary rights and the need to respect the principle of free, prior and informed consent.

Reiterating our ‘disclaimer’ on the front page, we are fully aware of the risks that our analysis can be used by various stakeholders to strengthen their negotiation position. Our analysis has not been able to assert full legal clarity, in the face of contests between government layers and the lack of compliance by government agencies of their own rules and procedures. We hope it can, however, contribute to a reassessment of the historical roots of the current conflicts and to new ways of achieving the high level goals of sustainable livelihoods, human rights, environmental justice, millennium development goals and global environmental integrity.

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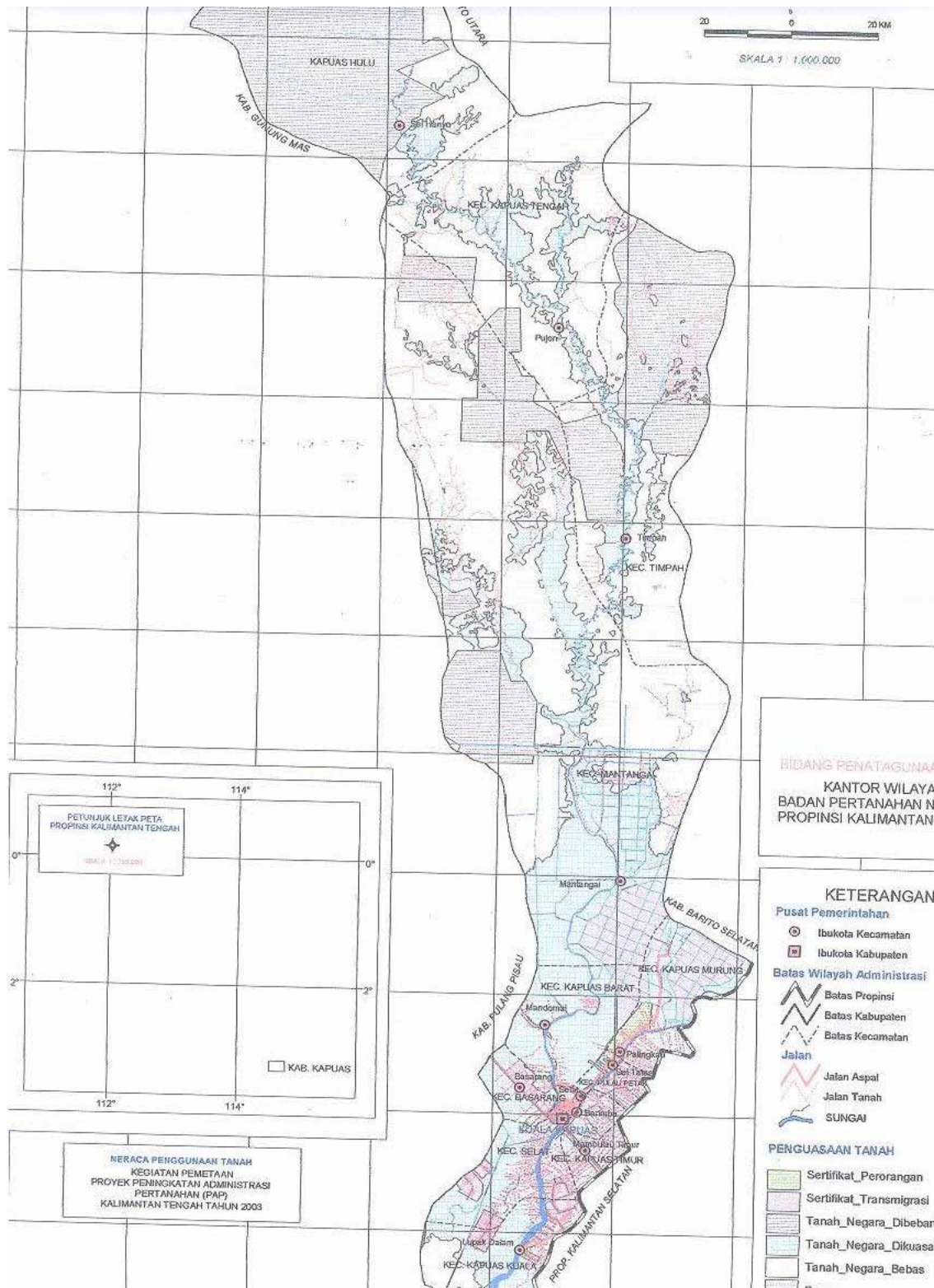
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# Appendix 1.

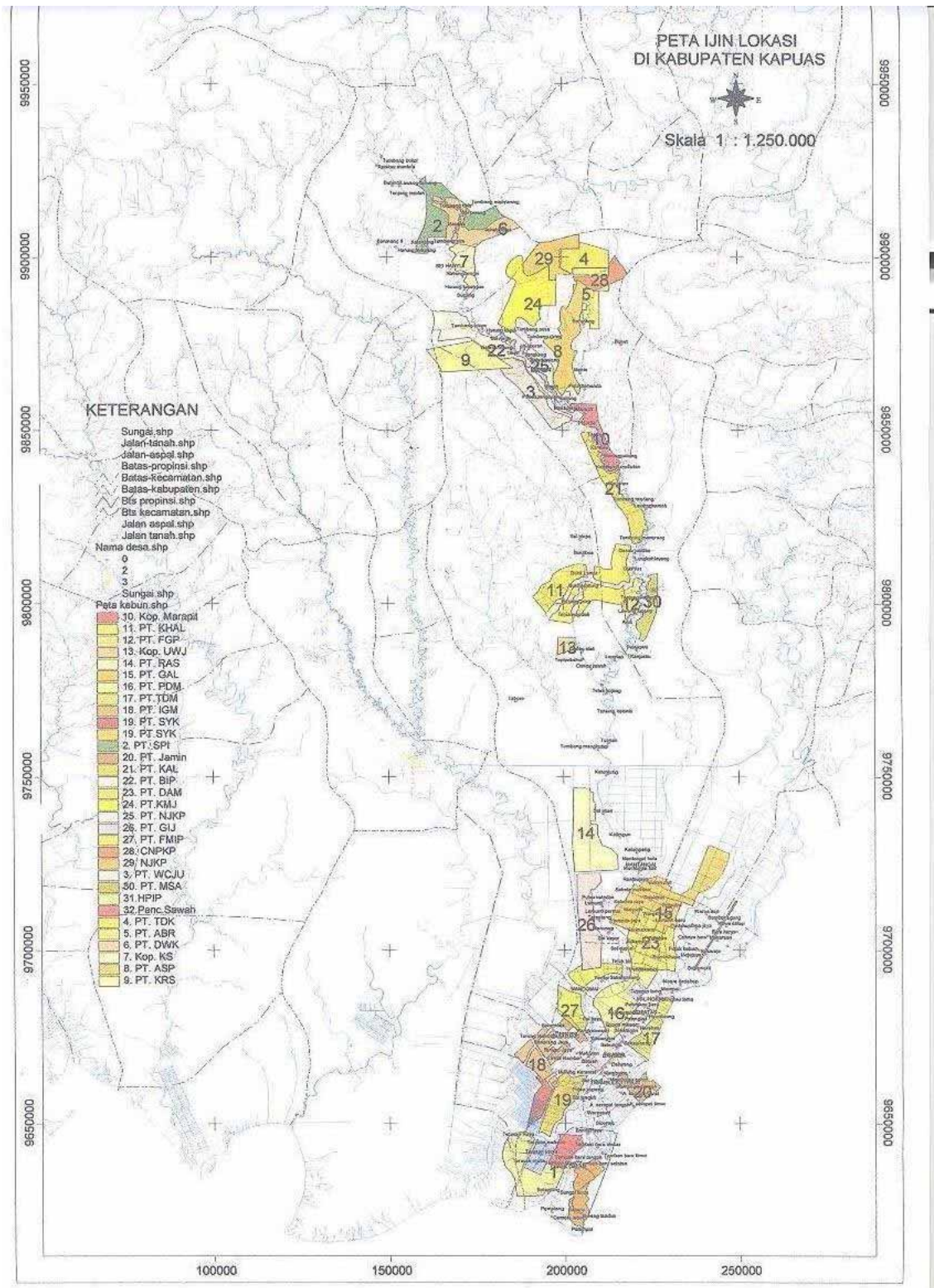
Land Status Map (National Land Regency Agency, 2003).





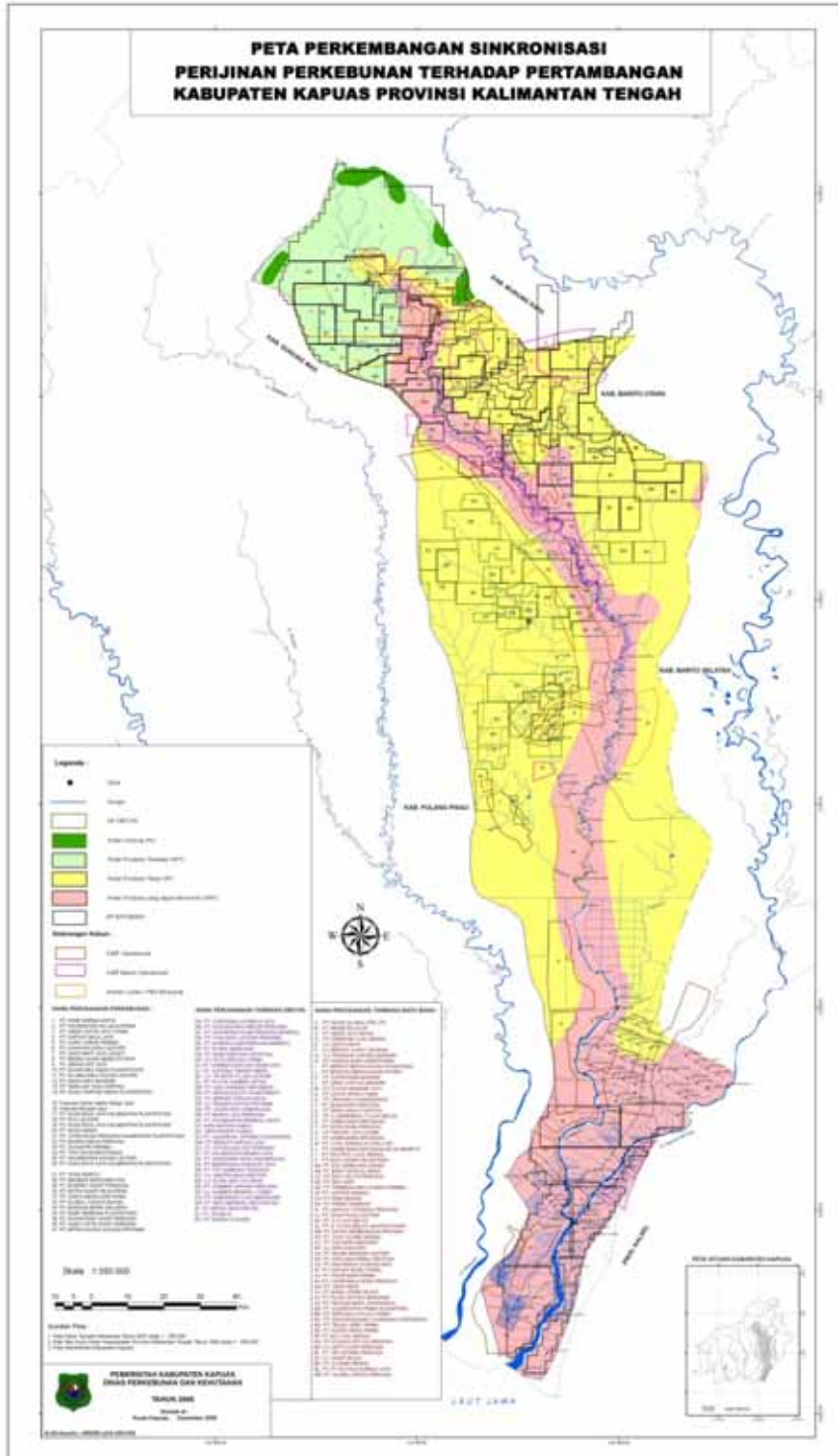
## Appendix 2.

Map of Oil Palm Concessions in Kapuas Regency (National Land Regency Agency, 2008).



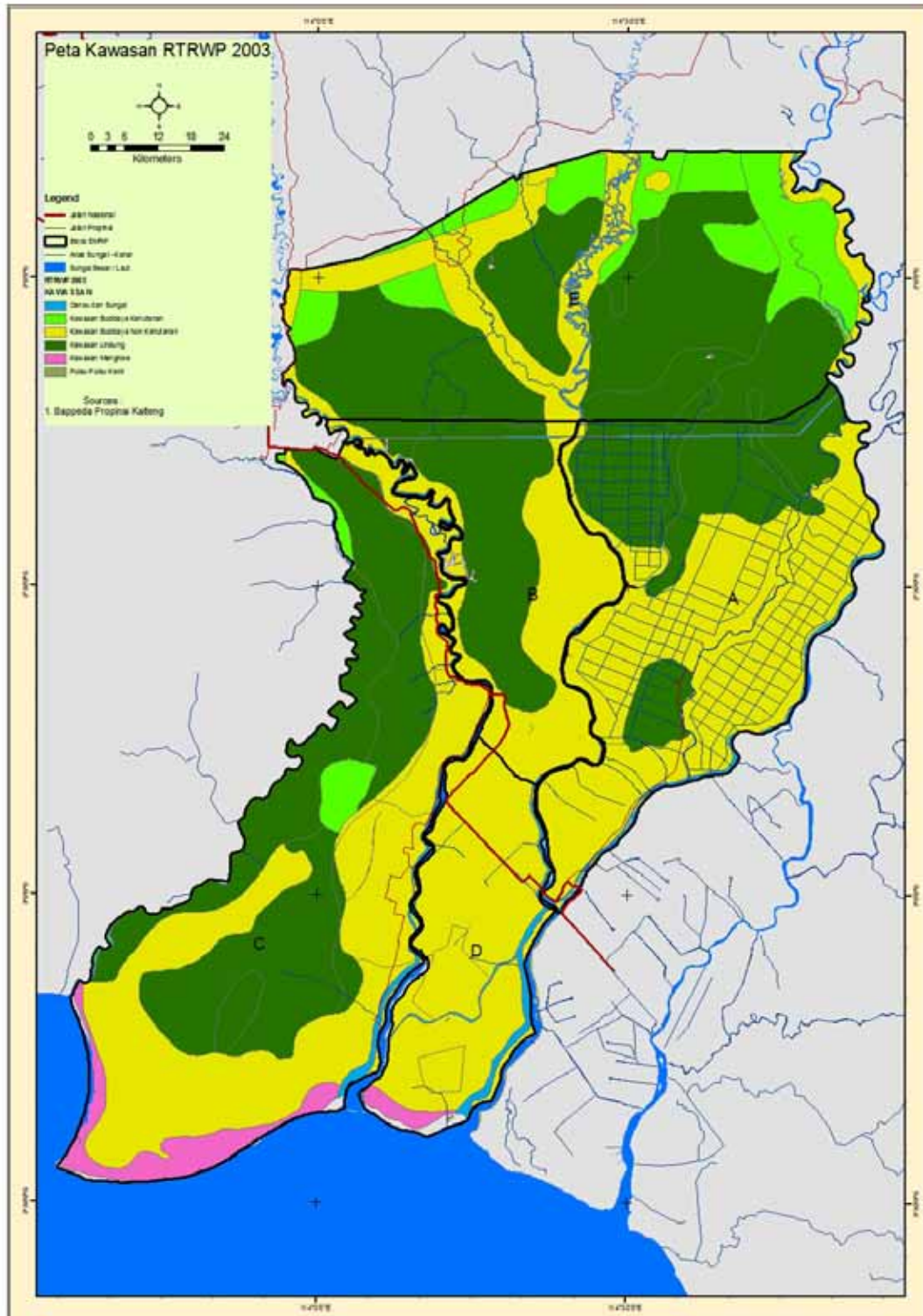
### Appendix 3.

Map Showing the Overlap between Oil Palm Plantations and Mining Concessions (Forest and Estate Crops Regency Office, 2008).



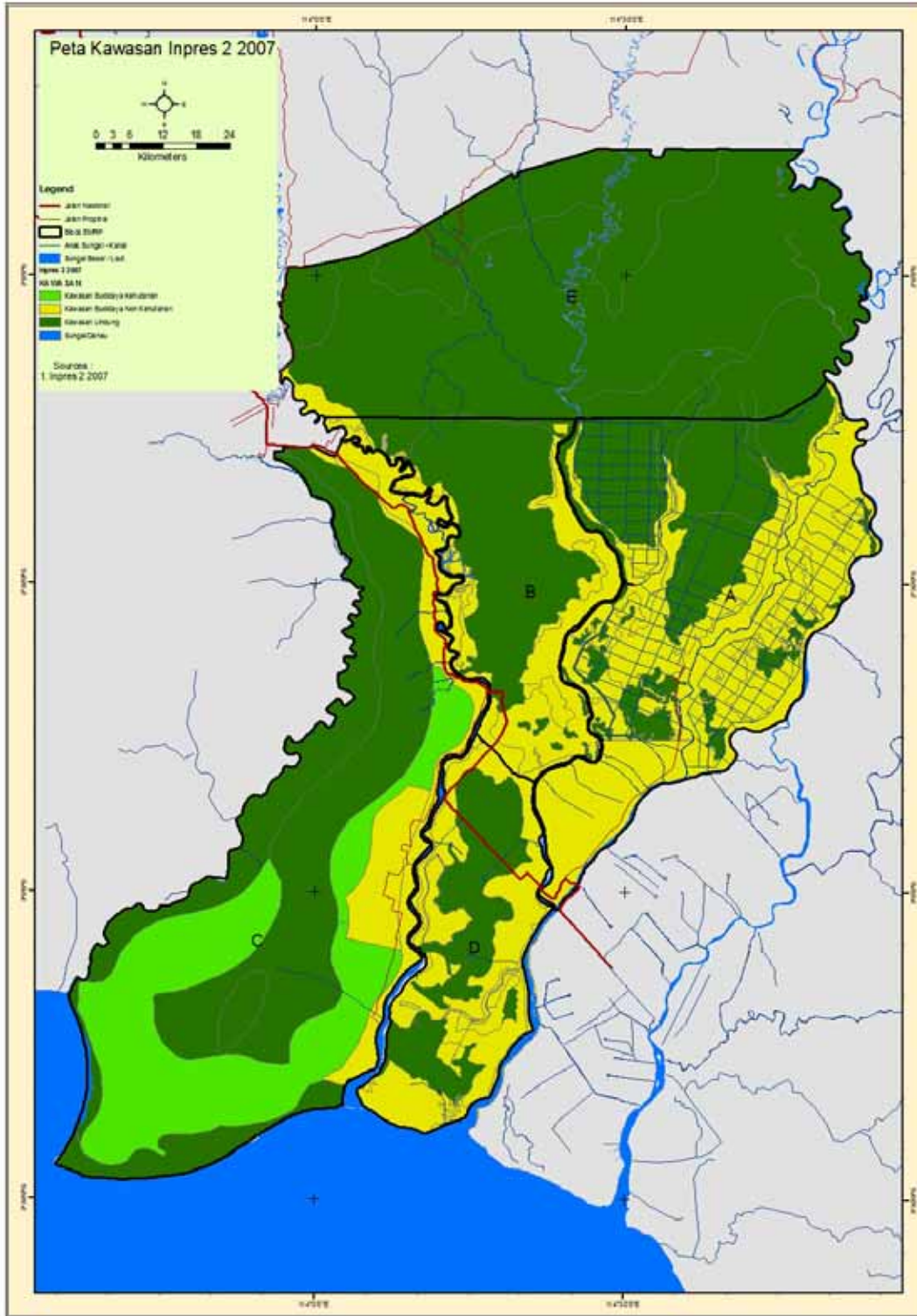
## Appendix 4.

Map of Provincial Spatial Planning (*Peta Rencana Tata Ruang Wilayah Provinsi*) year 2003, focused on ex-Mega Rice Area



## Appendix 5.

Map of National Revitalization year 2007, focused on ex-Mega Rice Area



## Appendix 6

List of Terminated Oil Palm Concession Permits in Kapuas Regency (Forestry and Crop-Estate Regency Office, 2009).

No	Name of Company	Location	Type of Plantation	Location Permits
1	PT Sarana Sawit Argo Perdana	Kapuas Hulu	Oil palm	525/422/Disbun/I/2007 31 January 2007
2	PT Karya Abadi Agro Utama	Kapuas Tengah	Oil palm	525/421/Disbun/I/2007 31 January 2007
3	PT Tirkasa Manunggal Jaya	Mantangai	Oil palm	525/530/Disbun/I/2007 31 January 2007
4	PT Asianagro Subur	Kapuas Tengah	Oil palm	525/473/Disbun/II/2007 28 February 2007
5	PT Karya Doib Cipta Bersama	Timpah	Oil palm	525/477/Disbun/II/2007 28 February 2007
6	PT Bina Sarana Sawit Utama	Timpah	Oil palm	525/420/Disbun/II/2007 31 January 2007
7	PT Kalimantan Lestari Mandiri	Mantangai	Oil palm	525/529/Disbun/II/2007 28 February 2007
8	PT Dakarin Jaya Utama	Mantangai	Oil palm	525/528/Disbun/II/2007 28 February 2007
9	PT Api Metco Palma	Mantangai	Oil palm	525/403/Disbun/II/2007 28 February 2007
10	Koperasi Tingang Menteng	Kapuas Tengah/ Timpah	Oil palm	525/603/Disbun/II/2007 30 March 2007
11	PT Marau Segi Lestari	Kapuas Tengah	Oil palm	525/633/Disbun/II/2007 30 March 2007
12	Koperasi Harawci	Kapuas Tengah	Rubber	525/631/Disbun/III/2007 30 March 2007
13	Koperasi Serba Usaha Warga Jaya	Mantangai	Rubber	525/817/Disbun/III/2007 30 October 2007

## Appendix 7

List of Oil Palm Concessions in the Ex-Mega Rice Project Area Showing Operational Status (Forestry and Crop Estate Regency Office, 2009 and Environment Regency Agency, 2008).

No	Name of Company	Concession Area (ha)	Status of Permit	Environmental Impact Assessment (Amdal) Status	Status of Operational
1	PT Rezeki Alam Semesta Raya	20,000	Land Use Permit ( <i>Ijin Pembukaan Lahan</i> ) No. 168/2009	Completed	Operational
2	PT Graha Inti Jaya	12,100	Forest Zone Conversion ( <i>Pelepasan Kawasan Hutan</i> ) No. 155/1998	In process	Operational
3	PT Fajar Mas Indah Plantations	12,000	Land Use Permit ( <i>Ijin Pembukaan Lahan</i> ) No. 27/2007	No request	Operational
4	PT Selapar Yasa Kartika	11,000	Land Use Permit ( <i>Ijin Pembukaan Lahan</i> ) No. 610/2006	No request	Operational
5	PT Globalindo Agung Lestari	24,000	Location Permit ( <i>Ijin Lokasi</i> ) No. 222/2008	No request	Operational
6	PT Dian Agro Mandiri	20,310	Location Permit ( <i>Ijin Lokasi</i> ) No. 840/2007	No request	Operational
7	PT Hijau Pertiwi Indah Plantations	15,000	Location Permit ( <i>Ijin Lokasi</i> ) No. 910/2007	No request	Operational
8	PT Kahayan Argo Lestari	20,000	Recommendation for Forest Zone Conversion ( <i>Rekomendasi Pelepasan Kawasan Hutan</i> ) No. 522/ 2008	No request	Operational
9	PT Sakti Mait Jaya Langit	10,000	Recommendation for Forest Zone Conversion ( <i>Rekomendasi Pelepasan Kawasan Hutan</i> ) No. 522/ 2008	No request	Operational
10	PT Tiga Daun Mantangai	7,669	Location Permit ( <i>Ijin Lokasi</i> ) No. 777/2008	No request	Operational
11	PT Fliel Green Power	4,000	Recommendation for Forest Zone Conversion ( <i>Rekomendasi Pelepasan Kawasan Hutan</i> ) No. 522/ 2008	No request	Operational



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