Summer 2012

Formalization and Community Forestry in Jambi, Indonesia: Indigenous Rights, Rural Migrants, and the Informal Divide

Matthew J. Bock
University of British Columbia

Formalization and Community Forestry in Jambi, Indonesia: Indigenous Rights, Rural Migrants, and the Informal Divide

Formalization and Community Forestry in Jambi, Indonesia

INDIGENOUS RIGHTS, RURAL MIGRANTS, AND THE INFORMAL DIVIDE

MATTHEW J. BOCK
University of British Columbia
M.A., Asia Pacific Policy Studies

Recent literature lauding indigenous 'localism' has led to the proliferation of local resource management institutions which has subsequent implications regarding the development-conservation nexus: this localist paradigm risks entrenching a rigid definition of 'local', especially within the rural sector. Mobility is a fundamental tenet of a liberal democratic society while migration occurs for myriad reasons; migrant communities often remain marginalized and susceptible to human rights abuses. Similar to mass property titling programs instigated by Hernando de Soto's policy prescriptions, state-driven, community resource management programs may also exacerbate the indigenous-migrant divide. In Jambi, Indonesia, the village forest designation (*hutan desa)* is a promising institution with the potential to impact positively the livelihoods of communities, although a gap in academic literature on migrant communities hinders the ability of the Indonesian government and NGOs to engage with rural settlers to bridge the informal divide.[1]

This paper addresses the conservation-development nexus within Indonesia's community based resource management model to highlight the heterogeneous nature of group identities in rural areas while threading the theme of indigenous versus human rights throughout. The purpose is to examine the policy implications of the Government of Indonesia's (GoI) 2008 regulation on the establishment and management of community forests (*hutan desa)*. A study of 17 newly established *hutan desa*, along with their associated customary management institutions, within a single district in the province of Jambi is presented and compared to similar case studies. Indonesia has over 19,000 villages while the GoI has a target to establish 2.5 million hectares of community forests, of which 58,000 have been verified. Consequently, this analysis will offer insight on scalability. Indications show that community based forest management (CBFM) institutions appear promising as a

---

[1] The author can be contacted at matbock@interchange.ubc.ca.

development and conservation strategy but lessons on the potential drawbacks of mass formalization will be examined.

This paper will first review academic responses to policy recommendations on mass titling derived from Hernando De Soto's *The Mystery of Capital* (2000) in order to extrapolate implications for CBFM aspirations based on customary (*adat*) principles. An overview of regulations surrounding *hutan desa* is then presented in the second section. Next, three case studies will establish a baseline from which to assess Jambi's village management institutions (*lembaga adat*): two studies summarize comparable CBFM programs while the third focuses on a state initiated, large-scale individual property titling program in low-income urban areas (*kampongs)*. Finally, a discussion on scalability is presented along with policy recommendations.

To examine Jambi's incipient *hutan desa* programs, I conducted field interviews with local leaders and facilitating NGOs. I then constructed a narrative of Jambi's community forest program based on these interviews to examine whether facilitating NGOs have been able to overcome barriers encountered previously.

This paper ultimately argues that, although different in substance to mass property formalization programs, rural migrant communities face similar situations of formal exclusion and further marginalization, thereby increasing the risk of human rights abuses. Consequently, a parallel policy is required to reconcile tensions between 'local' communities and informal migrants within Indonesia's rural areas.

Literature Review

Although not the progenitor of enhancing land tenure formalization as a means of economic development, Hernando de Soto catalyzed a wave of mass titling programs with the release of his acclaimed book *The Mystery of Capital* (2000). De Soto offers an institutional explanation as to why the West, led by the United States, became the dominant economic entity in the world. Mehring defines an "institution" as the set of rules determining who is eligible to make decisions in some arena and what actions must be constrained (Mehring et al 2011, 737). According to De Soto, Americans and Europeans occupy positions of economic power because they established widespread formal property laws and invented the legal processes necessary to convert formalized property into capital (2000, 10). Moreover, he posits that the inverse must also be true: developing countries, including those with free-

market economies, remain poor because property has not been adequately formalized, hence assets cannot be capitalized in order to access the investment required to spur grassroots business development (6).

In general, formalization is the means of indentifying, adjudicating, and registering ownership patterns (Meinze-Dick and Mwangi 2007, 38). Specifically, formalization is "a process in which rights to clearly defined land units vested in clearly defined individual or group owners are documented and stored in public registries as authoritative documents" (38). Rural 'property', however, remains a complex space, because property rights are analogous to a web of interests containing layers of rights: heterogeneous rights to use, manage, or regulate a resource (37).

De Soto uses his oft-cited example of the barking dogs in Bali, Indonesia to illuminate how extralegal property and usage rights are known to local residents while informal property boundaries can be demarcated by noting where one dog stops barking and the neighbour's dog begins (2000, 162). Due to its simplicity, this anecdote has had significant policy implications, for it presented a beguiling path to prosperity for developing nations. It acted as the catalyst for mass state-led property formalization and titling programs based on the theoretical assumption that formalization would lead to the financial capitalization of property (Miranda 2002). But De Soto failed to ask one important question: Why was the dog barking at all?

Had he posed this question, De Soto would have realized that the dog was not only barking because he was standing on the property of the canine's owner, but also because he was not part of the community and thus alien to the dog. De Soto was perceived as a threat. A visit from the neighbour's son, for example, would not have elicited the same response. The dog's barking demonstrates two important aspects of Balinese culture that exemplify rural life in many developing nations: a) group identity is inextricably linked to land ownership, and b) not all visitors are equal - some are perceived as friend and others as foe (see Veszteg and Narhetali 2010).

In response to De Soto, Woodruff examines the impact of formalization programs on farmers in Thailand to highlight an important distinction: urban and rural informal sectors are different in nature. The impacts of formalization programs will therefore vary accordingly (1219). Woodruff argues that formalizing pre-existing informal arrangements is by no means simple, because governments must be prepared to adjudicate cases of ownership conflict

(2001, 1218). Titling programs require comprehensive support including substantial political will, adequate budget allocations, judicial support, and financial restructuring (1222).

Samuelson argues that the root of De Soto's over-simplicity stems from the salient economic assumption that characterizes human nature as universal (2001, 208). The implications of this assumption should not be understated as De Soto explicitly compares current processes in developing countries to the historical settlement of the American West (De Soto 2000, 10). In response, Samuelson states the seemingly obvious, "human nature is not uniform…it is molded by history, geography, religion, climate, and tradition" (2001, 208). Without entering the extensive debate on culture and development (see Harrison and Huntington 2000), recognizing historical narratives is essential to the success of formalization programs, whether individual titling or group usage rights, because informal rights are written in land-use patterns, not documents.

Continuing with this tradition, Ahaikor argues that comparing today's developing world to the settlement of the American West is inappropriate, because modern informal occupants are not pioneers settling on lands confiscated from disenfranchised indigenous peoples, but are often perceived as squatters who violate the property rights of their neighbours (2008, 66). Ahaikor highlights a tension overlooked by De Soto: informal communities are not homogenous because indigenous groups, which maintain customary structures, differ significantly from rural migrants (i.e. squatters) who enter an area without 'local' permission, although both groups may lack 'formal' government recognition (66). Finally, Ahaikor quotes the work of Culpepper, who, in a comprehensive study on property formalization programs, concludes that De Soto's titling projects are inherently biased against the landless (2002).

Meinze-Dick and Mwangi argue that rural land tenure is derived from social relationships. Tenure changes therefore have implications on the local social and ecological fabric (2007, 37). The authors articulate that changing land tenure rules not only transforms the relationship between the individual and the community, but also between communities themselves. Although their study is not focused on individual property ownership, the conclusion of the authors is similar to that of Culpepper: although mass titling may create new opportunities, overall outcomes are not as favorable for women, pastoralists, migrants, and transient users. Moreover, these groups are susceptible to further marginalization (44).

Regarding Indonesia, equating informal property with local customary rights alone not only masks the problems in Indonesia's legal system - built upon a dualistic legal

framework based on both Dutch colonial law and *adat* indigenous norms - but also may entice local and international stakeholders to romanticize *adat* (Fitzpatrick 1999, 76). Fitzpatrick dissects this dualistic paradigm and concludes, "the relationship between formal state law and local practice is now so intertwined, and characterised [sic] to such an extent by the hegemony of state law, that the traditional [binary] paradigm is no longer an accurate basis" (1999, 76). In the same tradition, McCarthy concludes that a binary approach for contrasting state law with local customary norms, in terms of dominance or counter-resistance, may "fail to see the real connections" [2005, 79]. In conclusion, McCarthy specifically warns that romanticizing *adat* should be avoided, because customary principles are not empirically equated with sustainable living or a just society, although *adat* institutions have proved resilient to changing economic conditions (80).

In a study on NGO-facilitated participatory mapping development programs in Bali, Indonesia, Warren advises caution when evaluating the potential for formalized decision-making tools based on *adat* institutions (2005). Although an effective strategy for assisting local communities in resisting undesirable development and infrastructure projects, Warren states that "in the context of politically polarized situations which have emerged in many parts of Indonesia, local mapping strategies could simply fix equally inflexible 'counter-maps', suppressing other perspectives, interests and claims to land, resources, and identities" (Warren 2005, 70). Warren initially includes migrants in the study; regions containing significant amounts of migrants, relocated by state-sponsored transmigration programs, were shown to require a specific strategy for conflict mitigation and mediation (70). Furthermore, Warren recognizes the potential for future 'environmental and social tragedies' (70).

De Soto's mass titling programs focused on economic development, but he excluded an important implication from his narrative: the impact of titling on conservation. Along with informal property ownership rights, informal communities employ shadow resource management institutions, the subject of a study by Kahn and Pfaff (2000). Overall, the development-conservation nexus within the informal sector is complex and often leads to unsustainable practices. Like informal property rights, informal resource management institutions also vary. For example, homogenous indigenous communities manage local resources differently than economic migrants seeking new opportunities. Both groups face different incentives to exploit or sustainably manage their resources (530).

The development-conservation nexus leads to questions about group resource management regimes for commons, because changes to individual ownership or community-

managed lands have implications for both rights of access and rights of use. Ostrom offers refuge from Hardin's "tragedy of the commons" by drawing on humanity's track record of managing common resources at the community level in a sustainable manner. There are resource management solutions beyond top-down command-and-control systems or the liberalization of property rights (1999, 279). Ostrom also differentiates between two different processes by which a common resource may become depleted: through the active pursuit of short-term interests and over-exploitation, or through a passive process of neglect, although the two are not mutually exclusive (1999, 279).

The identification of group property rights in which a social group, bounded by norms and a degree of trust, maintains the rights to use, manage, and exclude others from accessing a resource demonstrates the viability of localized management institutions, although not completely unproblematic (280). Overall, institutional success is dependent upon the ability of the group to be defined as the lawful resource managers, to clearly demarcate the boundaries of the resource, and to maintain sufficient authority to enforce the rules and deliver sanctions to offenders (280).

Human versus Indigenous Rights vis-à-vis Indonesia's Migrants

Problems related to indigenous and human rights are complex due to both technical and conceptual debates. Within Indonesia's Constitution, Chapter XA explicitly declares Human Rights for all Indonesian citizens: Indonesians are afforded the right to citizenship, education, employment, and mobility, but also the right to defend one's life and existence. Furthermore, Indonesia has ratified all major international human rights conventions, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which focuses on international migrant workers. In addition, Indonesia has a functional national human rights institution: Komnas HAM (IWGIA 2012).

Regarding indigenous rights, Article 18B (2) of Indonesia's Constitution recognizes *adat* rights and awards privilege to customary communities. However, defining an "indigenous" person is difficult, because many Indonesians consider themselves to be indigenous. The GoI recognizes 365 ethnic and sub-ethnic groups as "geographically-isolated customary law communities," but the national indigenous peoples' organization uses the term "customary community" (*masyarakat adat*) to refer to indigenous peoples, who, in total, number between 30-40 million (IWGIA 2012). Indonesia has signed the UN Declaration on the Rights of Indigenous Peoples but has not adhered to strict standards of implementation. In

a milieu such as this, it is unsurprising that local authorities face difficulties when engaging problems related to rural migrants.

There is no single social or political group that stands as an exemplar of a "rural migrant community" (Nyphus et al. 2003, 198). A multiplicity of ethnic groups have moved around the archipelago for millennia while coastal areas have been integrated into the global economy through trade with the Middle East, India and China. This process has also included the inward, outward and internal flow of people, cultures, religions, ideas and technology (Dove 2012, 8). In general, Indonesia's migrants can be divided by type: voluntary versus involuntary, and formal versus informal. Voluntary, formal migration began in the wake of independence. Under President Suharto's New Order regime (1966-1998), Indonesia mounted extensive, World Bank-sponsored transmigration programs, in which inhabitants of Java and Bali, the most densely-populated islands, were given land in the "outer islands" and the rights to exploit natural resources in the name of nation-building and economic development (Arifin 2011, 211).

The focus of this paper is on informal rural migrants - those not relocated by government programs - who may be considered either voluntary or involuntary; the distinction remains conflated. In general, voluntary migrants moved in hopes of accessing new economic opportunities, while involuntary migrants were displaced by local economic, environmental, social, political, or cultural pressures (Arifin 2011, 213). A common feature of informal migrants is their lack of local residency cards and the problems derived therefrom: these migrants may not vote locally, purchase land, access formal credit, and have limited access to government health or education services.

Jambi had been a significant net recipient of migrants in the 1970s and 1980s, but this has slowed since decentralization and democratization (1998-present) (Arifin 2011, 212). Informal migrants not only followed in the wake of trans-migrants, but also after companies acquired concessions to harvest timber or convert lands into plantations. These migrants moved into degraded areas rendered uninhabitable for forest-dependent indigenous communities due to unsustainable extractive practices. Migrants often came from the surrounding provinces of South Sumatra, West Sumatra, and Bengkulu to pursue new livelihood strategies.

Methodology

The research for this paper was conducted while living in Jambi, Indonesia for three months and during follow-up interviews in Jakarta over the course of the following nine months. To grasp the intricacies of land tenure in rural Sumatra, rapid preliminary assessments were conducted with the support of a facilitator to establish a baseline on land use in Jambi. A field visit was then arranged to meet with the regional head (*Bupati*) to discuss the opportunities and limitations of formalization and CBFM. Next, a field survey of several villages was conducted by meeting with the village heads and other prominent village members, although surveys were neither expansive nor exhaustive enough to conduct a quantitative analysis. The goal of the field interviews was to garner an impression of local perceptions on community forests.

Establishing a community forest requires intensive NGO facilitation. Therefore, to produce a narrative on the history, process, benefits, and limitations of the GoI's community forest policy, formal interviews were conducted with a key member from two of the three facilitating NGOs. The NGOs differed in geographical scope, in that one was local, one was national, and the last was international, thereby generating a cross-section of opinion. An Indonesian representative was interviewed from the local NGO, and a foreign facilitator from the international NGO participated; both were intimately and extensively involved with their respective villages. Overall, no prominent contradictions were observed between the foreign and local representatives so a single narrative is presented.

Figure 1: Jambi, Indonesia

Source: Wikimedia Commons, 2012

To deepen the narrative, a perception survey was conducted for Indonesia's two English language newspapers, the *Jakarta Post* and the *Jakarta Globe*, to assess relevant themes within the public sphere. No quantitative analysis has been performed based on an econometric, nor was in-depth qualitative surveying conducted at the household level in target villages, so much work remains to be done. This paper seeks to create the opportunity for deeper analysis and discussion, not to produce a comprehensive impact assessment.

Legal Regulations on Indonesia's Village Forests

After the exit of President Suharto, Indonesia underwent a dramatic decentralization process resulting in the headlong devolution of power from national ministries to the regency (*kabupaten*) and municipal (*kota*) levels. The resultant legislation, Government Law No. 22/1999, articulates the general responsibilities of each level of government (national, provincial, regent/municipal), which removed the Jakarta-based command-and-control policy structure that had operated within a free-market economic system. Initially, regency and municipal jurisdictions were thought to possess little real authority, responsible only for all "other" activities not specifically assigned to the national or provincial levels; compulsory obligations were not clearly articulated (Astiyah et al. 2011, 270).

Whether beneficial or not in terms of development, the *fait accompli* of the legislation was to open new policy space to actualize regional autonomy. Consequently, the Ministry of Forests passed the Forestry Law No. 44/1999 that acknowledged customary (*adat*) laws pertaining to the ecological and social aspects of forest management (Madhi et al, 90). Under the law, the scope of customary institutions refers not to land ownership, as the state retains tenure over forest areas, but to forest resource management: decision-making authority over access, governance, and the distribution of benefits (Chatellier and Osmond 2011, 2). In 2001, the GoI actualized regional autonomy through fiscal decentralization as regents and municipalities received a transfer budget and became responsible for developing local initiatives and disbursing funds (Astiyah et al. 2011, 269).

In order to further clarify the jurisdictions at each level of government, the GoI passed Law No. 32/2004 which included a positive list of compulsory obligations. A degree of redundancy between the provincial and regency levels remained: planning and development, infrastructure, employment, environment, and land services were still managed at both levels, although the balance of power resided with the regency unless the project had

inter-regency implications (Astiyah et al. 2011, 270). Also in 2004, the GoI passed Law No. 7/2004, which outlined provincial, district, and local residents' responsibilities on water management and advocated water resource conservation and protection. Consequently, local communities acquired increased responsibilities for the management of irrigation resources.

In part, to offer respite from persistent conflicts between local communities and forestry/palm oil concession companies, the GoI introduced Government Regulation (GR) No. 6/2007 and No. 3/2008, which established the legal bases for CBFM resulting in three innovative local forestry designations: community forests (*hutan kemasyarakatan*), village forests (*hutan desa*), and management partnerships (*pola kemitraan*). In general, community and village forests are similar while the primary difference is that a 'village' forest is linked to a formal village, while a 'community' forest refers to a group, or community (*masyarakat*), that establishes a forest management institution within a village. For this study, both are referred to as *hutan desa*.

Jambi's *Hutan Desa*

Background and Precipitating Event

In Jambi, one seminal event mobilized NGOs to support local communities seeking to maintain access to their lands and livelihoods. In 2010, the government granted a timber concession license to PT Duta Alam Makmur, a subsidiary of PT Sinar Mas Forestry, which is the sole supplier of pulp wood fiber to Asia Pulp and Paper, one of the largest paper companies in the world (Selamat 2011). The concession would have resulted in the conversion of primary forests into a commercial plantation. Furthermore, local communities would have been prohibited from accessing their garden plots while additionally losing access to primary forest areas from which they harvested non-forest timber products (NFTPs) for commercial sale.
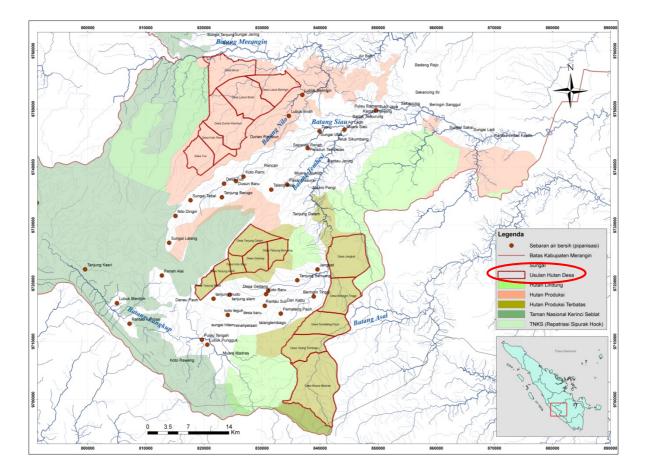
Figure 2: Map of Hutan Desa Locations

Source: Warsi, 2011

Within the region, three NGOs - one international, one national, and one local - were well-established and had been advocating for indigenous community rights by opposing the activities of large conglomerates. Overall, the *raison d'être* of each organization was empowerment through multiple means: advocacy, capacity building, legal support, generating awareness, and providing services, while all three vary slightly in their relative valuation of development versus conservation. Although the NGOs held varying perspectives, in Jambi they collaborated to develop a unified regional approach to support communities in their attempts to secure long-term forest management rights. They did so by undertaking the process to establish a *hutan desa*. In the end, 17 *hutan desa* have been established in three contiguous rows located within ecologically strategic areas to conserve mountainous forest areas and enhance watershed resilience.

Characteristics

A *hutan desa* is a legal entity defined as a state forest managed by a village institution and utilized for the welfare of that community (Chatellier and Osmond, 2011). The forest may be located only in areas designated by the government as production forests (*hutan produksi*) or protected forests (*hutan lindung*), and in forests not already under license by another entity; a *hutan desa* may not subsume an existing concession. The forest area is finalized by the Ministry of Forests based on a proposal drafted by the village and submitted by the head of the regency (*Bupati)*. The Ministry of Forests grants a 35-year management license while the village establishes a forest management institution (*lembaga)* responsible for submitting an overall 35-year management plan and annual plans.

Depending on the land designation, permitted business activities within the *hutan desa* vary, but must comply with existing land-use regulations. If the *hutan desa* is established within a production forest, communities are permitted to harvest wood to process for commercial sale or to use for local construction, and to plant naturally occurring productive trees such as jungle rubber or fruit trees. Moreover, village members may also harvest non-forest timber products including rattan, bamboo, honey, natural spices, and medicinal herbs. Conversely, a *hutan desa* in a protected forest limits revenue streams as the forest is located in an ecologically significant area - on steep slopes susceptible to erosion or in a watershed catchment area. Activities are restricted to harvesting non-forest timber products while communities may conduct afforestation activities to generate revenue from REDD+ or payment for ecosystems services schemes.

The primary characteristic of a *hutan desa* is that it is local. The process and the management institution are established, implemented, and directly controlled by the local community, although the structure of benefit sharing remains under development. To enhance ownership, which in turn increases compliance and reduces free-riding, the management process is informed by *adat* knowledge while traditional technology is prioritized. Furthermore, the forest territory must be clearly defined while interaction between the community and the forest is direct. Because the goal of a *hutan desa* is sustainability, the economic valuation of forest resources includes biodiversity conservation and limited production to ensure that both the forest and forest dependent economies remain resilient.

A *hutan desa* refers not only to a physical entity but also to a local forest management system, hence it is ideally characterized by mechanisms of transparency and

59

accountability to foster compliance. In Jambi, the village government must create a village organization (*lembaga desa*) specifically tasked with devising and implementing the management plan, monitoring compliance, and issuing sanctions. This village organization is responsible to the village head (*kepala desa*), thereby subjecting it to official government structures and local power politics. The goal of NGO facilitation is to resolve existing internal conflicts in order to devise win-win solutions. Although the 2008 Law and consequent regulations opened policy space for the establishment of *hutan desa* in Jambi, the process is locally determined. Thus, outcomes will vary accordingly..

Process for the Establishment of Hutan Desa

Establishing a *hutan desa* is an arduous process requiring extensive facilitation and intensive community participation; furthermore, the process is not a strategic negotiation initiated by the state, but a voluntary process initiated by communities. The first phase for *hutan desa* establishment involves a rapid strategic assessment to determine if there is land available for conservation and to find a point of entry for facilitation. The appraisal assesses whether the village has access to customary or indigenous forest areas, and to gain a sense of the community's level of local knowledge on forest management and the capacity of traditional management institutions. Beyond structural assessments, the facilitating NGO must cultivate strong relationships with key local stakeholders, local government, village elders, and hereditary leaders, allowing them to express their ideas on the envisaged *hutan desa*. Once a base relationship has been established, the NGO conducts participatory land use mapping to find conflict areas. While mediating land-use conflicts often appears tenable, at times NGOs must avoid highly contested areas.

If the technical criteria are met and key stakeholders are supportive, the facilitating NGO will then commence a broader socialization program through intensive discussions with the village government, elders, hereditary leaders, religious figures, intellectuals, youth, and other affected members. To enhance local ownership, NGOs make substantial efforts to understand the dynamics and structures of current use patterns. In doing so, they seek to ensure that benefit sharing is maximized and malfeasance is reduced, thereby minimizing transaction costs. This understanding is acquired by delving into the complex history of indigenous ownership structures.

If the village, or a community subset, is willing and able to go forward, the facilitating NGO then begins a key part of the process: establishing the village forest management agreement (*kesepakatan pengelolaan hutan desa*). The community is encouraged to commit to maintain, preserve, and manage the forests wisely through a community empowerment scheme while the agreement refers to the history of the community and traditional *adat* management practices. The village uses this narrative to shape the management institution to its own needs, circumstances, and conditions.

Often the crux of the process is establishing the borders of the community forest, because to move forward and agree on boundaries even the most vociferous detractors must be placated. In practice, facilitating NGOs' methodologies involve preliminary discussions with key stakeholders. A team from the community is then assembled and provided training to map and mark the boundaries. Before a formal map can be produced for government planning departments, the sketch is brought before the community for final examination. After the final map is agreed upon, the steps become more bureaucratic in nature with the overall process outlined in Figure 3.

The head of the regency (*Bupati)* plays an important role in facilitating the movement of information from the local level to the national Ministry of Forests. The *hutan desa* approval process requires two important steps: verifying its location and boundaries, and granting the management rights to the village management institution. Overall, the process is extensive, requiring at minimum two years, third party assistance, and external funding. Beyond the establishment process, future funding is expected from the village treasury.
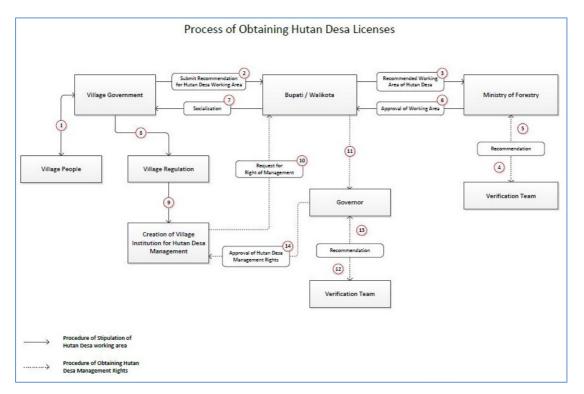
Figure 3: Process to Establish *Hutan Desa*

Source: Chatellier and Osmond, 2011

Comparative Case Studies

Three cases studies are presented in this section: two on community-based forestry management programs similar to the *hutan desa* in Jambi, and one on a state-led, large scale individual property titling program in low-income urban areas. The purpose of the first two studies is different from that of the third. The first two act as a baseline of comparison for the lessons learned, limitations, and benefits regarding the current status of Jambi's *hutan desa.* The comparisons remain valid only if the government allows communities and NGOs to initiate community forest programs, as is currently the norm. Therefore, in order to deepen the analysis on the policy implications of the GoI's ambitious targets to scale-up CBFM, a comparison to a De Soto-esque mass formalization program is presented. The goal is to hypothesize about what happens if either regional or national governments attempt to drive the process from the top-down, most likely for political gain during an election cycle.

Case One: Reinstating the Nagari, a Sub-Village Resource Management Institution

A study by Madhi et al. compares three highland villages within the Lembang watershed in West Sumatra, the province west of Jambi, in order to assess the quality of lives of local inhabitants at two different points in time, 1996 and 2006. The comparison's purpose was to examine changes in livelihood relative to the end of the New Order Era in 1998 (2008). The authors examined changes in internal (human, natural, physical, financial, and social) and external (vulnerability, structures, and processes) factors to present conclusions on the social, economic, environmental, and institutional sustainability of the *nagari* system - a sub-village customary institution within a predominantly homogenous indigenous group.

In this study, no single precipitating external threat (i.e. the influx of migrants, the creation of a national park, or the establishment of a commercial logging concession) catalyzed the reintroduction of the *nagari*. Importantly, the authors use the term 'restoration' of the *nagari* system, as opposed to 'establishment', thus recognizing its long-standing customary nature. This usage supports the argument that the program constitutes the formalization of pre-existing *adat* practices, not the granting of 'new' rights (90). The study is a useful comparison to Jambi's current *hutan desa* institution due to the close proximity of the two adjacent provinces, the comparable cultures of the inhabitants under study, and their similar economic structures.

The authors demonstrate that the effects of reinstating *nagari* institutions for forest and water management have been positive. Inhabitants have been able to "maintain and enhance their capabilities" while contextual changes have afforded them "opportunities to have more access to natural and physical assets" (95). Regarding the level of biophysical degradation within the watershed, the outcomes were less positive as increased erosion and the loss of forest cover along with decreased water availability was measured (96). Members of low-income groups gained access to new economic sources, thus a reduction in social exclusion was observed, although there was a concurrent increase in income inequity between community members so inclusion was paralleled by rising disparity (97).

This study is relevant for comparison to the *hutan desa* because it identifies institutional sustainability as an area of key concern, demonstrating that although the nascent model appears promising, authority over land and forest resource management remains weak (97). Overall, the authors argue that the data collected supports their thesis: to improve livelihoods and enhance watershed sustainability, local institutions must be strengthened,

while the *nagari* may achieve effective resource management because it constitutes an institution based on customary *adat* principle so is perceived as legitimate (97). The research does not engage with non-homogenous communities.

Case Two: Community Conservation Agreements and Co-Management in Park Areas

A comprehensive study by Birner and Mappatoba details a resource-based conflict resolution strategy for communities within the Lore Lindu National Park in Central Sulawesi (2002). During Suharto's reign, the idea that local inhabitants were agents of forest exploitation, not conservation, was prevalent (Mehring et al. 2011, 737). The park was established in a top-down process so local communities, which generally lacked formal recognition, were excluded. As a UNESCO World Heritage site, Lore Lindu was considered to be of international significance and national interest. It was therefore managed by a national park authority (*Balai Taman Nasional Lore Lindu)* reporting directly to the Ministry of Forests.

To seek congruence between the goals of local inhabitants and state authorities after democratization in 1998, stakeholders devised a program to establish Community Conservation Agreements (CCAs). The goal was "to establish systems of collaborative management (co-management), which involve a sharing of rights and responsibilities" (Birner and Mappatoba 2002, 2). Preceding the co-management negotiations, however, facilitating NGOs had to strike a deal with the state: traditional village councils would "receive formal recognition of their traditional rights to regulate the management and use of the natural resources located inside the Park [while] the village council commits itself to making sure that resources are used in a sustainable manner" (27). *Adat* institutions and norms acted as the basis for co-management in cooperation with the national park authority.

Building upon Birner and Mappatoba's study, Mehring et al. conducted follow-up research to offer qualitative analysis on the impacts and attitudes towards the co-management institutions established under the CCAs (2011). Specifically, the goal was to assess policies for sustainable resource management in park areas by analyzing village-based governance of natural resource use (737). The established village governance institutions (*lembaga desa konservasi)* were based on *adat* principles with a mandate to socialize the CCA, conduct participatory planning, and to supervise implementation and evaluation (744).

The study not only assessed the impacts of the CCAs, but also their process of establishment. As each CCA contained both endogenous and exogenous variations, these factors must be considered separately. Exogenously, the process required extensive NGO facilitation while the NGOs themselves, both local and international, neither collaborated nor maintained clear lines of communication to establish a regional approach. As a result, conflicting strategies became problematic for affected communities (Birner and Mappatoba 2002, 12). Endogenously, communities were not homogenous entities, because migrants from different areas of Sulawesi had either co-mingled with indigenous groups or had established parallel communities in adjacent areas. The CCA process faced significant barriers due to the normative variance regarding forest resource valuation among indigenous and migrant communities, because migrants tended to favor the economic potentials of forest resources with less regard for social or environmental services (Mehring et al. 2011, 741). Consequently, CCAs were unable to be signed in heavily mixed communities.

Overall, the study finds that state-induced conservation rules and enforcement strategies remain ineffective due to the conflict between state conservation goals and community needs (745). Clear goals and the ability to enforce sanctions within forest areas are necessary while mutually agreed upon boundaries and rules of access must be negotiated. Overall, although showing promise, CCAs did not act as a panacea to deter unsustainable practices within the park, although they were an instrumental step in recognizing local rights and knowledge (745). While migrant communities in and around the park present the greatest challenge, understanding their perspectives and needs remains difficult, for migrant perceptions and behavior are largely excluded from formal research.

Case Three: Formal Urban Land Tenure and Mass Titling in Bandung's Kampongs

In an attempt to alleviate urban poverty, the GoI has undertaken several iterations of mass titling programs (1981 and 1994) to increase tenure security, foster economic development, and promote socio-political stability (Reerink and van Gelder 2010, 79). Recently, Reerink and van Gelder completed a comprehensive assessment on the results of a mass titling program in the city of Bandung, Indonesia's fourth largest urban center, located in West Java (2010). Within this complex urban landscape, the program focused on *kampong* districts, originally rural villages engulfed by the city, which have become low income settlements (79). The study refutes the paradigm of binary land tenure rights: formal versus

informal. Semi-formal tenure, an intermediate designation, has a different historical legacy and accepted social status, so the impacts of titling programs were different between semi-formal and informal inhabitants (80).

Although Bandung is a modern urban center, customary law maintains a semi-formal status in spaces where modern state law has not fully permeated. Customary ownership acts as the basis for legal formalization within titling programs (79). Informal inhabitants constitute the most vulnerable communities, because they have no legal basis to occupy land, whether owned publicly or private, and rely on the good will of landowners or the political mood of officials for tenure security. Unlike recognizing semi-formal *adat* tenure rights, transferring ownership to informal inhabitants requires the granting of "new rights" and the forfeiture of previous tenure claims (80). Neither municipal governments nor private land owners have sufficient incentive to grant tenure to informal inhabitants, for the status quo offers both short and long term benefits: rents can be extracted from informal inhabitants, service provision costs are negligible, and land can be held for future development (81).

The study empirically demonstrates the differences across the three different land tenure designations: formal, semi-formal, and informal. Not surprisingly, informal inhabitants, i.e. those without customary claims to land within the *kampongs*, had the lowest average income and least consolidated houses, perceived the highest possibility of eviction within the next five years, and more often recognized that the government did not agree that they could reside on the land (83). Commonalities include the fact that all groups viewed the state as the primary driver of involuntary removal and that even formal tenure recognition remained weak when facing state development initiatives (83). A noteworthy conclusion of the study is the qualitative similarities between those with formal and semi-formal status versus the significant differences with those identified as informal.

The results have important policy implications, namely, that singular mass titling programs - which tend to capture only residents with semi-formal status - may impact economic development and political stabilization to a lesser degree than expected. Those with semi-formal status already experience a quality of life similar to those with formal tenure, thus no significant quantitative increase can be expected (84). Second, unless specific programs are established targeting informal communities outside customary *adat* structures, the semi-formal/informal divide may be further exacerbated; vulnerable groups, usually migrants, may become further marginalized. (84). Overall, the study demonstrates the risk inherent to overly simplistic formalization programs, whether individual or community

based: the extra-legal sector is not homogenous, and programs which only target semi-formal communities reinforce the informal status of those outside customary communities increasing their risk for eviction or state-sanctioned abuses.

Case Study Summary

The case study on mass titling programs in the urban *kampongs* of Bandung is substantively different from the rural sectors in West Sumatra and Central Sulawesi. Table 1 summarizes the findings. The policy that enabled the titling program was separate from those providing the opportunity to establish the *nagari* and the *hutan desa.* The impetus for the CCAs was also distinct, although the process and goals were similar to that of the *hutan desa.* Regarding the two rural programs, both had a focus on the state's recognition of group resource management rights, although ownership of the land remained with the GoI; communities were granted the right to manage resources in a manner that also met the goals of government stakeholders.

Table 1: Case Study Overview

	Program	Goal	Target	Role of Adat	Effect on Migrants
1	Nagari	Conservation	Rural, group forest management	Adat based institution, boundary demarcation	Homogenous population, no migrants
2	CCA	Conservation	Rural, group forest co-management	Adat based institution, boundary demarcation	Migrants, failed to sign CCA
3	Kampong Titling	Economic Development	Urban, individual ownership	Adat as basis of ownership	Least formal, further marginalized

Conversely, urban titling programs centered on individual property rights in order to grant individual entrepreneurs access to credit and productive investment opportunities (Reerink and van Gelder 2010, 79). This stands in stark contrast to the setting, origin, and goals of the *nagari* and CCAs, which focused on community development and conservation. In the rural sector, unlike in Bandung, speculation or land resale was not issue. In the mass-titling program, policy originated in a top-down process with the goal to stimulate economic development in order to achieve human development objectives (Reerink and van Gelder 2010, 79).

Regardless of the differences between the programs, one general theme can be extracted. All three programs were unable to successfully engage with migrants: in West Sumatra, the *nagari* lacked extra-communal authority because of its status as a sub-village institution based on customary communities; in Lore Lindu, communities with a high degree of migrants from other parts of Sulawesi were unable to sign CCAs; and, in Bandung, migrants lacked customary ownership rights - as opposed to the semi-formal status of *adat* ownership - so were often unable to transition into the formal sector, thus became formally divided from 'local' communities.

Discussion

As highlighted in Table 1, a consistent barrier to the success of formalization programs, whether state or community driven, individually or communally based, is boundary demarcation. This is not only a product of the fact that rights of use and rights of ownership are often disparate notions, but also an indication of the limitations of the mapping process itself. A map is two-dimensional, temporally static entity mandated to encapsulate the actions and relationships between humans and the environment throughout seasons and across generations (Meinzen-Dick and Mwangi 2008, 38). Transforming three dimensional activities - ground level herbs or medicines can be intercropped with cash crops that are dependent on irrigation systems which are all covered by a canopy of old growth trees - presents structural challenges that require a deliberative process to make value judgments in order to ensure fairness and accuracy during the unraveling process (Gibson and Woolcock 2008, 153).

In Jambi, as precipitating events forced communities to band together to stave off the intrusion of the timber company, establishing a *hutan desa* appeared as a viable strategy to

retain control of the land. This crisis has not been fully averted, however. It remains to be seen if and how community forests are maximized, while success factors remain largely out of the control of the communities. But what is important is that NGOs did not express a predetermined goal for the communities. The forest management rights were granted for the community, not for the development aspirations of either the government or NGOs, although conservation is considered an integral component of the management plan. Qualitatively, NGOs have been adaptive and realistic in managing the *hutan desa* process.

As indicated by the *nagari* and the CCAs, revitalizing and enhancing *adat* structures offers the highest chance of institutional success. Hence, in Jambi the involved NGOs are turning to customary institutions to manage the *hutan desa*. The fact that villagers were supportive of the community forests was confirmed by field interviews. Overall, villagers feld pride in establishing the *hutan desa*, because it was perceived as a victory against the company and corrupt state practices. In this regard, the project can be considered a success regardless of economic impact: proud and stable communities create new opportunities, a development paradigm popularized as of late (see Sen 2009). But pride and formally demarcated boundaries also enable communities to defend their forests, a potentially volatile situation when mixed with anxiety and animosity towards outside communities.

Within Jambi, the number of informal migrants with the region of the *hutan desa* is substantial: in one village alone, the number of informal migrants living partially within other formal village areas was estimated at over 5000, a substantial number considering the two adjacent villages in the region equaled less than 2000 residents. Furthermore, although informal, the migrant communities maintained a long-standing presence in the region as some villages had been established before 1998. Migrants were from adjacent provinces and had capitalized on the favorable climate and growing conditions of the region along with the availability of unmanaged degraded lands available for conversion. Similar to the situation in Lore Lindu National Park, migrants tend to prioritize economic activities at the expense of the environmental or social value of the land (Mehring and Seeberg-Elverfeldt 2011, 741).

While visiting the region in Jambi, beyond the immense pride within indigenous communities, the presence of fear was tangible, a factor that, in part, limited the economic growth of the region. However, in looking to the future, the province of Jambi is rising economically as investment and infrastructure improve, and the province continues to be a net recipient of migrants (Arifin 2011, 212). Ultimately, a positive feedback loop may result

in the marginalization of migrant communities if a CBFM program is scaled-up without due consideration.

The concern about exacerbating the local-migrant divide is not purely academic. The case study on Bandung's urban titling typifies criticisms of De Soto's policy, because mass formalization had less-than-expected returns, and, as argued by Culpepper, tends to further marginalize the least formal groups, i.e. migrants (2002). Furthermore, the limitations of mass formalization are not only dependent upon the structure and drivers of the program, whether individual property rights or group resource management rights, but also on the agents of the program. Specifically, if *hutan desa* programs are scaled-up and the GoI becomes the primary agent, community forest programs will be changed fundamentally. Government-led community forest programming may face similar limitations as mass property titling programs, because semi-formal indigenous communities with customary status are favored by NGOs and local governments, thereby granting them stronger support to the exclusion of the most vulnerable communities: informal migrants.

Marginalized groups are exposed to increased risks as state authority may be employed at the behest of formalized indigenous communities to protect their forest assets from outside agents, i.e. migrant "squatters" (Meinzen-Dick and Mwangi 2008, 42). Several important questions must be asked to evaluate the need for enacting indigenous rights and how this impacts fundamental human rights. When does a process of attrition actualized through the denial of basic services, such as primary education and maternal health, become inhumane? Who is accountable if indigenous communities are able to co-opt state authorities into removing migrants (Mehring and Seeberg-Elverfeldt 2011, 745)? And if constitutionally codified freedom of mobility is valued as a central tenet of a liberal, democratic society, then why is rural-to-rural movement, often precipitated by environmental change or a natural disaster, evaluated differently from rural-to-urban migration?

Consequently, NGOs and the GoI both need to recognize this risk in order to introduce a parallel policy to specifically manage migrant communities, and to establish basic services and proper identification for residents in migrant areas. Overall, the government, preferably with NGO support, must either formalize migrant communities or negotiate a transparent and constitutional relocation program. Waiting until health or environmental conditions deteriorate to the point where conditions become deplorable, or until horizontal and/or vertical conflict occurs, is not an appropriate strategy. Currently, resolution proves

elusive as NGOs lack authority to initiate an intervention within this sensitive space and governments themselves face significant political and structural barriers.

Conclusion

Post-authoritarian Indonesia has provided policy space for indigenous communities to assert their resource management rights based on *adat* principles, although it remains to be seen whether or not this process proves a resilient means of rural economic development. The purpose of this paper is not to disavow the ongoing work of NGOs striving to mitigate unsustainable business practices, corrupt government licensing procedures, or the development of indigenous communities. Qualitatively, facilitating NGOs are following the lessons learned from previous community resource management schemes to overcome the CBFM barriers articulated by Ostrom (1999).

The uncertainty lies with scalability. The GoI has ambitious targets for establishing areas under *hutan desa* management. The risk that the GoI will attempt to become the primary agent changes the potential structure of the program and may diminish its qualitative element. Turning to assessments of Hernando do Soto's simplistic policy prescriptions to engage in mass tilting programs to catalyze economic development, several parallels have been extrapolated: mass formalization may result in semi-formal indigenous communities becoming the sole focus of programs to the exclusion of marginalized 'informal' migrant communities. Furthermore, formalized indigenous communities may co-opt the state apparatus to defend their indigenous rights, thereby increasing the risk of human rights abuses within migrant communities. In collaboration with civil society, the GoI must establish a parallel process to specifically engage rural migrant communities, which have been severely under-studied.

References

Ahiakpor, James C. 2008. "Mystifying the Concept of Capital: Hernando de Soto's Misdiagnosis of the Hindrance to Economic Development in the Third World." *The Independent Review* 13(1), 57–79.

Arifin, Evi Nurvidya. 2011. "Regional Heterogeneity of the Large Market and Production Base." In *The Indonesian Economy: Entering a New Era*, ed. Aris Ananta, Muljana Soekarni, and Sjamsul Arifin. Singapore: ISEAS Publishing, 193–243.

Astiyah et al. 2011. "Decentralization and Domestic Trade Interdependence." In *The*

Indonesian Economy: Entering a New Era, ed. Aris Ananta, Muljana Soekarni, and Sjamsul Arifin. Singapore: ISEAS Publishing, 277- 309.

Birner, Regina, and Marhawati Mappatoba. 2002. "Community Agreements on Conservation in Central Sulawesi: A Coase Solution to Externalities or a Case of Empowered Deliberative Democracy?" Research Project on Stability of Rain Forest Margins, 1-34.

Chatellier, Jeffrey and Mary Osmond. 2011. "Hutan Desa License Process*". Forest Carbon*, 1-11.

Clift, Jeremy. 2003. "Hearing the Dogs Bark." *Finance and Development*, 8–11.

Culpepper, Roy. 2002. *Demystifying Hernando de Soto: A Review of the Mystery of Capital*. The North South Institute.

De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. USA: Penguin Books.

Dove, Michael R. 2012. *The Banana at the Gate.* Singapore: National University of Singapore Press.

Fitzpatrick, Daniel. 1999. "Beyond Dualism: Land Acquisition and Law in Indonesia." In *Indonesia, Law and Society*, ed. Tim Lindsey. Sydney, Australia: The Federation Press, 74–96.

Gibson, Christopher, and Michael Woolcock. 2008. "Empowerment, Deliberative Development, and Local-Level Politics in Indonesia: Participatory Projects as a Source of Countervailing Power." *International Development* 43, 151–180.

Harrison, Lawrence E. and Huntington, Samuel P. 2000. *Culture Matters: How Values Shape Human Progress.* USA: Basic Books.

International Working Group for Indigenous Affairs (IWGIA). *Indigenous Peoples in Indonesia.*http://uncg.libguides.com/content.php?pid=100907&sid=1079424 (Accessed May 5, 2012).

Kahn, Matthew E., and Alecander S. P. Pfaff. 2000. "Informal Economies, Information and the Environment." *Journal of International Affairs* 53(2): 525–544.

Mahdi, Ganesh P. Shivakoti, and Dietrich Vogt-Smchmidt. 2009. "Livelihood Change and Livelihood Sustainability in the Uplands of Lembang Subwatershed, West Sumatra, Indonesia in a Changing Natural Resource Management Context." *Environmental Management* 43, 84–99.

McCarthy, John F. 2005. "Between Adat and State: institutional Arrangements on Sumatra's Forest Frontier." *Human Ecology* 33(1), 57–82.

Mehring, Marion et al. 2011. "Local Institutions: Regulations and Valuation of Forest Use –

Evidence from Central Sulawesi, Indonesia." *Land Use Policy* 28, 736–747.

Meinzen-Dick, Ruth, and Esther Mwangi. 2008. "Cutting the Web of Interests: Pitfalls of Formalization Property Rights." *Land Use Policy* 26, 36–43.

Miranda, Liliana. 2002. "A New Mystery from de Soto? A Review of The Mystery of Capital*." Environment and Urbanization* 14(1), 263–64.

Nyphus, Philip J., Sumianto, and Ronald Tilson. 2003. "Wildlife Knowledge Among Migrants in Southern Sumatra, Indonesia: Implications for Conservation." *Environmental Conservation* 30(2), 192 – 199.

Ostrom, Elinor, et al. 1999. "Revisiting the Commons: Local Lessons, Global Challenges." *Science* 284(5412), 278–282.

Reerink, Gustaaf, and Jean-Louis van Gelder. 2010. "Land Titling, Perceived Tenure Security, and Housing Consolidation in the Kampongs of Bandung, Indonesia." *Habitat International* 34, 78–85.

Samuelson, Robert F. 2001. "The Spirit of Capitalism." *Foreign Affairs* 80(1), 205–211.

Selamat, Fawziah. 2011. "Jambi Villagers Fight to Save Their Forests | The Jakarta Globe." http://www.thejakartaglobe.com/home/jambi-villagers-fight-to-save-their-forests/463149 (Accessed May 5, 2012).

Sen, Amartya. 2009. *The Idea of Justice*. USA: Havard University Press.

Veszteg, Robert F., and Erita Narhetali. 2010. "Public-good Games and the Balinese." *International Journal of Social Economics* 37(9), 660–675.

Warren, Carol. 2005. "Mapping Common Futures: Customary Communities, NGOs and the State in Indonesia's Reform Era." *Development and Change* 36(1), 49–73.

Woodruff, Christopher. 2001. "Review of de Soto's 'The Mystery of Capital'." *Journal of Economic Literature* 39(4), 1215–1223.