

Searching for Justice: Rights vs 'Benefits' in Bukit Baka Bukit Raya National Park, Indonesia

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Abstract

Five villages that border Bukit Baka Bukit Raya National Park in Melawi, West Kalimantan, are rekindling their protest over the park boundaries and the appropriation of their lands by the park. The park was established as a nature reserve in 1981 without participation of customary users. Customary user contestations are muted by a democratic void in which they are without recognition in the governance structures of the park. Therefore, communities have sought Indigenous peoples' rights NGOs to represent them and advance their customary claims over land. These NGOs prove more salient to the needs of the villages because they focus less on distributive justice through benefit sharing and more on recognition justice through the advancement of land claims. Whilst villagers decry the lack of any benefit from the park, it is they themselves who refuse to accept such benefits from park authorities. This paper explores the struggles for recognition over customary land in the national park and finds that peoples' resistance to the State, including offers of distributive benefits, is rooted in the notion that their consent constitutes acceptance of State authority over customary land.

Keywords: environmental justice, conservation, recognition, authority, multi-level governance, Bukit Baka Bukit Raya National Park, Indonesia

INTRODUCTION

Notions of justice can vary widely among different actors concerned about land contestations, resulting in perceived inequalities, oppression, and uncooperativeness depending on the positions of each actor. These differences become ever more important as globalised perceptions of justice collide with local notions (Fraser 2009). This paper explores the procedures and outcomes of the appropriation of the Bukit Baka portion of Bukit Baka Bukit Raya National Park (TNBBBR), on

the border of West and Central Kalimantan, by elucidating notions of environmental justice. Since the establishment of the nature reserve in 1981, there has been a mix of opaque and exclusionary planning by park authorities, while tensions with customary users were often dormant. Conflict between customary users and park authorities arose when access rights to forestlands were restricted through enforcement of park boundaries. Although the villagers decry the lack of any benefit from the park, compensation has been offered in several distributive forms, and it is they themselves who refuse to accept such benefits. The objective of this paper is to elucidate the various perspectives of justice in this case and to understand the ways in which different notions of environmental justice affect one another. We also aim to highlight some of the governance mechanisms that enable or inhibit specific notions of justice from being realised by different actors.

Martin et al. (2013: 72) ask the extent to which "recognition injustices [may] become amplified or entrenched" as a result

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of benefit-sharing schemes. This paper explores this question through a case study of appropriation of land and forest by central government through the creation of a park. We explore the relationships between offers of global notions of distributive justice to customary users of forestlands in the park and recognition justice, which is sought by customary users. We look at the various ways in which recognition is denied to customary forest users and explore how villagers turn to other institutions for recognition and legitimation. This case is illustrative of the persistence of a fundamental lack of recognition of customary user rights by multiple levels of government.

We start off by exploring concepts of conservation and environmental justice, then briefly explain the history of authority over forests and forest land in Indonesia before describing our methods. We then move to a results section that describes the establishment, maintenance, and conflict of and within Bukit Baka Bukit Raya National Park in West and Central Kalimantan. A discussion section analyses the results from the perspective of environmental justice.

Conservation and environmental justice

Protected areas have become the dominant strategy for protecting biodiversity, as espoused by NGOs, governments, and international initiatives such as the Millennium Development Goals (Chape et al. 2005; Lele et al. 2010). By 2011, 157,897 sites protected 16.26 million km² of the earth's surface—a ten-fold increase over the last 50 years (IUCN and UNEP 2012). There has been significant research on the (dis)convergence of environmental conservation and the ability of people to benefit from forest resources. At the extremes of discourse, the rights of communities are pitted against hegemonic global perspectives concerning the preservation of natural spaces (Adams and Hutton 2007; Brockington, Duffy and Igoe 2008), resulting in such conclusions as either conservation at great costs to people (Ferraro 2002; Borgerhoff Mulder and Coppolillo 2005; Eaton 2005; Brockington, Duffy, and Igoe 2008; Duffy 2010) or local people contributing to the destruction of forests (Agrawal and Chhatre 2006; Wilkie et al. 2006; Henley 2007).

On one hand, some suggest that the natural capital protected in conservation areas enables adjacent communities to derive benefits from ecosystem services leading to reduced poverty (Turner et al. 2012). On the other hand, there is an argument that the global benefits of conservation are expensed to local people who live in and near the forest (Adams and Hutton 2007; Brockington, Duffy and Igoe 2008; Duffy 2010). These arguments, and the array of arrangements between them, are summarised well by Roe (2008), who suggests that such debates are becoming ever more critical within the current climate change agenda. Questions of conservation and poverty are “at the heart of concerns about conservation justice” (Martin et al. 2013: 71), or more generally, environmental justice. Notions of justice are central to the management of conservation areas, and more broadly environmental management, because they

directly impact who participates in decisions, how benefits and responsibilities are distributed, and in what ways people are recognised as having ‘rights’ to access and control resources and land (Fraser 2009; Sikor 2013).

We align ourselves with Thomas Sikor's conceptualisation of types of environmental justice. Sikor (2013) uses an empirical approach to define environmental justice and expands on the Schlosberg (2004) dimensions of distribution, participation (procedural) and recognition justices. Sikor (2013: 7) explains that “[d]istributive justice is about the distribution of goods and bads between different people”; participation or procedural justice includes “how decisions are made... including attention to the roles of different people and rules governing decision making”; and recognition “is about acknowledging people's distinct identities and histories and eliminating forms of cultural domination of some groups over others”. While distributive justice is more tacit, more measurable, and more in keeping with global neoliberal notions of economic ‘fairness’, recognition is a type of social justice, having a cultural dimension concerning social order (Schlosberg 2004; Fraser 2009). Schlosberg suggests that recognition and participation are underemphasised forms of environmental justice that ought to be considered more deeply. He goes on to show that if people are not recognised, they do not participate and therefore become detached from political processes. Further, failures of authorities to recognise customary claims (nonrecognition or misrecognition) is a form of oppression that leads to a reduced state of being among the oppressed (Taylor 1994).

One of the main concerns for forest-adjacent communities concerning land is land tenure security (Angelsen and Wunder 2003; Sunderlin et al. 2014; Wyatt et al. 2015), which embodies all three types of environmental justice. Forestland tenure is the customary or statutory determination of “who can hold and use forest lands and resources, for how long, and under what conditions” (Sunderlin 2011: 21), including the right to make decisions about forest land use, or what Ribot and Peluso (2003) would call ‘access control’. This research is concerned with the appropriation of customary land by the national park as an issue of land tenure security. Appropriation, in this sense, is one of natural resources and forestland from the customary users by the State (see Fairhead et al. 2012). We understand that customary land claims and demands for land tenure security are as much about distribution as recognition. Land is both a tangible benefit and symbolic of the right to exercise customary control. The struggle on which this paper focusses is as much about recognition over customary rights as it is about access to natural resources (see Sikor and Lund 2009; Larson 2010).

It is not surprising that efforts to apply a measure of fairness to conservation and environmental protection efforts focus on distribution, and to a lesser extent procedural, justices rather than recognition justice. The concepts are easily rendered technical to fit within cause and effect relationships, timespans and donor accountability of a ‘project’. Benefit-sharing, as a type of distributional justice, involves the main characteristics that Li (2007) uses to describe projects rendered technical.

It occurs within a specified area with definable boundaries, involves assembling information, includes techniques to measure and analyse information and addresses problems in an anti-political fashion. Recognition, on the other hand, is much more elusive in these regards. Deep political interests must be identified in order to understand and address issues of recognition, and these interests may not be easy to see and are likely to be interpreted differently by different actors.

Control over land, forests, and protected areas in Indonesia

Contestations between forests and communities can be traced to pre-colonial times (Peluso 1992; Henley 2007). Conflicts around protected forests date back to as early as 684 AD (Mishra 1994). Forest policy in Indonesia has historically operated in favour of powerful State and private interests; and against communities, whether forests were established for production or for protection. The overarching theory of forest management has been consistent since the Dutch first landed in Indonesia. It has been dominated by scientific forestry, enforced by all regimes, with the exception of brief occupation of Japan, and to a lesser extent Britain, in which access by Indigenous people to forest resources remained illegal (Peluso 1992). At the same time, sustainable forestry practices were all but ignored, especially for the harvest of teak (Peluso 1992; Tsing 2005).

The central principles of this ideology have consistently included State ownership and control of forests, the prioritisation of services for the greatest good to the greatest number of people, the upholding of the efficacy and efficiency of scientific forestry, and the overall responsibility of the scientific forester for the economic growth of forests (Peluso 1992). Starting in the 1970s, forest management shifted from direct natural resource extraction by the government to a relationship between State and private enterprise established by the New Order government and private Japanese corporations (Tsing 2005). This pattern of corporate management of a public good, via state, domestic, and foreign corporations, is maintained in the modern model of forest management and conceptually empties the forest of people in the way that decisions are made without due considerations of the interests of local communities of forest users (Peluso 1992; Tsing 2005). In effect, the law continues to disproportionately favour the interests of large corporations and state-making over those of local communities (Tsing 2005; Colchester et al. 2006a).

In as much as benefits and rights of the 'other' (i.e. non-customary forest users) are prioritised over the rights of customary users, production forests and conservation forests have a similar impact on Indigenous people in Indonesia. Overall, 59% of Indonesia's forests have been designated for logging and 19% as protected areas (Kementerian Kehutanan 2011). Under logging concessions, the companies have taken priority, and in protected areas, it is global interests. In both conditions, a centralist approach to forest management has effectively resulted in lack of formal rights to forest lands for

the poor living in or near forests (Peluso 1992; Colchester et al. 2006a; McCarthy 2006; Li 2007; Henley and Davidson 2008).

Evolving over successive years of fragmented customary leadership; Dutch, English, and Japanese colonialisation, and post-colonial rule by three major eras of Indonesian governments, the management of Indonesian forests involves a complex system of institutional arrangements (Peluso 1992; McCarthy 2006). Throughout some of these eras, multiple legal and policy systems existed concurrently. The Dutch, for instance, allowed legal pluralism in which Indigenous peoples were not completely subject to all Dutch laws (Li 2007; Henley and Davidson 2008); however, trading, timber harvesting, and accessing forestlands were heavily controlled by the colonial authorities (Peluso 1992). As these governance systems evolve, it becomes increasingly difficult to understand how customary and statutory laws co-exist, often resulting in interpretations by different levels of government as circumvention of the law by local communities to obtain access to forest resources and resulting in criminalisation of local communities among the corrupt and gangsters. This confusion is compounded by inconsistent application of the law in different contexts (Tsing 2005; Colchester et al. 2006a; McCarthy 2006; Henley and Davidson 2008). Indigenous self-governance and customary land rights are respected within the 1945 Indonesian Constitution; however, "laws provide only weak recognition of customary rights and allow government agencies a great deal of discretion in deciding whether to respect them or not" (Colchester et al. 2006b: 13). Also, there is no pre or post-colonial practice of reserving land for customary users (Li 2001). The Basic Agrarian Law (Law 5 of 1960), which forms the basis of Indonesian land law, recognises *adat* (customary) law as co-existing with national law, but no implementing regulations have been introduced that relate directly to *adat* (Wright 2012). Article 5 of the law reads as follows:

*Agrarian law applies to the land, water and air space is customary law to the extent that it is not contrary to national interest and the State, which is based on national unity, Indonesian socialism and the regulations contained in this Law and other regulations, and to any elements that rely on religious principles.*¹

Amendments to the Constitution in 2000² clarified the conditions under which customary rights may be claimed, but even these clarifications have been subject to such interpretations that they have yet to be implemented on a national scale. While the Constitution recognises customary rights, it also makes clear that the State has complete authority on land use and ownership. Herein lies a major tension between the State and Indigenous peoples' land claims (Colchester et al. 2006b). There is a unilateral claim that all forests are owned by the State, thereby overriding customary rights to ownership and control (Peluso and Vandergeest 2001; Colchester et al. 2006a; Sirait et al. 2011). Official forest areas, sometimes referred to as politico-administrative forests (see Safitri 2010), which may or may not have forests or trees (Peluso and Vandergeest 2001), have fallen under the control of the central State since colonial times and have therefore been distanced from local and customary control (Peluso 1992; McCarthy 2006).

The political and administrative definitions of forests in Indonesia are made clear in the inauguration of forests and specifically conservation areas. Gazettement as a forest is intended to affirm the status, function, location and boundaries of a forest area so that it can be distinguished from a non-forest area. One of the primary deterrents for formal designation of forests is overlapping land claims, especially on customary land. Conflicts have arisen because of lack of consultation and transparency in determining political forest boundaries (Safitri 2010). The forest designation process itself reveals a bottleneck in inter-governmental co-ordination and lack of political will to protect the rights and public access to the forests. The result is the rampant loss of customary and community access and rights to forests.

There are recent signs of promise for customary claims. Two Constitutional Court decisions (No. 34/PUU-IX/2011 and No.45/PUU-IX/2011) stated that forest designation by the Ministry of Forestry³ without consent from local communities is an arbitrary action and considered not legitimate. In terms of customary forest (*hutan adat*), a 2012 Constitutional Court decision (No. 35/PUU-X/2012) annulled articles on forest law (Law 41/1999) that incorporated customary forest in the national forest estate, and made it possible that customary forests could be designated outside of the national estate. Consequently, clear boundaries must now be established between state forests and *adat* forests. NGOs and customary users, as we show later, use these decisions and laws to legitimise their current claims in statutory law. Although the laws and decisions themselves relate primarily to recognition justice, the practice of the government has been on distributive justices for which there are no such laws.

By the end of 2012, Indonesia had 128.22 million ha of forests under the control of the Ministry of Forestry (Directorate of General Forestry Planning in Kementrian Kehutanan 2013b). Of this, only 21.07 million ha (16.3 per cent) had been determined (*ditetapkan*) as forests (Kementrian Kehutanan 2013a), which involves verification processes (i.e. demarcation, mapping, and consultations). Prior to the 2011 Constitutional Court decision (No.45/PUU-IX/2011), the Ministry of Forestry was legally unchallenged in its assumption that appointment of the national forest estate (*penunjukan kawasan hutan*) was sufficient to assert its claim over forestland. The decision contradicted this assumption, stating that only forest that had been determined (*ditetapkan*) could be considered as forest area (see Wells et al. 2012 for more details). There is therefore a wide gulf between the forestland assumed to be controlled by the Ministry of Forestry and legally binding determined forest. Yet, the Ministry of Forestry continues to issue forest licences on an appointed forest, leading to conflict with communities.

At this time, the regulations on *adat* forest are still stymied by delays within the Ministry of Forestry, which is tasked with operationalising the court rulings. One of the central issues is the lack of mechanism for boundary demarcation between *adat* forests and 'national forest estate' forests. So far, the Ministry of Forestry has stated that *adat*

forests will be excluded from the state forests as long as there are sub-national regulations (district or province regulations) that recognise the existence of *adat* communities (see Ministry of Forestry Regulation P.62/Menhut-II/2013). The onus will likely be on local communities to demonstrate customary land uses. This is problematic because there are few examples of district and provincial regulations that recognise customary users and fewer still that demarcate customary use lands.

To date, access rights of the communities have rarely been taken into consideration in the determination of forestlands, and there is no standardised legal conflict resolution mechanism or means of appeal in the national forest estate aside from the Constitutional Court. There is also a lack of multi-level governance co-ordination due to a difference of interest between central and district governments. Central government continues to manage timber licences and conservation forests, for example, and therefore is motivated to maintain as large a forest area as possible. Most district governments consider vast forest area an impediment to development, hindering conversion to other forms of land exploitation like plantations, mining, or farming required to meet economic growth targets (as obtained in interviews with district government actors). In and around these political forests, it is local communities that bear the burden most heavily.

The case of TNBBBR illustrates some of these issues of procedure and problematic outcomes. Considering the process by which the national park was gazetted, it is so far unclear whether or not the communities around TNBBBR will be able to benefit from these new laws and regulations. At least some of customary use land was technically gazetted into the national forest estate, but because of somewhat opaque boundaries, it is not clear that all land in the national park was gazetted. Forestland that was gazetted may be a more challenging claim for the communities to make since there was agreement by community leaders, despite the questionable circumstances under which that consent was obtained, as we shall discuss shortly. For other parts of the forest, where the boundaries of the park expanded without the consultation of customary users, the Constitutional Court decisions are of particular importance. We now turn to the results of our research on the processes of making and maintaining TNBBBR. We elucidate the institutional linkages that are at play and explore the sequences of events from the establishment of the park to current contestations.

METHODS

The methodology is a single case study, which is useful to develop lessons learned from an in-depth exploration (Flyvbjerg 2006). The study used semi-structured qualitative interviews to guide discussions with government and civil society actors from the village to national levels in 2013 and 2014. The five focal villages in the Melawi District (*Kabupaten*) of West Kalimantan are Belaban Ella, Mengkilau, Nusa Poring, Dawai, and Laman Mumbang (Figure 1).

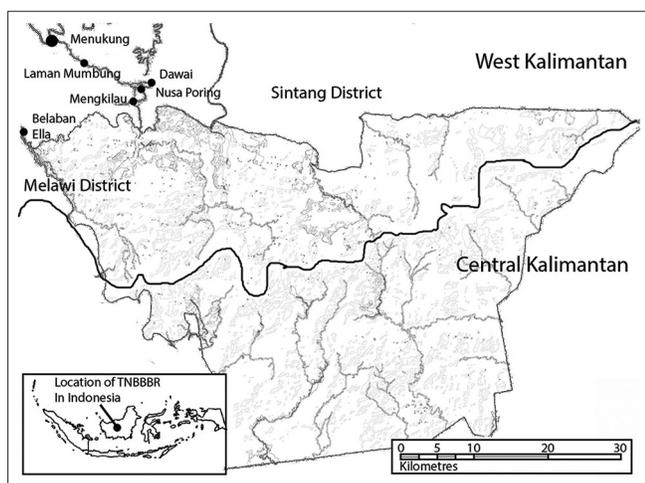


Figure 1
Map of Bukit Baka Bukit Raya National Park

Most of the village interviews were conducted in Belaban Ella (specifically the hamlet of Sungkup) due to the recent work of village activists there as identified by several Indigenous rights NGOs in West Kalimantan. To address the potential limitation of a unique situation in Sungkup compared to other communities, a broader spectrum of leaders and activists were also interviewed from the other villages, based on convenience sampling of village leaders who were available for interview. Data collection instruments included an initial key informant interview and then an in-depth historical interview. Respondents were selected through snowball sampling based on suggestions from previous respondents, most often of other people or institutions with which they had interacted related to the case. Interviews were conducted face-to-face in West Kalimantan and were structured around concepts of procedural legitimacy, outcome legitimacy, and articulation among actors and non-actors concerning specific land use changes. A total of 16 formal interviews were conducted, each lasting for one to two hours with one to four respondents in each interview. Interviews were conducted at each level of governance so the research took place in several locations, moving upward along the chain of authority from the villages to Jakarta, including sub-district (*kecamatan*), district (*kabupaten*) and provincial government respondents as well as Indigenous rights organisations and NGOs.

RESULTS

The making of TNBBBR

The nature reserve that preceded TNBBBR was established in 1981 and the boundary markers were installed in 1984 with the labour of villagers who, according to Agus & Setyasiswanto (2010) and our own interviews with customary users, were not informed as to the purpose of the markers. The park was established through the collaboration of several sections within the Ministry of Forestry, often working independently of one another.

The initial location identification was spearheaded by the Directorate General of Forest Protection and Nature

Conservation (*Perlindungan Hutan dan Pelestarian Alam*), which is responsible for planning and policy implementation. Then the Centre for Forest Area Consolidation (*Balai Pemantapan Kawasan Hutan*) under the Directorate General of Forest Planning (*Direktorat Jenderal Planologi Kehutanan*) was called in to delineate and confirm the forest boundaries. The boundaries were ground-checked to ensure that villages were not within the park boundary, in which case the border could be drafted to ensure that villages are outside of the park, but customary use within the designated park area was insufficient ground to alter the establishment of the boundary. The park required the consent of communities, but the process by which this was done was left subject to interpretation by Ministry of Forestry officials.

There are varying accounts of the consultation process at this time, but the most likely scenario, based on interviews, is that a meeting was held in the district capital, Nanga Pinoh, and that heads of village were invited to attend. They were told that a nature reserve would mean protecting the forest against logging concessions and illegal logging, which were expanding rapidly at the time (Soetarto et al. 2001; Barr 2006). When we asked village leaders about the process of creating the park, their initial response, was that “we never signed anything.” On further discussion and triangulating responses, however, the discourse changed to, “we don’t know if we signed anything or not. Maybe the head of village did sign, but he didn’t understand”, as one ex-village head put it.

The establishment of the nature reserve was supported by the signatures of six heads of village on the establishment of the nature reserve and its borders, dated from January to March, 1985. This rules out lack of legal consent of village representatives and the signatures appear to be authentic, although not all could be verified. Nevertheless, the accompanying map, which is not directly signed by the heads of village, is scant on detail. The settlements are not represented on the maps and only vague representations of rivers serve as a reference to geographical location.^{4,5} In all villages, the recollection of any discussion about the establishment of the nature reserve or national park included *kata manis*, or “sweet words” uttered by government officials. Consent was obtained by heads of village on the basis that the agreement would ‘protect the forest for our children and grandchildren’. This is a standard phrase used by national parks in Indonesia, but it fails to capture the cost of the park, which according to respondents was not explained to the heads of villages.

There was little activity after the initial inauguration and gazetting of TNBBBR and villagers could not perceive any significance of the markers nor effect of the national park on their lives. In 1992, when the nature reserve was converted into a national park (Ministry of Forestry decree 281/Kpts-II/1992), the Park Authority (*Balai TNBBBR*- responsible for the administration of the park) erected an outpost for the forest police and the following year held an information session that explained again the meaning of the park but, according to community members interviewed, failed to mention that the park could not be used by villagers.

Customary claims and contestations on National Park land

In 1998, the Park Authority, along with the Ministry of Forestry and representatives of the district government, led a participatory mapping process with Sungkup, a hamlet of Balaban Ella, one of the villages near the park.⁶ The resulting map (referred to as the '3D map' since it is textured with topographical features in *papier-mâché*) is still housed in the village. It clearly shows the traditional land area of the community and what its land uses were at the time, claiming a total area of 14,259 ha in customary land, about half of which is inside the national park,⁷ as shown in Figure 2. This map is used by villagers to legitimise their claim over the land, but the Park Authority and World Wildlife Fund (WWF) dismiss the maps as a "participatory mapping exercise" and as not having any bearing on land claims.

The villages lay claim over the land primarily based on customary usage, which consists of swidden agriculture, the harvest of wood for domestic and community use, hunting and the collection of non-timber forest products. As evidence, they cite the land use patterns consistent with swidden agriculture, monoliths that represent an ancient war between tribes (now in the centre of the park), and the 3D map itself.

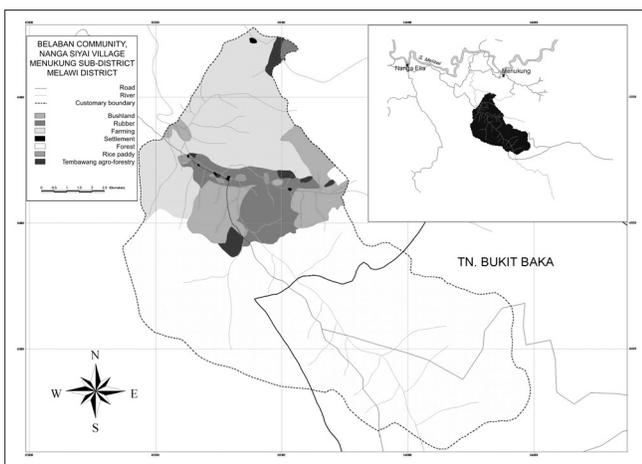
Villagers in several of the villages, and specifically in Belaban Ella, state that the borders of the national park have moved closer to the village. They say that while the border used to be at kilometre 38, it is now at kilometre 35. Kilometre 38 coincides with a logging road owned and managed by the logging company PT Sari Bumi Kusuma, which demarcated the border of the park. There is evidence that the villagers' claim is correct. For example, the office and housing complex that is used by the park authorities is inside the park at kilometre 38 where the outpost should be, and is usually, on the park

border. Further, the villagers show that their traditional rubber plantations, which were originally not included in the park in the map shown in Figure 2, are now inside the park boundaries according to the Park Authority.

The Ministry of Forestry recounts the history of the national park and states that in 1981, the nature reserve (*cagar alam*) was 100,000 ha. By the time the national park was established in 1992, the area was 181,090 ha, which includes the Bukit Raya portion of the park (Bukit Raya is in Sintang and not connected to Bukit Baka except by administration). The Bukit Baka portion of the park was 110,590 ha, signalling an increase of 10,590 ha compared to the original area. According to Balai Taman Nasional Bukit Baka-Bukit Raya (the Park Authority) (2009), the borders were expanded to encompass 236,610 ha in 2005. Exactly where these changes were made, or how the borders have changed is not explained as there is no map available that represents an increase of this scale. Community members are not aware of any official change, and are adamant that there has been no consultation during the entire process, let alone leading up to 2005.

Part of the confusion may arise from the nebulous definition of a buffer zone around the park. Although the communities are not aware of a buffer zone, an Internal Affairs Letter was issued in 1999 (No. 660.1/269/v/Bangda), which details a partnership in the management of a buffer zone that would be managed by the local government (ITTO 2003). A collaborative agreement was drafted by the Park Authority to manage the buffer zone, which included local communities among a wide range of stakeholders (ITTO 2003), but the borders were not clarified and the multiple stakeholders listed in the agreement (including WWF, the Park Authority, and communities) are unaware of the existence of a buffer zone at the time interviews were conducted.

Only in 2005 did the policing activities in the forest increase to a level that started to concern the villagers. That year there were 11 patrols of the forest by the forest police. These patrols resulted in confrontations and the destruction of property, including machetes, saws, cooking pots and other equipment used by villagers in the forest. In 2006, these confrontations continued with another 14 patrols (Agus and Setyasiswanto 2010). By 2007, two residents of Sungkup were arrested for illegal activities in the national park, although they were farming inside their customary farmland, and outside what they understood to be the boundary of the Park as defined by the stone markers placed around the park boundaries. They served seven months in jail and were fined Rp 50,000,000 (about USD 4500), which was replaced by an additional three months in jail, for farming on traditional land that had been appropriated by the national park. This sparked a demonstration in Nanga Pinoh against the arrests primarily, but more broadly about authority over the park, reigniting contestations over land. After the arrests, some local activists went to their main portal to the outside world: an activist pastor based in Nanga Pinoh, the district capital. The pastor put the community in



Note: Map shows the official rather than enforced national park boundary
Source: LBBT/PPSDAK. Used with permission.

Figure 2

Participatory map of Sungkup customary forest (old village names)

touch with LBBT (*Lembaga Bela Banua Talino*- an NGO supporting Indigenous rights), which he had known about through meetings on social justice issues. From then, the police patrols decreased to six patrols a year with only two confrontations.

As in many national parks, the Park Authority has responded to community discontent by offering compensation for the hardships that villagers suffer from exclusion from forest resources. The Park Authority teamed up with the WWF in 2009 to address compensatory benefits along with park management, which had been problematic to date (MacAndrews 1998). That same year, the Park Authority held a meeting with the villages, but the villagers wanted nothing short of recognition over their control of the land appropriated by the Park. Another series of protests against the Ministry's heavy-handed control over customary land, involving 70 people, was held at the Park Authority that year as meetings were proving ineffective to sway the Park Authority's control over the park (Agus and Setyasiswanto 2010).

In the north end of the park, a group of rogue villagers in Nusa Poring imposed a customary sanction of Rp 100 million (about USD 9000), on the Park Authority in 2012 for the acquisition of customary land. The sanction was not approved by the head of the *adat* customary committee at the time because it implies that it was possible to pay compensation for the land appropriation. While the sanction was never paid, it was not about the money as much as the right of the community to apply a customary sanction to offenders on their land. When asked if they expected the government to pay, a villager activist smirked and admitted that they did not, but "we have to charge offenders. That is our way."

Between 2012 and 2014, several dialogues were held between the district government and communities, in which the communities demanded recognition of their customary rights over their territories. The district government positioned itself as a facilitator between communities and the provincial or national government, suggesting that its ability to make direct changes would be limited. The district government has no authority to resolve the conflict due to status of TNBBBR as a national park. So, even though the people and the village are in its territory, the district government sees the conflict as a national government problem (Agus and Setyasiswanto 2012). While local officials promise to "pass the message", as one elected official phrased it, to the next level of government; they have no recourse for follow-up nor do they have the authority to communicate directly with the central government on this issue because of the absolute control of the Ministry of Forestry over the park. As one head of village expressed, "the only way for us to get our message heard is to go to Jakarta, but our [annual] village operating budget is only Rp 26 million [USD 2345]. We cannot even afford for one person to go to Jakarta even if we knew how to talk with them." Community activists and leaders express frustration with the lack of interest of government officials and continual passing on of responsibility.

Attempted compensations

To date, compensation in the Bukit Baka portion of the park has included a forest rehabilitation programme in which villagers were employed as labour to rehabilitate parts of the forest that were traditionally used for swidden agriculture. Rehabilitation included clearing the scrub that had developed and relocating seedlings from other areas of the forest rather than planting new seedlings. Villagers were paid for their labour in 2012 and 2013, but soon realised that they were being paid to plant over land they claim as their own, and which they did not agree should be included in the park. The customary leadership in the villages placed a stop order on such rehabilitation efforts and all other assistance from the Park Authority and WWF in terms of compensation. In other words, the village leadership realised that the acceptance of benefits would legitimise the government's position. Resistance to the Park Authority is sanctioned by the *adat* leadership (*Ketemenggungan Siyai*) as led by the chief (*temenggung*) and 'staff' or elders (*dandai*), but carried out by a range of community activists that co-ordinate with customary leadership.

Villagers decry the lack of any benefit from the park, but it is they themselves who refuse to accept such benefits. A traditional leader in Belaban Ella recounts an offer of rubber tree seedlings, enough for 30,000 ha to be given to the village. Upon realisation that the source of the assistance was from the national park, village leaders immediately refused because the community felt deceived into working on national park land that they consider their forest. WWF and the national park are actively engaged in benefit-sharing arrangements in the Bukit Raya portion of the park, with employment programmes, micro-hydro projects and more, but they have been stymied in Bukit Baka because of the refusal of the villages to co-operate, perhaps owing to a stronger sense of identity tied to control over the forests. Such are the weapons of the weak (see Scott 1987) employed by villagers surrounding Bukit Baka in that co-operation with the park authorities would be tantamount to recognising its legitimacy over their forests. Other common strategies are to emphasise the lack of relationship between the government and the community, citing how seldom they come to the village; when they do, it is only to talk about a new programme or the function of the park rather than to discuss the disagreements with the villages or even to clarify its boundaries. Villagers assert repeatedly that they are not sure of the exact positions of the park boundaries.

In 2013, six villagers were threatened with arrest for farming activity in the national park by the Park Authority. The arrests were prevented by the intervention of LBBT and a protest by the community to which the district government responded by staying the charges and demanding that the offenders sign a letter to agree not to enter the park again. The villagers refused and were neither forced to sign the letters nor arrested. As Park Authorities explained, the situation was getting "hot" already, suggesting that they did not want to agitate the condition further by enforcing the arrests after the protests.

In the same year, WWF and the Park Authority developed a usage zone called the 'traditional benefit zone.' The zone was created in response to the 2009 protests and subsequent dialogues. It aims to enable the villages that have protested most strongly to gain legal access to the forest again, with no change for the other villages. The rules of the traditional benefit zone will allow villagers to collect non-timber forest products from the forest. In those villages, there is no forest left outside of the park. Therefore, the community uses the forest not only for non-timber products, but also for wood for domestic use in their homes. The new zoning, of which village leadership were not aware because it has not yet been shared by the Park Authority, is "totally unacceptable" according to a village leader with the agreement of others. It is not only unacceptable because they cannot legally harvest wood, but as one leader said, "that is not the point, the point is that the forest is ours."

Continuing struggles for recognition and representation

The TNBBBR villages have tried to use the multiple channels discussed in the previous sections without success and without much support from government-aligned NGOs. District and sub-district governments have no authority over the Park and therefore were resistant to raising issues around the park to the national government. Between 2009 and 2013, the communities set out to clarify their demands in a statement to the district government. The Epistema Institute and HuMa (social justice research NGOs) backed LBBT in this process and helped facilitate dialogue with all levels of government and increased understanding of the rights of communities. The petition was signed by over 2000 citizens of the five villages affected by the Bukit Baka portion of the park. It demanded that the district government: a) recognise and respect adat land; b) issue a regulation confirming as such; c) assist customary communities with developing their economic potential; d) facilitate the conflict over the park as a mediator between the community and Park Authority; and e) cease the issuance of permits to extractive industries, especially on *adat* land and conservation areas.

On May 5, 2014, after considerable pressure from Indigenous rights organisations and NGOs, the *bupati* (district head) of Melawi signed a letter to the Ministry of Forestry requesting the recognition of Indigenous territories as mapped in the participatory mapping exercises of 1998 to end the conflict and violence in the area. While the *bupati*'s letter is not legally binding, it suggests that under some pressure, articulations among multiple levels of government can change, and at least symbolically suggests some admission of the importance of public participation.

Prior to this, there had been no action on part of the district or local governments and even though all laws are under purview of scrutiny of the Regional Representative Council (Dewan Perwakilan Daerah- DPD) and People's Representative Council (Dewan Perwakilan Rakyat- DPR)⁸, no member had taken action despite repeated requests from the villages.

At the time of writing, there was no discernible result from the May 5 letter, but the head of Sungkup Hamlet, two activist

leaders, and a Catholic priest were funded by HuMa to travel to Jakarta to meet with the Centre for Forest Area Consolidation, the Directorate General of Forest Planning, and the Human Rights Commission. The Ministry of Forestry officials in Jakarta were perplexed by the letter and suggested that if the *bupati* were to issue a District Regulation (*Perda*) pertaining to the requirement for action, then they might be able to start looking at the situation, but they could do nothing with a letter. They also suggested that they had never heard of there being a problem with TNBBBR and the communities in the past.

By the middle of 2014, the villages are still hungry for action and have called upon a companion organisation to LBBT and the Indigenous peoples' rights organisation *Aliansi Masyarakat Adat Nusantara* (Indigenous Peoples Alliance of the Archipelago - AMAN) to elevate the discussion to national levels. They also called on the church-based *Perkumpulan Pancur Kasih* (PPK) to conduct mapping exercises of the customary lands in reference to park boundaries.

DISCUSSION

The communities are not against the concept of TNBBBR. They are supportive of protecting the forest, and much of the area under claim has been protected by customary law for hundreds of years, or at least "since before there was an Indonesia", as one leader put it. They are against their exclusion from decision-making over their customary land and against control over their forests by an alien entity.

Fraser (2009) frames justice as a matter of parity of participation. Therefore, exclusion from participation would be considered as an extreme injustice. Exclusion, as it is experienced by the villagers, is not exclusion from participating in benefits sharing, but exclusion from land control (see Peluso and Lund 2011). In this case, inclusion in benefits sharing would cement the exclusion from land control, highlighting that inclusion and exclusion are not binary conditions and that inclusion is not synonymous with positive results for communities (McCarthy 2010).

Lund (2011: 71-72) explains that the "processes of recognition of political identity as belonging and of claims to land and other resources as property simultaneously work to imbue the institution that provides such recognition with the legitimation and recognition of its authority to do so" (see also Li 2001). In the introduction of this paper, we posed a question based on Martin et al (2013) concerning the relationship between distributive and recognition justice. This case demonstrates that an acceptance of the distributive justice of benefit-sharing would serve to accept that the government will not recognise customary rights over the conflicted forest. The acceptance of distributional benefits is intertwined with the acceptance of the legitimacy of the government, which is antithetical to the recognition that the community seeks.

One might ask why— after more than 30 years of being designated as a nature reserve and 22 years after becoming a national park— has there been no evidence of more discontent among the villages if the park is really a problem. Government

officials at various levels explain the current conflict in these terms. They explain that the current generation does not agree with the former generation's decision to sign on to the park, and therefore have begun to protest, but the park had already been established with the agreement of the villagers. On probing, it is clear that from the perspectives of the villagers, the boundaries of the park had not been a problem until recently. Although the park was established on paper, community members continued to access the forest according to custom. Only because of the 2007 arrests and 2013 threats of arrest (both related to the lack of clarity around the park borders) have the villages been awakened to the fact that the park could serve to exclude them from the forest.

The 2007 arrests motivated the villagers to hold a demonstration in Nanga Pinoh, the district capital. After that the arrests and displays of intimidation of the communities by park officials (according to villagers as "armed guards who yelled violently"), there was a period in which there was no open resistance from villagers and the Park Authority also eased its confrontations of the communities. By early 2014, local activists and leaders said that "it is now safe to start again", meaning that they are prepared to ramp up their campaign and follow up with the several levels of government from whom they expect democratic representations.

Community members are clear on their opinions of the government at all levels. "They are killing us without blood", said one leader. A sub-district official understands this all too well. "They think that we just work with companies and take their land", he said, "that we are the enemy." As one traditional leader put it, "The national park [government] was too busy taking over traditional land." The communities have had no success in finding representation in their government, nor recognition of their customary land claims.

One sub-district leader captured the sentiments of many others by saying that the district government "has no idea what it is like here." Interestingly, that is the same argument that district leaders use to describe their relationship with the national and provincial governments, that they have "no idea what is happening in reality", citing other multi-level governance issues related to land use planning. As one village head explained, "the district government is like a tree with dead roots." He explains that the government continues to exist, but lacks a basis in the community and fails to serve community interests, especially against the powers of the Ministry of Forestry.

Similar disaccord exists between the Ministry of Forestry and Ministry of Internal Affairs in terms of legal recognition of Indigenous peoples. The Ministry of Forestry has requested a *Perda* as legal basis, but the Ministry of Internal Affairs has stated that the recognition could be formalised with a decree from the district head. These inconsistencies of requirements are perplexing to local communities (see Ministry of Internal Affairs Regulation No 52/2014 on guidance on the recognition and protection of Indigenous peoples). A Decree from the head of district (*Bupati*) is simpler to obtain because there is no need for consultation and consent from the district legislature, whilst

the *Perda* requires this consent and is therefore more difficult to obtain. Whether a district head decree or district regulation is required to make *adat* claims on forest remains unclear.

The refusal of the communities to co-operate with park authorities and WWF, and an active engagement with LBBT and AMAN can also be explained in terms of environmental justice. WWF and the Park Authority offer distributive justice by way of benefit sharing. On the one hand, it might be too little too late, but on the other, it fails to address the core concerns of the communities. LBBT and AMAN offer recognition and respect for customary authority as typified by responses from villagers describing that "they understand us." Sikor and Lund (2009: 10) explain that "claimants seek out socio-political institutions to authorize their claims, and the socio-political institutions look for claimants to authorize." In this way, the relationships between the communities and the Indigenous peoples' rights institutions are constantly negotiated through a process of the mutual search for legitimacy. This reciprocity is less evident in the relationships between communities and any of the levels of government, in which the government assumes its own legitimacy. The deliberate dismissal of state legitimacy by the communities is a source of constant frustration for all levels of government. The Park Authority initially responded by asserting its assumed legitimacy more strongly in the arrests of villagers, but has since regressed due to the more organised challenge that communities have put forth with the Indigenous peoples' rights organisation and NGOs.

CONCLUSIONS

At first, the customary leader who said, "They are killing us without blood" seemed sensationalistic. Neither he nor any other community members could explain what this might mean in a way that made sense to the researcher, yet he used the phrase repeatedly. There are few *de facto* limitations to forest access at the moment. Even though two people were arrested from Belaban Ella and some others were threatened, villagers continue to use the forest as they did, except that they had to move their farms to outside the park boundaries. The most risky activities are farming and obtaining timber. The customary leader who made this statement was not from a village that accessed timber, however, and his village still has enough farm land at the moment. Any activities undertaken in the park are done with some risk, but still done none the less. While in some villages, the "killing" includes livelihood deprivation through decreased access to good quality land and natural resources required to sustain families and derive incomes, it is much more than that overall. The "killing" refers to the lack of recognition of customary stewardship of, and control over, the land. This is a death of recognition through non-participation and failure of local government to represent the communities, creating a sense of invisibility and neglect. This has the effect of killing the spirit and killing their identity, which is intrinsically tied with the forest.

Recognition is denied in two primary ways in this case. First, is the procedural avoidance by the central government

of community participation in the creation of the park, as if customary users did not exist. Second, there is the failure of multi-level governance structures, which have a democratic responsibility to the communities, to advance customary claims to the central government. Combined, these denials of recognition constitute 'killing without blood'. The Indigenous peoples' rights NGOs and organisations that have been active with the communities over the past few years are stimulating the heartbeat of the villages by filling the void left by government. They are the vehicle through which the communities find recognition. The Constitutional Court rulings give a breath to that recognition: that one day they may be able to make a claim that the land is theirs and it will be accepted.

This analysis is germane not only to national parks, but also other land uses that have a mix of multi-level and central governance architectures. The case of TNBBBR is instructive in this regard. Recognition justice cannot exist where people do not have the opportunity to participate. People struggle to participate where governance structures ignore them by either an unwillingness or inability to advance community claims upward within the democratic structures. The highly technical nature of global notions of conservation and environmental protection projects makes them susceptible to rendering complex socio-political issues technical and thereby tending toward distributive justice rather than recognition justice (Ferguson 1994; Li 2007; see Büscher 2010). The drive toward results-based management prefers measurable and obtainable results that can be obtained within finite project timeframes. While participation of local stakeholders is often acknowledged in modern conservation and environmental protection projects, multi-level governance issues get more complicated as more layers of governance are added (Larson and Lewis-Mendoza 2012).

The challenge to project proponents and governments is to assess the extent to which they exacerbate or mediate recognition injustices and to reconceptualise notions of environmental justice. Within this assessment, understanding multi-level governance structures is paramount. Including only distributive benefits, which remains a point of contention in many conservation and environmental protection proposals and implementations, may undermine recognition justice and ultimately serve to further alienate communities living near forests. The solutions need not lie in the full decentralisation of forest management, but in securing a voice for forest users and a channel for communication to work its way up to decision-makers, enabling actors at various levels to question and challenge the Park Authority with some effect and to do so free of the threat of retribution. As movements for recognition justices increase in intensity, especially alongside global programmes such as REDD+ (Reducing Emissions from Deforestation and Forest Degradation) and considering the customary forest movements in Indonesia, it is exceedingly paramount to recognise the calls from local forest users to participate in the decisions about land over which they lay claim.

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NOTES

1. Article 5 of Law Number 5, 1960. Translation by first author.
2. Article 18B Paragraph 2.
3. In late 2014, the Ministry of Forestry was merged with the Ministry of Environment in the new Ministry of Environment and Forestry. This research was conducted under the old administrative structure. Therefore, we continue to use the old nomenclature, acknowledging the new name and structure.
4. This form of non-recognition is also seen in other areas of Indonesia, where maps scant on detail, work to the advantage of governments and serve to ignore or make unclear customary land claims (Li 2001).
5. In some villages, these representations have now been interpreted as incorrect by the leaders, and they submitted corrections to the Park Authority (*Balai Taman Nasional Bukit Baka Bukit Raya*) in 2012 without response.
6. All the villages in the park were mapped by a GTZ (now GIZ) project in the mid 1990s, but as a result of conflict in the area, the project offices, along with the maps, were lost to fire. The perpetrators of that fire are still unknown. The Belaban Ella map was facilitated directly by the Ministry of Forestry and was physically stored in the village and was therefore preserved.
7. Exact calculations are unclear because the national park boundaries are not clear.
8. DPD and DPR are parliamentary chambers of government.

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