Mimicry of the Legal: Translating de Jure Land Formalization Processes Into de Facto Local Action in Jambi province, Sumatra

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In Indonesia, as in many other countries of the global South, processes to formalize rights over land have been implemented with the intention to reduce deforestation, decrease poverty and increase tenure security. Literature on de jure processes of land formalization is widely available. There is a gap, however, on the discrepancy of de jure land titling procedures and de facto strategies to legitimize land claims. Led by the theoretical concepts of "law as process" and "politics of scale", this study closes this gap by analyzing the impact of national tenure formalization processes on de facto local patterns of land titling. Using empirical material from 16 villages in Jambi province, we show that the outcomes of the state-led land reforms and land tenure formalization processes are imitated and translated into locally feasible actions. We refer to these translation processes as "mimicry of the legal". The land formalization endeavors fostering mimicry of the legal allow for resource exploitation and rent-seeking behavior.

Keywords: Indonesia; Land Reform; Land Tenure; Mimicry of the Legal; Politics of Scale

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INTRODUCTION

In Indonesia, as in many other countries of the Global South, processes to formalize land rights have been implemented with the intention to reduce poverty and increase tenure security (De Soto, 2000; Sjaastad & Cousins, 2008, p. 8). In the context of increasing conflicts over land due to agricultural expansion and other development and infrastructure projects, the tenure formalization endeavors are seen as an opportunity to alleviate such conflicts. With an increasing pressure on communities and difficulties they experience in accessing land, the formalization of land rights seems to be an obvious step. The concept of using land titling as a tool to stimulate investments in order to eradicate poverty and to foster more sustainable land-use practices has been widely discussed, often controversially. Many studies focus on the benefits and disadvantages of property formalization with regard to land, as well as on hurdles to implement land registration programs (Benjaminsen, Holden, Lund, & Sjaastad, 2008; Bromley, 2008; Hall, 2013; Sjaastad & Cousins, 2008; Toulmin, 2008). Toulmin (2008, p. 10), in particular, points to the fact that securing tenure rights has become ever

more urgent, given the rising demand for land for purposes of large-scale cultivation.

An increasing pressure on land is notably prevalent on Sumatra, Indonesia. Rising demands for land occur especially in the context of large-scale monoculture cultivation as well as through the expansion of conservation areas. Transmigrants, an increasing number of independent smallholders, as well as investors from other parts of the country further contribute to a rising demand in land. Since the beginning of colonization, more than 15 million ha of Sumatra's forest land have been converted (De Kok, Briggs, Pirnanda, & Girmansyah, 2015, p. 29), often in the context of land-tenure formalization processes. These processes were, for example, realized through transmigration and titling programs initiated by the government and supported by the World Bank in combination with the intention to boost cash crops. The participants of these programs were granted formal land titles and often also seedlings with the obligation to cultivate a certain crop, usually rubber or oil palm. These contract farmers are bound to sell to mostly state-run processing facilities (McCarthy, 2009, p. 115). Today, about 70% of Indonesia's oil palm plantations are located on Sumatra[1] (Coordinating Ministry for Economic Affairs of the Republic of Indonesia, 2011, p. 53) and about 84% of Indonesia's smallholder rubber comes from the western island (Peramune & Budiman, 2007, p. 9). Sumatra also has the highest share of transmigrants resettled from densely populated Java, Madura, and Bali (Cribb, 2000, p. 57; Miyamoto, 2006, p. 8).

Indonesia's recent attempts to formalize land tenure have been pushed by the UN-backed Reducing Emissions from Deforestation and Forest Degradation (REDD+) mechanism. The national REDD+ strategy refers to the "constitutional right to certainty over boundaries and management rights for natural resources" (Indonesia REDD+ Taskforce, 2012, p. 18). The process of formalizing rights, which normally involves an amendment of the rights, can be complex when different phases of formalization occur consecutively or even simultaneously. Rather than fostering sustainable and socially inclusive growth, this complexity can create leeway for actors to develop their own interpretations of land tenure formalization processes. This leeway in turn encourages rent-seeking behavior as well as resource exploitation (Lund, 2008, p. 135).

While there is literature on the de jure procedures of issuing title deeds, on the institutions in charge, on land-use planning, and on the designation of protected areas in Indonesia (e.g., Sahide & Giessen, 2015), there is a gap in the literature on the links between de jure land titling procedures and de facto actions on the local level. This study closes this gap by analyzing the discrepancy between national land formalization processes and de facto local level dynamics of land titling. The article therefore starts by embedding the research in a theoretical conception, establishing the underlying understanding that the law is often not simply followed but imitated and translated on different scales. Translation here refers to de- and re-construction, that is, an adjustment of meaning. While making use of language and procedures as outlined in the initial law, meaning and application shift in the course of translation (Struve, 2013, p. 131). This translation is linked to, but is not congruent with, the national legislation: Starting with the pre-colonial period through the first major changes in

1 Indonesia is palm oil producer number one in the world.

tenure regimes under the Dutch and the major development interventions of titling programs that followed, we explore the history of land-titling programs in Indonesia.

Led by the concepts of "law as process" (Moore, 1978) and "politics of scale" (Brenner, 1998; Meadowcroft, 2002; Neumann, 2009; Swyngedouw, 2010; Towers, 2000; Zulu, 2009), we combine theory and empirical data from Jambi province, Sumatra, to shed light on a confusingly high number of different kinds of land titles in use and their relation to public authorities. We argue that actors – these are state representatives as well as farmers – translate fragments of national land formalization programs and regulations into local action. Drawing on concepts devised by international law (Bélanger, 2011; Drumbl, 2005) and post-colonial scholars (Bhabha, 1994), we call these processes "mimicry of the legal". In our case, mimicry refers to the translation of national law to local land tenure regulations embedded in power asymmetries (Bélanger, 2011, p. 25; Drumbl, 2005, p. 15; 123). In two case studies, we illustrate this mimicry process of national policies. The first case study analyzes the formation of the informal settlement *Transwakarsa Mandiri* (TSM) within a private conservation concession and REDD+ pilot initiative, while the second case study examines the general translational dynamics of village-scale land titling. The cases demonstrate that formalization of land tenure systems is not simply applied as predetermined, but is reinterpreted and translated by local public authorities and land users into a local reality. Local actors construct new village scales of regulation for facilitating access to land and property. By using fragments of national policies and regulations as well as language and symbols used by the central state, local public authorities seek to legitimize the exceeding of competencies and rent-seeking behavior. The ensuing empirical material leads to the conclusion that access to land is rather obtained by mimicry of the legal than by applying de jure procedures.

PROCESS-ORIENTED CONCEPTIONS OF LAND TENURE FORMALIZATION

This article analyzes the translation of national formalization endeavors into de facto processes of regulation on the local level. This implies that "rules enshrined in formal law provide only part of the picture" (Lund, 2008, p. 134). In *Law as Process*, Moore (1978) puts forward the idea that regulatory processes, including rules, exist to organize and stabilize uncertainties. At the same time, processes of situational adjustment redefine rules or relationships. Although social reality is impacted by national laws, it is also impacted by the socio-cultural context in which local actors live, making the law applicable to their local setting. We analyze regulatory processes of property making as existing orders that are "endlessly vulnerable to being unmade and reproducing themselves. Even staying as they are should be seen as a process" (Moore, 1978, p. 6).

We define property in line with Sikor and Lund (2010, pp. 3-5) as a social relationship to an object of value (e.g., rights to land legitimized by a public authority). Eventually, it is the local actors embedding normative rules of property making into their local reality. A land registration program, for example, can spark the motivation of people striving for a certificate. Smallholders might for certain reasons not be able to participate in a national land titling scheme or might lack the (financial) capacities to obtain a formal land title. Actors are aware of a national rights framework securing

claims over land, hence, turning it into property backed by the central government. The authority in charge of de jure acknowledgments and securing of land rights is a government institution. However, the perspective of local land users on what secures and legitimizes claims may differ. In addition, local authorities, in their multiple identities, can also have a different perception from that foreseen by the national legislators. According to Lund (2008, p. 135), actors

> develop certain readings of the law that may be technically [de jure] incorrect, though considered "the law" by the administrators and, in consequence hereof, by the local population. . . . What is commonly accepted as the reference point, the law, may in fact be a social construction that differs significantly from the normative law. The rule of law is often the rule by those who define it.

In line with Swyngedouw (2010), we assume that questions of access to natural resources, including land, can be further explained by analyzing the socio-spatial configurations of scales. We consider scale as socially produced, thus "as the outcome of socio-spatial processes that regulate and organize social power relations" (Swyngedouw, 2010, p. 8). Different public authorities construct different scales to acknowledge and secure rights. In frontier landscapes, public authorities with varying capacities and ranges of legitimacy compete with each other (Fold & Hirsch, 2009; Peluso & Lund, 2011; Tsing, 2005). They seek to constitute different – and often competing – land rights as property (Benda-Beckmann, Benda-Beckmann, & Wiber, 2009, p. 18; Sikor & Lund, 2009, p. 5). The legitimacy of public authorities in issuing land titles is in many cases characterized by "endless chains of reference to bigger authorities" (Lund, 2006, p. 693), and thus has a scale component. Authorities governing forests and land operate on different government levels and consequently create different – and sometimes overlapping – scales of regulation (Towers, 2000, p. 26). More explicitly, scales are shaped by actors while they are at the same time structuring the social practices of actors (Hein et al., 2015; Marston, 2000, p. 220; Towers, 2000, p. 26). Relevant scales of regulation that overlap and compete with each other are the village and the national scale. While the village and national scale compete with one another, the latter is at the same time structuring the village scale. When "actors . . . attempt to shift the levels of . . . decision-making authority or the level and scale which most suits them . . . [and] where they can exercise power more effectively" (Lebel, Daniel, Badenoch, Garden, & Imamura, 2008, p. 129), the literature speaks of politics of scale (Brenner, 2001; Towers, 2000). When actors are marginalized at a specific scale (e.g., the national scale), they might seek to "jump scales" to higher or lower scales in order to achieve their interest (Smith, 2008, p. 232; Zulu, 2009, p. 695). For example, in many parts of Indonesia it is almost impossible for peasants to access a land title or forest concession from the Ministry of Forestry or from the National Land Agency (NLA). Peasants consequently often jump to the village scale of regulation to legitimize land claims (Hein et al., 2015; Zulu, 2009, p. 695).

By acknowledging that rules are dynamic and that certain actors "jump scales", it becomes apparent that the regulatory processes used at the village scale are different from the formulation of these processes at the national scale. They are "almost the same but not quite . . . almost the same but not white" (Bhabha, 1994, p. 132). Bhabha

describes these processes as mimicry. Applying the term in the postcolonial discourse context, he sees mimicry as a strategy. Inherent to this strategy is a subversion and power potential. On the discursive level, mimicry works in a double way. On the one hand, specific aspects used by colonizers are turned into own, local aspects in a way that makes them look deceptively genuine. On the other hand, there is always something remaining that cannot be read in the "still not exact" or the "almost the same" (Struve, 2013, p. 144). Since the regulatory and legal aspects are central to the context of land formalization dynamics, we extend the term to "mimicry of the legal". Regulatory processes played out at, and amended between, scales is what we present in the following paragraphs, the outcome being what we refer to as mimicry of the legal.

METHODOLOGY AND FIELD SITE

In order to analyze asymmetries in the national de jure procedures of formalizing land ownership and de facto local land titling, a multi-sited qualitative approach was applied (Hein et al., 2015; Marcus, 1995). Through a literature review of government and academic documents, we gained an understanding of de jure land tenure formalization in Indonesia and, in particular, in our research area Jambi province, Sumatra. In addition, 75 expert interviews were conducted with national government representatives, local authorities, and representatives of NGOs between June 2012 and November 2013 to learn about the de jure perspective on land formalization processes at different times.

To study the village-scale processes of tenure formalization it was crucial to investigate a variety of villages that differ in their origin and in their locality. The research is part of a larger Collaborative Research Centre (CRC 990 on "Ecological and socio-economic functions on lowland rainforest transformations systems in Jambi province, Sumatra, Indonesia"). Core plot villages, around which all of the 24 research center groups work, were predetermined by the overall research design. In accordance with this design, we identified 16 villages (see Figure 1) from across Jambi province. Amongst them are transmigration villages and local resettlement villages as well as villages of pre-colonial foundations. Despite the heterogeneity of the villages and the fact that transmigrants are granted title deeds by the NLA, mimicry of the legal dynamics were found in all villages. The researched villages are all located in the proximity of protected areas managed by the state or by private conservation companies. The village territories of some villages (e.g., Bungku and Singkawang) overlap with state forest, with protected areas, and with the private conservation and REDD+ pilot initiative *Harapan Rainforest* (Badan Pengelola REDD+, 2014). Overlapping claims, (e.g., village-scale land titles competing with titles (concessions) issued by the Ministry of Forestry or by the NLA), are common for many of the villages investigated. Information on land tenure systems and land titling processes was mainly gathered through semi-structured interviews in all of the villages (119 interviews across all villages) between May 2012 and October 2013. Interview partners were selected following principles of snowball sampling and present a wide variety of affiliations: village representatives, customary leaders, independent smallholders, contract farmers, employees of companies, and the like. The interview focus was on differences in the local actors' perception of the intention as well as the motivation to obtain title deeds.

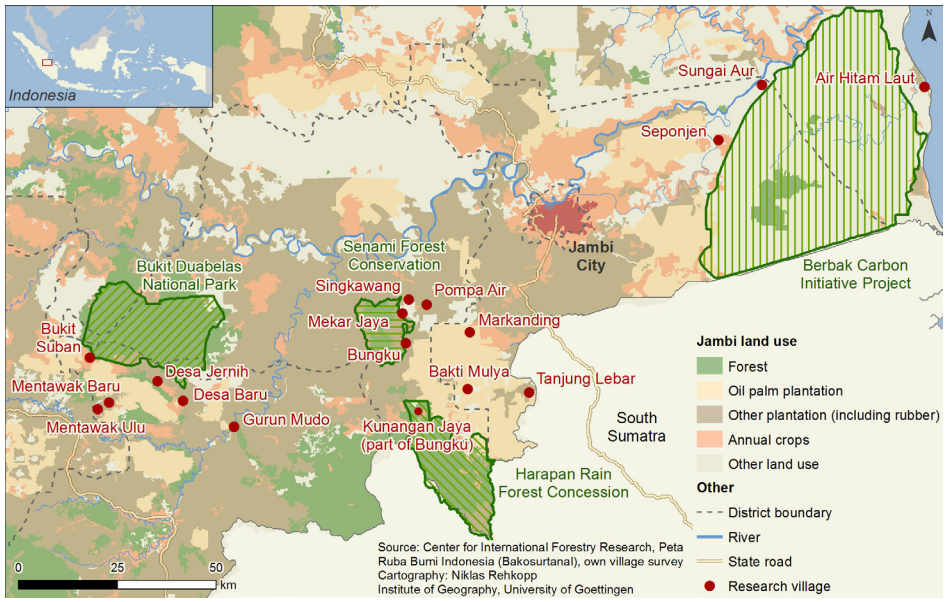


Figure 1. Research Area, Jambi Province, Sumatra, Indonesia.[2]

Information was also gathered through participatory observation and numerous informal interviews conducted while spending several weeks in the villages, usually in the household of the village head.

HISTORICAL DEVELOPMENT OF TENURE FORMALIZATION IN JAMBI, SUMATRA

The emergence of land formalization during the colonialization period does not imply that land tenure had been unregulated before the Dutch arrived in Indonesia. In precolonial times, it was the Sultan who was in charge of land and resource management regulations. The different ethnic groups (*Batin* groups) inhabiting the research area at that time were mostly given autonomy by the Sultan in their land decisions. Their elected chiefs were in charge of decisions made in regard to access to land as well as in regard to what the land could be used for (Locher-Scholten, 1994, p. 48). Land, during that time, was not an individual possession, but a common good that was guarded and preserved by the community (Warman, Sardi, Andiko, & Galudra, 2012, p. 17). The maintenance of the land was regulated through *adat* rules, the rules in use by indigenous communities. These *adat* rules permitted different *Batin* lineages to control land and forest along different rivers. The boundaries between different lineages were demarcated by water courses, specific trees, and other landmarks. Within the territory of a lineage, only lineage members were allowed to establish fruit gardens and dry rice fields (Hein et al., 2015). Migrants and other outsiders had to pay tenancy to *Batin* groups for accessing land (Tideman, 1938, p. 78). Amongst

2 Other land use here refers to acacia, eucalyptus, coconut, mangrove, ponds, primary and secondary swamp forest, rubber, settlements, shrubs, swamp, and tea.

these *Batin* groups are the *Batin Sembilan*, an ethnic group that has been living in the research area for generations. Until today, *Batin Sembilan* leaders are approached by land-seeking actors to be granted access to land. By acknowledging their authority as group in charge of land tenure, the access granted is legitimized at the village scale, however, not recognized at the national scale.

Colonization and Land Tenure

Western concepts of private property rights were introduced to the research area at the beginning of Dutch colonization when the first Dutch resident, Helfrich, was deployed to Jambi in 1906 (Locher-Scholten, 1994, p. 268). The Dutch colonial government sought to strengthen land control and started to enact regulations aimed at formalizing access to land and property rights. The Agrarian Act was issued for Java and Madura in 1870 and for Sumatra in 1874 (*Sumatra Domein Verklaring*). The main intention was to "facilitate the growth of private investment in the agricultural sector" (Biezeveld, 2004, p. 140) by establishing a concession system allowing mainly European companies to run plantations. Colonization imposed laws, land-use categories, and a Western concept of private property by imposing a jurisdictional system with implications for land tenure. In Jambi, the colonial jurisdictions undermined the previous water-shed and lineage-based social and territorial structure of the *Batin* groups. The Dutch colonial administration established the *Marga* as a new jurisdiction consisting of five to six villages, and the *Pasirah* as a new public authority responsible for land tenure of the native population within a *Marga*. The *Pasirah* remained a relevant public authority until the enactment of the village government law in 1979 (UU 5/79) (Galudra, Van Noordwijk, Agung, Suyanto, & Pradhan, 2014; Hein et al., 2015).

Independence and the Basic Agrarian Law

The independence period, commencing in 1945, was characterized by a dual system of land laws: Dutch land tenure regulations and customary rules. Until the enactment of the Basic Agrarian Law (BAL) in 1960, the dualism remained, mostly equipping non-Indonesians with land certificates for land that was mapped, measured, and titled. For Indonesian citizens, *adat* rules usually continued to be the legitimizing regulation that organized access to land (MacAndrews, 1986, p. 19).

The BAL sought to abolish this dualism mainly by revoking Dutch land laws. The basic principles, as outlined in these regulations, were based on the Indonesian Constitution from 1945, Article 33, stating that all land in Indonesia has a social function, and that land matters shall be controlled by the state as the authority representing the Indonesian people (MacAndrews, 1986, p. 21). The BAL was passed under the first president Sukarno and can be considered as an important element of his idea of an Indonesian socialism. By introducing a maximum size for land holdings (20 ha) and a redistribution of land to landless or poor households, the law aimed at promoting agrarian justice. The BAL further set out the fundamental types of land rights, the most important ones for our context being the right of ownership (*hak milik*) and the right to cultivate (*hak guna usaha*). The right of ownership needs to be registered with

the NLA, and the holder is given a certificate as evidence of the title (OECD, 2012, p. 109). Article 19 of the BAL made land registration through the NLA mandatory, but set no time limit for registration. This means that all landholders should hold a certificate issued by the NLA, indicating that the landholder is legally granted the right to own (*hak milik*). The empirical data to be presented in the case studies show that this mandatory registration is widely interpreted, mimicked, and subject to shifting levels of decision-making.

New Order and the Economic Development Paradigm

Sukarno's 'Guided Democracy', during which most of the provisions from the BAL were not operationalized, ended with a military coup and made way for the New Order government under general Suharto in 1965 (Thorburn, 2004, p. 37). The new policy narrative that came with the military-led government was characterized by export-led economic growth and development (Barr, 2006, p. 23; Rachman, 2011, p. 43). For Jambi province, this meant that vast areas of the province were designated as concessions for forest exploitation, thus neglecting the rights of local indigenous communities such as the *Batin Sembilan*. In order to achieve these development goals, a number of laws and programs, often closely or directly linked to land formalization processes, were implemented or passed during a 32-year period of a centralized and authoritarian government.

The Transmigration Program

The transmigration program in Indonesia is the largest government-sponsored voluntary resettlement scheme in the world (World Bank, 1988, p. iii). People had already been moved from densely populated islands such as Java and Bali to less populated areas such as Jambi by the Dutch Colonial Administration (*Batang Hari Delta Kolonisatie Project*) (Sevin & Benoît, 1993, p. 105). This program was continued under president Sukarno with the intention of equipping landless farmers with land, but it gained momentum during the New Order regime and Suharto's strive for development. The program contained "provisions for land development, basic infrastructure, selection and transport of settlers to the sites, housing, subsistence packages, and supporting agricultural services" (Sevin & Benoît, 1993, p. 555). The Directorate General of Transmigration, in cooperation with the Directorate General of Agrarian Affairs, was to provide each transmigration household with right-to-use titles (*hak pakai*) for their house, the land that was ready for cultivation on arrival, and the land to be set aside for other cultivation purposes. After a total of five years on the site, households would be granted full right of ownership titles (*hak milik*) issued by the NLA (World Bank, 1979, p. 33). For Jambi province, where 70,000 households were moved to under the transmigration program between 1967 and 1995, this would translate to a total area of approximately 438,000 ha equipped with de jure title deeds (Miyamoto, 2006, p. 8). Participants of a sub-program called *Swakarsa* received, compared to the 'full transmigrants', 'only' a plot titled by the NLA and subsidies for relocation (Fearnside, 1997, p. 3). The term *Swakarsa* plays a major role in the mimicry dynamic of the first case study.

Forestry Laws and the National Land Agency

In addition to the transmigration program, the newly established Basic Forestry Law (BFL) of 1967 initiated major changes in land tenure regimes during the Suharto period. Under the BFL, the Directorate General of Forestry within the Ministry of Agriculture (later upgraded to the Ministry of Forestry) has the so-called one-sided authority to designate forest areas, regardless of the vegetation cover of a certain area. With this newly acquired authority, more than 140 million ha of forest land or approximately 74% of the land mass of Indonesia fell under the jurisdiction of one ministry (Indrarto et al., 2012, p. 23). Indigenous and local communities were disappropriated and their land became part of state forest land (*kawasan hutan*), and thus eligible for corporate exploitation via a concession system (Contreras-Hermosilla & Fay, 2005, p. 9). For local communities, it is close to impossible to receive a land certificate for state forest land. Nevertheless, as the case studies show, local land users in state forest areas hold de jure title deeds for the land they cultivate.

The NLA, formerly the Directorate General for Agrarian Affairs, governs land use and land tenure for non-forest areas while the Ministry of Forestry governs the area assigned as forest land (Hein, 2013; Indrarto et al., 2012). In terms of land formalization processes and rights of ownership to land, this dual structure has major implications: The BAL does not apply to forest land, thus right of ownership land certificates issued by the NLA only apply to non-forest land. The NLA is responsible for the administration of all non-forest land activities, including land reform, land use, land titling, and land registration (OECD, 2012, p. 109). The local reality, as to be presented in the cases later on, differs. Titles are issued on forest land and titles are also issued by institutions different from the NLA. According to the NLA, the two most common ways to acquire right of ownership land titles outside the transmigration program are sporadic and systematic registration. Sporadic registration is the process that identifies, adjudicates, and registers rights of ownership to land on an ad hoc basis, usually when walk-in customers approach the NLA and request registration of their parcel regardless of the intentions of their neighbors in this regard. Systematic registration identifies, adjudicates, and registers rights to all adjacent land parcels in a selected locality and within a given period of time (World Bank, 2002, p. 3). As one of the case studies shows, in a process of mimicry the term sporadic is reinterpreted with a new meaning at the village level.

In the process of obtaining a land certificate, the role of the village head (*kepala desa*) is crucial. Based on Government Regulation 24/1997, it is mandatory to have a proof of ownership signed by the village head in case no other written proof exists. Article 7 of Government Regulation 24/1997 further authorizes the village head to be in charge of land deeds in peripheral areas without a Land Title Registrar (*Pejabat Pembuat Akta Tanah*, PPAT). These regulations and the powers given to the village head are widely played out in local reality land titling processes. As to be seen later on, the village head is regarded as a legitimized authority in the context of issuing land titles. Again, the competency exercised by the village head is not exactly what the national regulations indicate, but they are "still not exact . . . but almost the same" (Bhabha, 2000, p. 122).

MIMICRY OF THE LEGAL IN JAMBI PROVINCE

Despite the efforts to foster land formalization in the previous decades, only a very small number of smallholders hold de jure certificates. "Only about 45 percent of the 85 million existing parcels [all over Indonesia] are registered, but most of these registered parcels are not yet mapped" (Deininger, Augustinus, Enemark, & Munro-Faure, 2010, p. 11).[3] Nevertheless, most of the interviewed smallholders state that they do hold land titles. How does the local reality match the statistics as recorded by the NLA and the National Statistic Office? Local actors have established their own titling system, imitating the national juridical system but based on locally relevant scales of regulation, such as village territories. Even though this system looks arbitrary, it is not: It follows a complex pattern of translation from national conception to local feasibility.

Adding to the complex regulatory framework, access to de jure formal tenure is easier to obtain for certain groups (e.g., transmigrants) than for spontaneous migrants or groups inherent to the area.[4] This disequilibrium has been translated into a more feasible local set of rules. Two cases illustrate the mimicry of the legal as a local translation of national formalization processes. The first case is the formation of a particular informal settlement within state forest land and the way of formalizing its existence; the second one is a type of title deed that was found in all villages, by the name *Sporadik*.

Mimicry 1: The Formation of *Transwakarsa Mandiri*

The forests of Kunangan Jaya have been used for shifting cultivation, hunting, and gathering activities by the semi-nomadic *Batin Sembilan* since pre-colonial times. In the 1970s and 1980s, the area became part of the logging concession of PT Asialog and of the oil palm concession of PT Asiatic Persada. As a consequence, some *Batin Sembilan* families were displaced and shifting cultivation was prohibited. Yet, a few families resisted and have remained in the area. The formation of the *Transwakarsa Mandiri* (TSM) settlement in the hamlet of *Kunangan Jaya* of Bungku village can be considered as an active spatial strategy of *Batin Sembilan* elites, village elites, and district elites to regain full control over land that had been used and owned by the local population prior to Suharto's appropriation policies.

The settlement can be considered as a mimicry of the legal national resettlement policies such as the transmigration program or the program for 'underdeveloped villages' (*Impress Desa Tertingal*, IDT). National policies are structuring in-situ access and property relations and providing them with legitimacy. The mimicry of legal policies, legal procedures, and narratives are used to legitimize and justify settlement formation and hence forest conversion. The name of the settlement, *Transwakarsa*

3 Unfortunately no data is available for Sumatra or Jambi province in particular.

4 Worth mentioning here is the Constitutional Court Decision MK35 from 2012 (Mahkamah Konstitutsi Nomor 35/PUU-X/2012) declaring that customary forest must no longer be subsumed under state forest. Instead, customary forest has been changed to a category of "forests that are subject to rights". Once implemented, this would allow indigenous groups to be granted ownership rights for parts of their customary forest land.

Mandiri, refers to the state-backed *Swakarsa* transmigration program, even though the TSM settlement has officially no relation to this program and none of the settlers has ever received any support from the transmigration authorities (Hein, 2016). The formation of the TSM settlement in 2003 can be traced back to an agreement between a *Batin Sembilan* leader living in the district capital of Muaro Bulian, a Javanese teacher and second-generation transmigrant, and the former village head of Bungku (Pak Kumis [pseudonym], 9 September 2012; 10 July 2013). The former village head of Bungku married into a *Batin Sembilan* family and claims to represent the formal village government and customary authority at the same time (Hein et al., 2015; Mardiana, 2014). The three leaders started the formalization process by requesting a forest conversion and settlement permit from the logging company PT Asialog (Pak Kumis, 9 September 2012; 10 July 2013) that stopped logging activities in 1997. PT Asialog refused to issue a permit, delegating it to the Ministry of Forestry as the authority in charge. They applied for a permit from the Forestry Service office in the district of Batanghari but never received a formal permit. Instead, the Javanese teacher Pak Kumis claims that he received a permit from the district head to establish a farming group for converting forests into smallholder rubber plantations. It is impossible to verify this claim; nevertheless, it seems likely that the TSM project was supported by district officials since the settlement became de facto legalized through support given by the Agricultural Agency of the district of Batang Hari (smallholder from Bungku, 10 July 2013). The Agricultural Agency provided agricultural extension services for the settlers, such as fertilizer, soy, and corn seeds. Today, the elementary school in the settlement receives operational support from the district's education agency, further legitimating the settlement. For legalizing individual land claims, the village government of Bungku issued village-scale land titles.

The formation of the TSM settlement had, according to the three leaders running the project in the first place, three objectives which were all in line with objectives of the transmigration program. The settlement should provide land for landless households, create welfare, and reduce unemployment. Additionally, it aimed at supporting poor *Batin Sembilan* households. As the program for 'underdeveloped villages', the three leaders claimed that encouraging the *Batin Sembilan* to be sedentary and teaching them "modern farming techniques" would support them in reaching "development". Following the central transmigration program, migrants participating in the TSM program should act as model farmers for local semi-nomadic groups (Pak Kumis, 9 August 2012). However, during field research in 2013 only 20 *Batin Sembilan* households lived in the settlement and only five to nine houses for *Batin Sembilan* had been built by the program.

To access land, villagers had to pay a development or administrative fee of approximately IDR 700,000 to 1,000,000 per ha (USD 55 to 80) (smallholder from Bungku, 24 August 2013). As a local indigenous group, *Batin Sembilan* were considered as previous legitimate land owners. Thus, they received the plots free of charge. The fee for migrants was meant to finance public infrastructure such as roads, electricity supply, and housing for *Batin Sembilan* and for an elementary school (Hein et al., 2015). By using the term development fee, the organizers of the TSM settlement concealed the fact that the land was actually sold. As land trade is not in line with the principles of the state-backed transmigration program, the concealment of this fact in particular

and the whole formation of the settlement in general can be considered a strategy of mimicking de jure processes of the transmigration program.

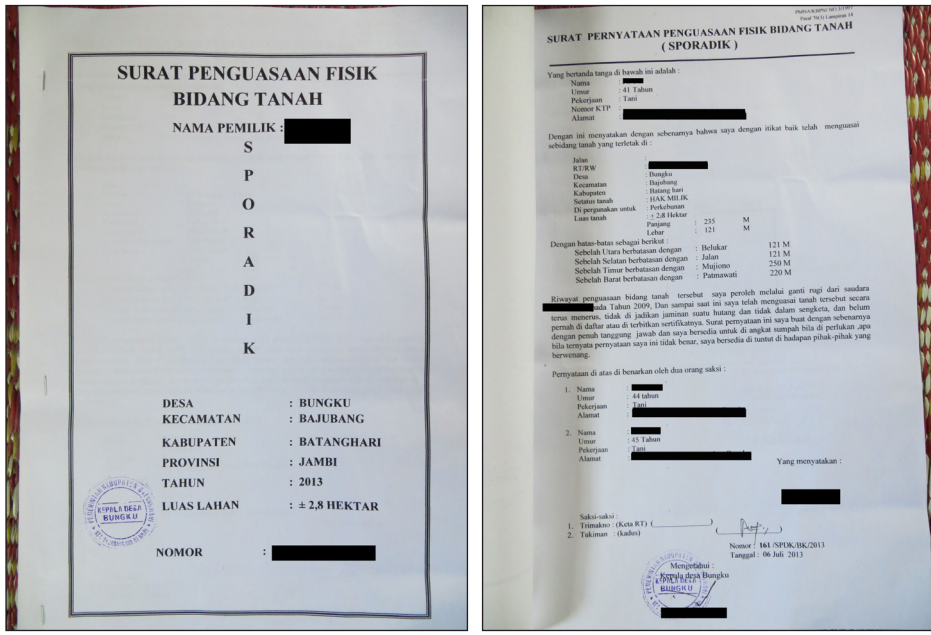
Settlement formation and road construction started in 2004. In 2010, the conservation company PT REKI received a conservation concession from the Ministry of Forestry and started to implement the Harapan Rainforest project. The concession includes the area of the TSM settlement. During the same year, the conservation company, supported by the forest police and the mobile police brigade BRIMOB, entered the settlement and announced that the settlers had to leave the area within two months (smallholder from Bungku, 24 August 2013). Most of the settlers left only temporarily and returned after the police operation ended. In 2011, a participatory mapping process started, involving PT REKI, the district and provincial forest service, the Ministry of Forestry, the village government, and representatives from the settler community. At the time of field research in 2012 and 2013, the situation was calm but the conflict was not yet resolved.

Many key informants in the settlement reported that they felt betrayed by the organizers of the settlement arguing that they were not aware of the fact that the settlement was located within state forest land. A *Batin Sembilan* elder living in the settlement complained that the TSM settlement has not created benefits for his family or other *Batin Sembilan*. He argued that they have lost most of their customary land to Javanese, Sundanese, and Minangkabau migrants and the remaining land is too small for providing a livelihood for their children (smallholder from Bungku, 24 August 2013).

The formation of the settlement has been facilitated by two scalar strategies. First of all the actor coalition 'jumped' to the district scale for formalizing and legitimizing the settlement and agricultural practices within state forest. They circumvented the Ministry of Forestry by requesting support from the Agricultural Agency of the district of Batang Hari. The settlement as such was constructed as a new scale of regulation which has been reproduced by migrants requesting land. Regulations for the settlement and the name of the settlement imitated national polices and laws on transmigration and tenure formalization for further legitimizing the conversion of state forest.

Mimicry 2: Sporadik – A Title in the Name of a Process

The second case exemplifying translation of de jure processes of obtaining a title into local reality by mimicry of the legal is the application of the term *Sporadik*. Data reveals that amongst all 16 villages visited, peasants secure tenure and gain access to loans by using a title deed referred to as *Sporadik*. Even though a high number of different titles in use was found (e.g., *segel*, *surat jual-beli*, PRONA, SKT, SKTT), *Sporadik* seems to be the most common proof of ownership amongst local actors and was considered the strongest village-scale land title by key informants. According to interview partners, the *Sporadik* (see Figure 2) is a tenure proof of land which is measured, while the measurements need to be approved by witnesses (smallholder from Gurun Mudo, 5 July 2013).



SURAT PENGUASAAN FISIK
BIDANG TANAH

NAMA PEMILIK : [redacted]

S
P
O
R
A
D
I
K

DESA : BUNGKU
KECAMATAN : BAJUBANG
KABUPATEN : BATANGHARI
PROVINSI : JAMBI
TAHUN : 2013
LUAS LAHAN : ± 2,8 HEKTAR

NOMOR : [redacted]

SURAT PERNYATAAN PENGUASAAN FISIK BIDANG TANAH
(SPORADIK)

Yang bertanda tanga di bawah ini adalah :
Nama : [redacted]
Umur : 41 Tahun
Pekerjaan : Tani
Nomor KTP : [redacted]
Alamat :

Dengan ini menyatakan dengan sebenarnya bahwa saya dengan itikat baik telah menguasai sebidang tanah yang terletak di :

Jalan : [redacted]
RT/RW :
Desa : Bungku
Kecamatan : Bajubang
Kabupaten : Batang hari
Setatus tanah : HAK MILIK
Di pergunakan untuk : Perkebunan
Luas tanah : ± 2,8 Hektar
Panjang : 235 M
Lebar : 121 M

Dengan batas-batas sebagai berikut :
Sebelah Utara berbatasan dengan : Belukar 121 M
Sebelah Selatan berbatasan dengan : Jalan 121 M
Sebelah Timur berbatasan dengan : Mujiono 250 M
Sebelah Barat berbatasan dengan : Patmawati 220 M

Riwayat penguasaan bidang tanah tersebut saya peroleh melalui ganti rugi dari saudara [redacted] pada Tahun 2009, Dan sampai saat ini saya telah menguasai tanah tersebut secara terus menerus, tidak di jadikan jaminan suatu hutang dan tidak dalam sengketa, dan belum pernah di daftar atau di terbitkan sertifikatnya. Surat pernyataan ini saya buat dengan sebenarnya dengan penuh tanggung jawab dan saya bersedia untuk di angkat sumpah bila di perlukan apa bila ternyata pernyataan saya ini tidak benar, saya bersedia di tuntut di hadapan pihak-pihak yang berwenang.

Pernyataan di atas di benarkan oleh dua orang saksi :

1. Nama : [redacted]
   Umur : 44 tahun
   Pekerjaan : Tani
   Alamat : [redacted]
2. Nama : [redacted]
   Umur : 45 Tahun
   Pekerjaan : Tani
   Alamat : [redacted]

Yang menyatakan :

[redacted]

Saksi-saksi :
1. Trimakno (Keta RT) ( )
2. Tukiman (kadus) ( )

Nomor : 161 /SPDK/BK/2013
Tanggal : 06 Juli 2013

Mengetahui :
Kepala desa Bungku
[redacted]

Figure 2. Sporadik Title in the Village of Bungku. (photo by J. Hein).

> If we want to obtain a *Sporadik*, our land has to be measured, we have to report the location of the land to the village head, the bordering plot owners have to approve the information and the *Sporadik* can be issued. (smallholder from Desa Baru, 21 August 2013)

In some villages it was reported that the *Sporadik* was signed by the village head and in others by the sub-district head (see Figure 3). The de jure certificate, in contrast, is only valid if signed by the NLA. The mimicked *Sporadik* provides detailed information on the landholder, the size of the plot, and the location of the plot (Figure 2). It further contains the names and addresses of two witnesses confirming that the holder of the *Sporadik* is the person owning this land. It also indicates the type of right, in this case the right to own (*hak milik*). Several interview partners also reported that the *Sporadik* can be used as collateral to obtain a loan from a bank.

According to the NLA, a *Sporadik* is the process by which a single person obtains a land certificate without being part of a program (NLA representative in Jakarta, 15 August 2013). This is opposed to the process of *Sistematik*, in which a group of people hand in a bundled application to certify a certain number of plots. Both processes result in de jure land certification issued by the NLA (MacAndrews, 1986, p. 28) (see Figure 3). From the perspective of local actors, *Sporadik* is a proof of ownership and not a process. This proof of ownership is less binding than a certificate. It is, however, binding enough for the holder not to strive for more. Most interview partners holding a *Sporadik* do not see their land tenure as insecure and are not planning to buy an official NLA certificate soon.

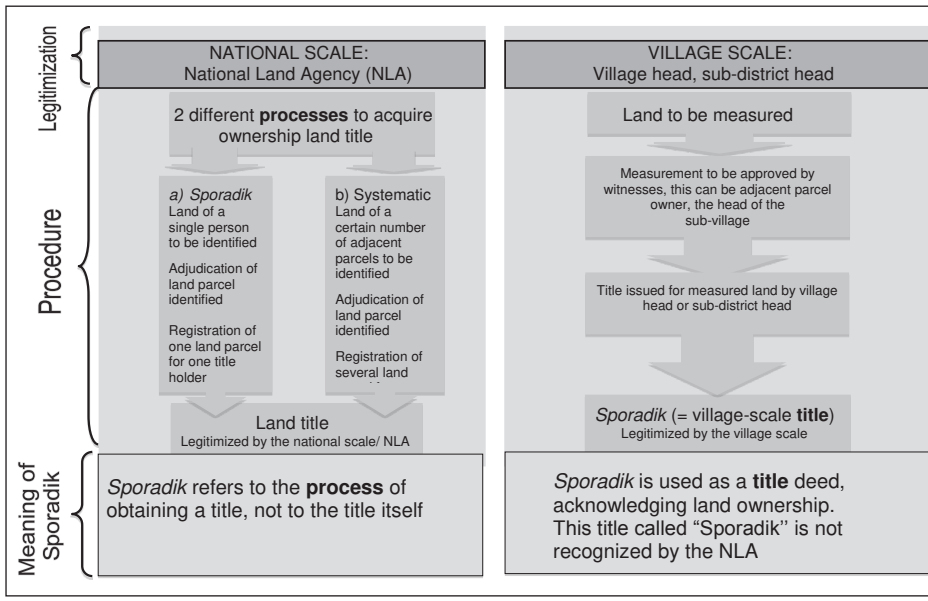


Figure 3. Sporadik in Perspective. (own illustration).

Interestingly, experts (local government officials, representatives of state-owned companies, and local NLA offices) during interviews also referred to *Sporadik* as a certificate proof of ownership, which allows the holder to borrow money from the bank. It mimics the legal certification by imitating the procedures for obtaining a land certificate issued by the NLA in using vocabulary and tools which the NLA uses. The certificates are issued and signed by the village head, most probably due to the crucial role given to the village head by the earlier mentioned Article 7, Regulation 24/1997. The fact that local banks accept the *Sporadik* as collateral on loans, as is the case for de jure land certificates, displays the de facto power of the translation process.

In two villages, it was reported that a *Sporadik* was issued as a title for plots within the boundaries of state forest land. According to national law, this is not possible since right of ownership titles cannot be issued for state forest and since the *Sporadik* is not a title itself but the procedure to obtain a title through the NLA. This further displays mimicry of the legal under the precondition that law is a process: A title which is de jure not a title on a piece of land that cannot be owned by an individual is issued by a political authority not legitimized to issue titles. And still, most parties at the village scale consider the right as legitimate.

The reason why titles are obtained by mimicry of the legal and not through the de jure procedures does not seem to be a lack of knowledge on the side of local actors. Local actors are well aware that it is actually the NLA that is in charge of issuing land ownership rights through a land certificate. It is rather an issue of access: The high costs of obtaining a land certificate, the distance to the national offices, and limitations imposed by the Ministry of Forestry seem to be a motivation for imitating the procedures in a locally feasible manner. "People prefer *Sproadik* as it is cheaper and it is not to be applied for by an office far away" (farmer from Gurun Mudo, 5 July 2013).

Local public authorities benefit from this mimicry as the *Sporadik* does not come free of charge.

The interplay of scale, land tenure regulations, and modes of production are worth mentioning. Even though it is usually the NLA issuing land certificates, supported by local documents, the highest political scale, that is the national scale, is simply left out by smallholders. This new village-scale of land tenure regulation fits perfectly to one of the dominant modes of production, namely smallholder oil palm and rubber cultivation. Pre-existing modes of production such as shifting cultivation have been regulated by lineage and water-shed scales of regulation. Tree crop cultivation has contributed to the transformation of lineage-based property to individualized and commodified property. The *Sporadik* title provides a minimum of tenure security and access to loans – both are relevant for farmers entering tree crop production (Hein et al., 2015). Local public authorities respond to this demand by producing village-scale titles and smallholders re-produce a village-scale of land tenure regulation through 'scale jumping'. This combines mimicry of the legal and active scalar restructuring, since village authorities have expanded their competencies in legal and in spatial terms through issuing land titles.

CONCLUSION

Processes of land tenure formalization have been initiated by many colonial and post-colonial governments in the Global South. Multilateral organizations such as the World Bank have promoted land tenure formalization and the allocation of land titles as important means to rural development. Empirical data from the case study villages in Jambi province, Sumatra, reveal tenure procedures and title deeds adjusted to the local context through mimicry of the legal. The material shows that laws in regard to access to land which seem unrealistic to obey are an invitation for local actors to mimic. All villages under investigation have established their own local titling system. Village authorities have successfully installed village-scale land tenure regulations accepted by local smallholders and by the local NLA offices. Only in transmigration villages do the majority of inhabitants hold a national juridical title deed. The land provided through the transmigration program does, however, not seem to be sufficient any more, leading inhabitants of transmigration villages to seek to expand the land under cultivation. By doing so, the transmigrants also engage in obtaining land titles, mainly *Sporadik*, further stabilizing the village scale of land tenure regulation. In some villages, *Sporadik* titles are issued for land within state forest and within the private conservation initiative Harapan Rainforest, indicating that property rights legitimized by village governments and by the national government, and entangled with different scales of regulation, compete with each other. Banks accepting *Sporadik* documents as collateral for loans are a strong hint of how the de facto local title deeds are regarded as a legitimized claim by a wide range of actors.

The reasons for mimicking national laws seem to be manifold and might not have been exhausted completely in this study. Unclear and overlapping competencies might be one reason. The role and the power granted to the village heads indicate that local authorities are exceeding their competencies. At the same time, local land owners legitimize the exceeding of competencies through requesting village-scale titles.

For land users, it is cheaper, less time consuming, and sufficiently secure to obtain a title through the village head. The majority of the actors involved on the local level do not seem to see the rationale behind the land titles issued by the NLA. Only an opportunity to be eligible for a higher loan by the bank seems to legitimize the certificate issued by the national scale. However, since the banks legitimize these competencies, legitimization for the translated procedures is further strengthened. Additionally, it seems to be a privilege of companies to get access to forest land through concessions. Mimicry then seems to serve as a subversive strategy to gain access to forest land in an asymmetric relation that otherwise restricts this access.

Mimicking the national law provides land titles and enables land use where it would not be possible according to the central state. The village-scale titles provide actors with less financial resources to access property rights legitimized by state actors providing tenure security and access to bank loans. The consequences of the mimicry on the local level, however, remain the creation of leeway for rent-seeking behavior, since the mimicked *Sporadik* titles are bought from the village heads and sometimes district heads. What also remains is a flexibility in regard to land use that allows for an exploitation of the landscape and accelerates the expansion of small-scale agriculture in the forest frontier areas of rural Indonesia.

A situation in which rules are used, abandoned, bent, reinterpreted, and sidestepped is inherent to rule systems. That this happens through imitation of de jure legal systems, while at the same time jumping scales and producing village scales, adds to the complexity. In the case of Indonesia, massive amounts of money have been invested to accelerate national land formalization processes. But still, until today, for vast areas the local reality remains a mimicry of the legal. In the future, it will be worthwhile to monitor the developments under the REDD+ strategy. The strategy refers to the constitutional rights over clear boundaries of natural resource management rights. Crucial for smallholders holding a *Sporadik* title will be whether a village-level land title is accepted as a natural resource management right by the national government in the context of the REDD+ readiness process.

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