

- Investors who exploit natural resources have the right to obtain benefits equal to the benefits obtained by government and indigenous peoples.
- The EIA process must include all of these three groups of stakeholders if it is to be effective.

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References

- Canter, L.W. 1996. *Environmental Impact Assessment*. Second Edition. New York: McGraw-Hill.
- Hadi, P.S. 2009. *Aspek Sosial AMDAL: Sejarah, Teori dan Metode*. Yogyakarta: Gadjah Mada University Press.
- Leknes, E. 2001. "The roles of EIA in the decision-making process". *Environmental Impact Assessment Review* 21: 309–334.
- Republic of Indonesia. Government Regulation No. 27/2012 on Environmental Permits.



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Forest Register 45 Mesuji Lampung: Agrarian Conflict, Social Exclusion and Human Rights Violations

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The continuing agrarian conflict in the area generally known as "Forest Register 45 Mesuji Lampung" (herein, "Register 45") engenders many implications regarding the former economic orientation and agrarian policy of Indonesia. The establishment of various sectoral laws such as the Plantation and Forestry Laws has implications for the increasing variety of rules on the management of agrarian resources. During the era known as the "New Order",¹ agrarian policy in the forestry sector gave rise to the exploitation of forest resources. Acquisition of land through the application of these rules was implemented according to the types of rights over land and natural resources that were involved. Among the types of rights that have been introduced since the New Order era are the following: Rights of Use, Forest Concessions, Industrial Timber Concession Rights and Mining Work Contracts (Nurjaya, 2005). This article raises two issues in the context of the conflict in Register 45 and how political exclusion and the consequent human rights violations have affected citizens in the area it encompasses.

Background

The Forests of Register 45

The economic crisis at the end of the 1990s was an important period in the history of forestry in Indonesia. The Center for International Forestry Research (CIFOR) shows that significant impact occurred with regard to the dynamics of the forestry sector from 1997–2003, which are the years immediately before and after the end of the New Order regime. It was a period during which the

authority of the security apparatus and law enforcement agencies greatly declined, as a result of the spread of the political crisis from Jakarta to the regions. Political turmoil during that time also ignited the courage of those people who desperately needed farmland to survive to cultivate on plantation and forest land, *etc.* However, the era also saw the neglect of land particularly where rights holders did not have working capital to cultivate their lands (Sodiki, 2004).

In many forest areas including Lampung, conflict arose with regard to management access. One of the longest running forest management conflicts in Lampung involved the production forest area that has come to be known as "Register 45". Located in the Regency Mesuji, Register 45 encompasses an area that was originally 33,500 hectares, but has been expanded by later decisions, as noted below. Its boundaries were definitively measured and demarcated in 1985. By formal decree,² the Minister of Forestry gave PT Sylva Inhutani Lampung (SIL)³ the right to manage an industrial forest area of 43,100 ha in the Register 45 area. Following the decree, SIL began commercially planting acacia trees in this area (Wahab, 2012).

Economic Crisis

The economic crisis at the end of the 1990s was important in the history of forestry in Indonesia. This occurred before and after the change of the New Order regime and led to a shake-up among companies in the forest sector, where much of the land in forest concession areas was neglected or abandoned. Many companies found it necessary to slow down their respective business activities. Conflict was triggered during this period due to the entry of farmers into the registered production forest areas.

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The authority of security forces and law enforcement agencies had fallen sharply. Political events in Jakarta coincided with burning and riots. Looting spread to the regions, as well. The political rhetoric of the time stated that this turmoil also emboldened the people to enter the lands dedicated to plantations, forestry and other activities. Undoubtedly, it made their lives difficult, and encouraged them to create their own work and livelihoods on lands that were considered abandoned, including lands within the forest area. This phenomenon also occurred in Lampung and the Register 45 area, where agrarian conflicts emerged with regard to natural resource management.

As the holder of the Industrial Forest Plantation Permit (HPHTI)⁴ on Register 45, SIL was also feeling the impact of the economic crisis and responded with virtual land abandonment, which gave birth to another Ministerial Decree⁵ revoking SIL's HPHTI and also stipulating that the Register 45 forest area was 43,100 hectares. SIL was deemed unfit by virtue of its record on carrying out forest plantation development activities, both from a technical and financial standpoint, such as not fulfilling its financial and other obligations in accordance with applicable regulations. Among other things, since 1999, SIL has never submitted any Annual Work Plan or Five-Year Plan (Wahab, 2012)

In 1997, a group of farmers, also impacted by the economic crisis, began to enter into and cultivate the Register 45 area, one by one. Eventually, this incursion became rather massive. The farmers managed and developed the land, primarily by planting cassava and rubber, and keeping animals, for subsistence and also to amass enough money to eventually enable them to build residences and settlements. In general, these tenants still inhabit the area of Register 45.

The group of farmers working in these areas are mostly from three major ethnic groups: people of Java, people of Bali, and other tribes. Most of them came to the area from transmigration areas in the province of Lampung. These areas have come to be known as "self-help villages", of which there are five, namely Moroseneng, Morodadi, Morodewe, Suka Makmur and Asahan. Among other things, these communities have independently established various public facilities, as well as building roads to connect groups and hamlets and to transport crops.

Forest Conflict

In 2004, SIL again obtained a Ministerial decree⁶ granting them permission to operate their concession. The return of SIL's licence had consequences for the Moro-Moro citizens that were resident in the Register 45 area. Conflict began in 2006, when these Moro-Moro citizens began to be challenged. Since then, repeated repressive actions involving security forces and various *Pam Swakarsa*⁷ units have occurred, in an attempt to expel Moro-Moro citizens from the area. Given that these efforts have not produced their intended results, the conflicts continue.

The people living in the Register 45 area have been branded by the government and media as "forest squatters" and "illegal" residents. As a result, in addition to suffering from the conflict, their constitutional rights as citizens have been neglected. For example, as discussed below, they have not been issued a National Identity Card (KTP)⁸ or other documents, have experienced a loss of political rights in each election, and have not been given adequate access to education and basic healthcare.

From its initial focus on access to the disputed forest areas, the conflict over Register 45 has spawned a variety of socio-juridical issues. Several different kinds of conflict have arisen and become relatively serious as they have developed in this very obscure area. Among these are a continuation of the various problems of determination of forest area, which in turn has led to agrarian conflict; as well as an ethnic and land-rights-oriented conflict.

A long-standing agrarian conflict in the Register 45 production forest was basically a manifestation of disputes over forest area access rights between local communities and the company holding the concession. Ultimately, this conflict developed to include not only the issue of access to forest area management, but also the lack of awareness of the citizens living in the area of their constitutional rights (Wahab, 2012). Specifically, when the District Government stigmatised living in the Register 45 production forest area as "illegal encroachment", that characterisation had a direct impact on the recognition and fulfilment of the basic rights (to education, health, identity, politics, *etc.*) of citizens resident in that area.

The ethnic conflict referred to above involves a group of indigenous people – the citizens of Moro-Moro – who claim that the expansion of the forest area at Register 45 has resulted in a "taking" of their indigenous land. Activism, particularly by indigenous communities who feel their land has been stolen, ranges from lawsuits to the occupation of land. In this context, citizens of Moro-Moro experienced consequences that could be described as an attempt at total exclusion. Their social, political and economic status is entirely unrecognised by the State. The State also discriminates against them in political, economic, legal, social, cultural and other aspects of life. For example, at each general election, both at national and local levels, thousands of Moro-Moro citizens cannot use their voting rights because they are considered non-residents.

Method and Materials

This article uses a socio-legal approach – integrating legal drafting and other social sciences – in viewing and assessing the current situation. This approach enables the analyst to overcome some theoretical and methodological limitations of related disciplines – to develop a new form of analysis (Banakar and Travers, 2005). Primary data were obtained through in-depth interviews, while secondary data were also taken into consideration (through a review of documentation and library search studies).

Results and Discussion

Conflict in the Register 45 Forest

The tide of conflict in the Register 45 area has swelled over the last 10 years. It is a very basic kind of conflict. While it continues, many benefits and interests related to the protected forest as a resource are up for grabs. At issue, from the perspective of the commercial forest industry, are the flow and distribution of benefits from the forest production, as influenced by technology, capital, markets, knowledge, authority, social identity and social relations. The issuance of Ministry of Forest decrees that permit SIL to go forward with commercial forest exploitation has led to the commencement of efforts to evict forest residents, which devolved into a bloody conflict.

In 2011, SIL brought and won a lawsuit (herein referred to as the “Mesuji case”)⁹ regarding its rights in the area. Prior to that case, a task force (the Mesuji Fact Finding Team or TGPF) was convened and many concerns were examined.¹⁰ The TGPF’s report states that the conflict in Register 45 is a conflict over the management of industrial plantations that has long been a cross between disputes between investors, the public and the government. Changing and uncoordinated government policies, lack of government oversight, situations in which investors do not carry out their obligations or misuse of permits, aggression by people who are excluded from the area and the activities of land speculators were among the factors which it cited as contributing causes of the disputes in the Register 45 area. These challenges continue and have never been completely resolved. In fact, the 2011 decision of the Mesuji case seemed to be taken as a justification for the fact that none of those suggestions were implemented. Instead, the Mesuji case’s recommendations were considered to be the ultimate resolution of the Register 45 conflict.

One issue addressed in the TGPF recommendations arose from that team’s clear statement that the constitutional rights of the citizens in that area had been and were being violated. By characterising the status of forest residents as “illegal”¹¹ and “an encroachment”, the government was creating a situation which had the effect of not recognising the residents’ constitutional rights. That stigma seemed to provide a justification for the disapproval of the State. As a result, although resident in the Register 45 area for a dozen years, the Moro-Moro citizens have not been issued identity cards and their political rights have been lost. In addition, the government’s vilification of them as illegal encroachers has been articulated in the press, and thereby spread through discussion until it has become socially legitimised and reinforced politically.

The combination of the fact that they live in an area of agrarian conflict and the “illegal” stigma attached to them has increased their social vulnerability. Constitutional rights including not only access to education, but other access (e.g., healthcare) have also been affected. The local government strongly argued

that, under Law 23 of 2006 on Population Administration, those living in the Register 45 communities could not be categorised as “residents” because they live in forest areas, even though they had been a village-like community entity for a decade.

Cut off for a decade from the services, social networking, and growth opportunities that are enjoyed by most people in general, these residents are harmed by the “illegal” stigma, which has emerged as part of a State practice of presenting the principles of legality and then putting them in opposition to the narrative of “illegality” – in other words the practice of reducing a particular group’s actions into what is characterised as a general (illegal) condition and thereby distinguishing it from the State’s categorisation of others’ behaviour as acceptable and/or undertaken on behalf of the State (McCarthy, 2011).

Basically, the interests of governments, the private sector and the public benefit are in a “contest” – that is, a dynamic process of interaction and negotiation – in the context of the struggle for natural resources. These three actors, however, are in this contest mode in all conflict over agrarian issues or natural resources in Indonesia. In Register 45, the contested control over forests has long been a subject of such cross-cutting disputes. In that socio-political climate, government policies, although changing, are often uncoordinated and involve minimal government oversight at best over investors and land speculators who do not perform their duties, demonstrate incompetence and abuse their permit rights. People whose lives and families are severely negatively affected can become aggressive against those who have abused them. In this way, the weight of disputes in Register 45 has become cumulative and “solutions” have never completely resolved the problem.

Ignorance, Social Exclusion and Human-rights Violations

The economic crisis that hit Indonesia in the late 1990s became a turning point in forestry conditions. The economic meltdown opened opportunities for people affected by the crisis, who were able to manage many forest areas that had been neglected by commercial users due to their own situations leading up to and following the economic crisis. This was the heart of the Register 45 conflict.

Recognition of Residential Rights

Having come to Register 45 at the end of 1996, the Moro-Moro people have a 22-year basis for their claim of the right to be recognised as citizens of Indonesia. They have not, however, received identity cards, which seems to have been part of an overall intention to avoid recognising their legal and constitutional rights. Such an abandonment could be considered to be an act of discrimination.

Under the law,¹² people of Indonesia and foreigners who have a fixed residence permit must be issued a KTP if they are at least 17 years of age or have ever been married. The civil/political right to a KTP impacts on

each person's right to ensure that their other rights – economic, social, and cultural – are respected, fulfilled and protected. People who do not have KTPs find it difficult or impossible to get driving licences, health insurance and access to various other government assistance programmes.

Rights of Children

The government's *de facto* waiver of constitutional rights in the Register 45 territory has, in effect, placed serious pressures on the communities, even on children born in the area during the course of this conflict. This fact raises another constitutional challenge, given that Article 28B paragraph 2 of Indonesia's Constitution states that every child has the right to survive, grow and develop, and to be protected from violence and discrimination. As to the latter, the Government has discriminated against the Moro-Moro children by deliberately ignoring their separate constitutional rights and legal rights. While it is clear that no child would choose to be born in the territory that is riven by strife, the Moro-Moro children are there, nonetheless. The State should recognise, fulfil and protect their rights as children of the nation.

Social Exclusion

As noted by Hall *et al.*, the conflict in Register 45 has engendered a "politics of ignorance", effecting social exclusion through power, regulation, pressure and legitimacy (Hall *et al.*, 2011). Social exclusion itself is both a process and a result. It is a process when institutional obstacles interfere with people's ability to achieve life's necessities, human development and equal rights as citizens. It is a result when individuals or groups are not able to fully participate in societies because of social identities such as ethnicity, gender, caste or religion and locations like inland areas, war zones or conflict areas.

Peluso and Lund (2011) provide an initial picture of the development of new forms of restrictions on control and control of land. This article's argument is based on the results of their study, emphasising the active creation of new forms of control over land through the struggle between various actors, contexts and dynamics.

The denial of the citizens' legal and social rights is an indicator of social exclusion. The process of stigmatisation, oppression and restriction through policy and other institutional discrimination operates to exclude individuals or groups from social, political, and cultural life (Somerville, 1998; Pierson, 2002).

Discrimination

Discrimination against those involved in the Register 45 conflicts is basically motivated by a combination of the current claims, historical background and strategies developed. The contrast is striking – law enforcement actions are taken against those residents who allegedly entered the forest area illegally, while efforts are not taken to enforce the law against HPHTI violations committed by SIL.¹³

Discrimination is also related to a network of power – ultimately expressed in the choice of social action taken in the context of controlling interests and maintaining access. The process of community exclusion on the outskirts of the forest area is actually related to the problem of unequal power relations between the company, the government and the rural peasant communities – relationships that are directly related to the use of space in the forest area (Wahab, 2017).

Economic Exclusion

The loss of rights and social exclusion described above are interconnected to other more direct problems: economic exclusion. The initial steps to remove people from the land involve a process that limits their rights (such as the rights to public utilities, education, health, clean water, road access, *etc.*). Those excluded persons may find it difficult to support themselves, and to access the social, economic, political and educational networks that might help them. Exclusion automatically breaks down such networks and the connection they provide to opportunities for the development of individuals and their livelihoods.

Protection of Human Rights

The experience of various conflicts over the management of agrarian resources in Indonesia often has implications for the neglect of citizens' rights. The agrarian conflict that occurred in Register 45, for example, was not only a dimension of violence, but also resulted in the neglect of the constitutional rights of other citizens. The neglect of constitutional rights in turn also has implications for the recognition of rights regulated in law or legal right.

Indonesia's Constitution formally includes human rights protection, which should apply in this situation. The government should guarantee law as an instrument for realising social justice. To this end, the law must be able to regulate security and to protect, respect, and fulfil citizens' rights without any discrimination.

Article 27 of the Indonesian Constitution states "All citizens shall be equal before the law and the government and must uphold the law and government with no exception".¹⁴ Article 28 also mandates that "[e]veryone has the right of recognition, guarantees, protection and legal certainty, and of equal treatment before the law".¹⁵ Similarly, the country's Law on Human Rights¹⁶ specifically states that discrimination on the basis of religion, ethnicity, race, social status, economic status, gender, language, or political beliefs is not allowed.

All of the rights discussed in this section are strongly entrenched in Indonesian law. The responsibility of the State to respect, protect and fulfil human rights was made clear in the Indonesian Constitution as was the principle of their democratic enforcement and protection.¹⁷ In addition to these constitutional rights, other legal rights arise under the Guarantee Act and its subordinate legislation. Given that the provisions on human rights have been adopted in full in the Constitution, these provisions too can be considered as "constitutional

rights". In addition, every citizen of Indonesia has legal rights that are more detailed, and is entitled to engage in operational activities which are regulated by law or other legislation that subordinate to these primary documents. Such rights are generally classified as "legal rights".

In practice, power tends to be manipulative and its exercise may often silence criticism or claims, prevent the actualisation of human rights protection and tarnish the sovereignty of the people. The only reasonable response to these conditions is to base the resolution of all such situations in a critical consciousness of constitutionalism (the *sine qua non* of the existence of a State that recognises the rule of law) and the protection of human rights from undue infringement by the power of the State.

Conclusion: The "Politics of Ignorance"

The conflicts in the Register 45 production forest are essentially a manifestation of the critical clash between the needs of forest enterprises and those of forest communities. As a result of the rising tide of such conflict, the Moro-Moro have been illegally stigmatised as encroachers by the government – a stigma which has caused them to suffer negative impacts on and losses of basic rights that are regulated and protected by the Indonesian Constitution and other various laws and regulations.

The conflict in Register 45 has spawned a level of political negligence and social exclusion that is sometimes referred to as the "politics of ignorance". The experience of the citizens of Moro-Moro is essentially abandonment – a social exclusion process through rule, regulation, pressure and legitimacy. In essence, these politics of ignorance, as practised by the Mesuji Regency government, constitute a series of efforts to impose such social exclusion processes. One need only look to the loss of citizens' rights to, *inter alia*, education and health to see that the Mesuji Regency Government has indeed violated the social, economic and cultural rights of the citizens.

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References

- Banakar, R. and Travers, M. (Eds) 2005. *Theory and Method in Socio-legal Research*. Oxford and Portland OR: Hart Publishing.
- Hall, D., Hirsch, P. and Li, T. 2011. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Singapore: NUS Press.
- McCarthy, J. 2011. "The Limits of Legality: State, Governance and Resource Control in Indonesia". In: Aspinall, E. and Van Klinken, G. (Eds) *The State of Illegality in Indonesia*. Leiden: KITLV Press.
- Nurjaya, I.N. 2005. "Sejarah Pengelolaan Hutan di Indonesia". *Jurnal Jurisprudence* 2(1).
- Peluso, N.L. and Lund, C. 2011. "New Frontiers of Land Control: Introductions". *Journal of Peasant Studies* 38: 667–681.
- Pierson, J. 2002. *Tackling Social Exclusion*. London and New York: Routledge.
- Sodikin, A. 2004. *Penerbitan dan Pendayagunaan Tanah Terlarang*. Public Consultation Paper, Improvement of Government Regulation Number 36 of 1998, Jakarta, National Land Agency.
- Somerville, P. 1998. "Explanations of social exclusion: where does housing fit in?" *Journal of Housing Studies* 13(6): 761–780.
- Wahab, O.H. 2012. *Terasing di Negeri Sendiri: Kritik Atas Pengabaian hak-hak Konstitusional Masyarakat Hutan Register 45 Mesuji, Lampung*. Indepth Publishing.
- Wahab, O.H. 2017. *Konflik Kawasan Hutan, Eksklusi Sosial dan Akses terhadap Keadilan (Suatu Studi Hukum Kritis Perjuangan Warga Moro-Moro Register 45 Mesuji Lampung)*. Disertasi di Universitas Diponegoro.

Notes

- 1 The New Order is the common way to refer to the period from 1966–1998, during which Suharto was president of Indonesia.
- 2 Minister of Forestry Decree number 93/Kpts-II/1997.
- 3 SIL is a joint venture between PT Silva Lampung Abadi and PT Inhutani V. SIL was established based on notarial deed No. 360 dated 27 October 1992.
- 4 Generally known as the "Hak Penguasaan Hutan Tanaman Industri" or HPHTI.
- 5 Minister of Forestry Decree Number 9983/Kpts-II/2002, concerning revocation of Forestry Minister's Decree Number 93/Kpts-II/1997.
- 6 Minister of Forestry Decree Number 322/Menhut-II/2004 concerning revocation of Decree Number 9983/Kpts-II/2002 and re-enactment of Decree Number 93/Kpts-II/1997.
- 7 [Civilian volunteer security force created by the government. Ed.]
- 8 The card is formally known as the *Kartu Tanda Penduduk*, and generally called the KTP.
- 9 [Apparently, formal case names and citations and case summaries are not always available in Indonesia. The author offers the following links for further information on the "Mesuji case": <http://id.beritasatu.com/home/penyelesaian-kasus-mesuji-libatkan-semua-unsur/26401>; <https://books.google.co.id/books?id=1BMaDQAAQBAJ&pg=PA8&lpg=PA8&dq=Register+45+Mesuji+Case&source=bl&ots=UvorUPGhaf&sig=93sHwNmCy0zq8-Ymk0umJv7Xxug&hl=id&sa=X&ved=2ahUKEwjKru-hnpDdAhVMvo8KHx19B3AQ6AEwF3oECAYQAO#v=onepage&q=Register%2045%20Mesuji%20Case&f=false>; and https://www.researchgate.net/publication/321164906_The_Causes_of_Protracted_Land_Conflict_in_Indonesias_Democracy_The_Case_of_Land_Conflict_in_Register_45_Mesuji_Lampung_Province_Indonesia. Ed.]
- 10 The TGPF was formed by the Coordinating Minister for Political, Legal and Security Affairs through KEP.64/MENKO POLHUKAM/12/2011 after the Register 45 conflict became a national issue.
- 11 In addition to the Register 45 legal issues, local residents were also considered to have violated Law No. 41 of 1999, on Forestry.
- 12 Article 63, para. 1 of Law No. 23 of 2006.
- 13 Reports on the Mesuji case clearly indicate that various offences of this type have been committed.
- 14 Constitution of Indonesia, Article 27, para. 1.
- 15 *Ibid.*, Article 28D, para. 1.
- 16 Law No. 39/1999, Article 1, para. 3.
- 17 Article 28, para. 5.



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