

Struggling with Development: How Decentralization Undermines Traditional Farmers' Cultural Rights in Barito Kuala, Indonesia

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Abstract

This research examines the concept of a regional wide-ranging autonomy principle that aims to promote local uniqueness and traditions and their impact on the rights and protections of traditional communities and their Traditional Knowledge (TK). Empirical data collected from early to mid-2021 in Barito Kuala District, Indonesia, was used. The results revealed that the local government has no practical autonomy, nor does it protect traditional communities from the negative effects of development projects as all regional Bills must uphold the limited affairs stated in the 2014 Regional Autonomy Act. The sources of this bottleneck are the ambiguities in the Constitution and the loopholes in the 2014 Act. These legal flaws are worsened by elite connections in central and local governments creating a 'trade off', in which the local government must uphold the Unitary State doctrine while the central government remains silent to the corrupt political dynasties in the district. This study advances the existing contemporary understanding of decentralisation and development projects that often contradict the law.

Keywords: Indonesia decentralization; agricultural traditions; law and development; traditional farmers; national and local elites.

I. INTRODUCTION

The existence of traditional communities and their TK is under threat from a development regime that prioritises economic growth and accumulation.¹ In contrast to modern knowledge and development, TK is developed through traditional practices embedded in the local cultures and traditions of indigenous or traditional communities. TK has dynamic characteristics, meaning that it has gained the status of distinct set of

¹ Sofia Monsalve Suarez, "The Human Rights Framework in Contemporary Agrarian Struggles." 40 (1) *The Journal of Peasant Studies* (2013), 239-290, p. 240.

knowledge;² it is not necessarily ancient and static, but it develops progressively in response to the updated needs of communities.³ Due to its distinctive characteristics and strong connection with traditional communities, TK is considered as part of the right to culture within the realm of human rights because of its very nature as cultural commons.⁴

Indonesia as unitary state with an accommodative twist, alongside symmetrical and asymmetrical regional autonomy, has an existing decentralisation law that acknowledges the concept of wide-ranging autonomy. Article 18 (5) of the 1945 Indonesian Constitution guarantees “... wide-ranging autonomy with a decentralization policy to regulate the affairs of regional authorities.” This autonomy particularly promotes local uniqueness and traditional cultures and traditions. Moreover, the constitutional norm corresponds to the ideal purpose of setting out the form and the limitations of government, alongside the goals of its power,⁵ including regional autonomy.

Indonesia is a crucial example of exploring the retrogression of decentralisation law, as it changed from respecting the particularities and diversity of every region to strengthening recentralisation policy by providing several conditionalities and procedures that hinder regional autonomy. The 2014 Regional Government Act interprets the Constitution by proposing several conditionalities and limitations when stipulating regional regulations. As a consequence of regional autonomy, each district can autonomously enact legislation to implement delegated affairs from the central government. However, the substances of such regulations should correspond to the conditionalities mentioned in the 2014 Act.

The Indonesian government seems to appreciate cultural diversity through the 2017 Act on Improvement of Cultures. Nevertheless, the Act lacks a strong obligation to both national and local government to protect and preserve traditional cultures, including their TK. As such, traditional communities remain marginalised, especially when they encounter a state development project.

Regional regulations involve the examination of four important Acts. They are: the 2021 Regional Regulation on Long-Term Road Plan for the District of Barito Kuala, the 2019 Regional Regulation on Sustainable Agriculture of Barito Kuala, the 2016 Provincial Regulation on Regional Irrigation, and the 2022 Act on South Kalimantan Province. The contention between local aspirations on the preservation of TK and environmental protection *vis-a-vis* the government’s economic-developmental interests

2 Kamrul Hossain & Rosa Maria Ballardini, “Protecting Indigenous Traditional Knowledge through a Holistic Principle-Based Approach.” 39 (1) *Nordic Journal of Human Rights* (2021), 51-72, pp. 54-55.

3 Daniel Gervis, “Traditional Knowledge and Intellectual Property: A TRIPs Compatible Approach.” *Michigan State Law Review* (2005), p. 140.

4 Francesco Mauro & Preston D Hardison, “Traditional Knowledge of Indigenous and Local Communities: International Debate and Policy Initiatives.” 10 (5) *Traditional Knowledge Ecological Application* (2000), p.1253.

5 Stephen Holmes, “Constitution and Constitutionalism,” in M. Rosenfeld & A. Sajo, eds., *The Oxford Handbook of Comparative Constitutional Law*, (Oxford: Oxford University Press, 2021), 176-205, p. 178.

over these laws needs further elaboration from human rights perspective, particularly from the viewpoint of cultural rights.⁶

This article reveals several ambiguities that hinder the ability of traditional communities to survive the state's development project. This research explored Barito Kuala as a case study to provide a detailed examination of the legislation and regulations that affect and shape the survival of traditional farmers, especially when practicing their traditional agricultural knowledge in constructing man-made canals, called *handils*, amidst developmental projects.⁷

Two questions arise from the background: Firstly, how do the provincial and district governments exercising decentralisation manage and balance development projects with the socio-cultural life of Barito Kuala, especially with regards to the cultural rights of traditional farmers? Secondly, how are the laws, both national and local regulations, stipulated and implemented when managing the development and protecting the agricultural traditions and the rights of traditional community?

This article proceeds as follows: The next section discusses the literature on decentralisation in Indonesia while scrutinising the conditional requirements in the constitution and legislation for recognising cultural particularities. It establishes the facts which show that the current laws of decentralisation in Indonesia have many normative flaws, thereby requiring a sociolegal perspective to explain the legal phenomena. In this section, a gap was filled by proposing elite theories to explain the failures of the decentralisation practice in the country. Subsequently, some regional regulations and the legislation on South Kalimantan Province were analysed to examine the underlying economic and political motives of these regional acts. It concludes that extensive influence by the symmetric regional autonomy paradigm and recentralization mindset are the barriers to decentralisation in Indonesia. Finally, the main empirical section analyses the exercise of tradition and challenges encountered by traditional farmers.

6 See the interrelated connection between both human rights covenants, International Covenant on Civil and Political Rights (ICCPR), Article 27. International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15.

7 Idak, *Perkembangan dan Sejarah Persawahan di Kalimantan Selatan* [Development and History of South Kalimantan's Agricultural Areas], (Banjarmasin: Province of South Kalimantan Press, 1982) p.11. *Handils* are small collector canals. Their function of diverting the water meant to circulate the rice fields, thereby preventing floods in wetland areas and 'bleaching' acidity.

II. INDONESIAN DECENTRALISATION LAW: LEGAL CONDITIONALITIES OF CULTURAL PARTICULARITIES

The highly contested legal concept of decentralisation in Indonesia has evolved with different governments to reflect their political inclinations.⁸ Several Acts to regulate regional autonomy emerged between early 1945 and the present day. This section examines the current 2014 Act, which represents the central government's political nuances and contexts. Additionally, the government ratified both ICCPR and ICESCR into national legal framework in 2005. The acceptance of international human rights norms was expected to strengthen decentralisation processes. However, ratification is not a panacea.

The 1945 Indonesian Constitution Article 18 (5) guarantees “wide-ranging autonomy with a decentralization policy to regulate the affairs of regional authorities, including provincials, districts and municipalities.” Furthermore, Article 18A (1) acknowledges “... the particularities and diversity of each region.” However, the Constitution is silent when elaborating how these particularities and diversity be administrated and maintained.⁹ To interpret the Constitution, the 2014 Act on Regional Autonomy was installed. The Law focuses on re-centralisation and empowerment of hierarchical order. It consolidates the position of provinces, placing them clearly above districts and municipalities. On the other hand, it lessens the cultural rights of indigenous and traditional communities in regions. The 2014 Act articulates Article 18 of the 1945 Constitution which groups regions into three categories: autonomous, administrative and special regions. The concept of special autonomy is acknowledged by the recognition of ‘traditional/local circumstances’ and ‘local values’ of regions under the 2014 Act, but the precise details and procedures it entails are not explained.

This ‘constitutional asymmetry’ is assigned by the 1945 constitution, Article 18B (1) under the concept of ‘special and distinct’ regions. This provision aims to cater for the unique circumstances of a country, to lessen or curb secession and to manage violence within regions by granting their unique status, despite the fact it also adds complexity to government affairs.¹⁰ Currently, Indonesia only recognises five special provinces: Jakarta, Yogyakarta, Aceh Darussalam, Papua, and West Papua. Those provinces have different rationales; Aceh has its strong adherence to the Shariah, Papua and West Papua maintain their traditional laws and customs, Yogyakarta is the last monarch in Java, and Jakarta is the country’s capital city.¹¹

It is important to note that asymmetrical autonomy is only recognised under ‘special’ political circumstances. Apart from these five special regions, the majority of regions exercise symmetrical autonomy. Policymakers are not seriously considering expanding

8 Simon Butt & Tim Lindsey, *Indonesian Law*, (Oxford: Oxford University Press, 2018)

9 *Ibid*, p. 67.

10 Ronald L Watts, *Comparing Federal System*, (Montreal: Queens University Press, 2007), p. 127.

11 Saldi Isra, “Asymmetry in a Decentralized, Unitary State: Lessons from the Special Regions of Indonesia.” 18 (2) *Journal on Ethnopolitics and Minority Issues in Europe*, (2019), 43-71, p. 44.

asymmetry to other provinces. In other words, the current Indonesian government is inclined to strengthen symmetry with a strong tendency towards re-centralisation.¹² The Constitution acknowledges and recognises “... the particularities and diversity of each region.” The Constitution, Article 18B (1) also recognises indigenous/traditional peoples and their laws, but under conditional requirements phrases: “... in accordance with the societal development, the principles of the unitary state and prescribed by law.” In this section, we scrutinise contextually the conditional requirements, particularly the terms ‘the doctrine of the unitary state’ and ‘the societal development’.

1. The Doctrine of Unitary State

There have been many debates between unitarian government and federalism in Indonesia. The Republic was a federal state when the Dutch persuaded the young Republic into a negotiation for a smooth transition. The Dutch had a preference for federalism, as can be seen in their colonial law, Decentralisatie Wet 1903, which acknowledged that not all regions could be managed in a uniform manner, considering their cultural and historical origins. Since then, federalism has become a rather pejorative concept in the Indonesian political mindset; a Dutch-made system aiming to instil western liberalism in the eastern mind of Indonesia.¹³ When the authoritarian-centralistic regime was overthrown in 1998, some academics proposed federalism as a political solution once again, however the idea was harshly rejected by the remnants of military groups in the parliament. The vow to be loyal to the Unitary State was one of the pre-requisites of the constitutional amendments in 1999 and 2002.¹⁴ It was politically proposed by the military that strongly adhered to the maxim of national unity.

The supporters of the unitary state consider that the ‘wide-ranging’ and asymmetrical autonomy can lead to disintegration. Hence, the notion of autonomy only extends to affairs delegated by the central government under the Unitary State doctrine. The doctrine of Unitary State has become an ‘imagined reality’ which the government and elites believe in. As long as this political belief persists, the imagined reality of a strong Unitary State maintains a force in Indonesia. The rigidity of the Unitary State’s doctrine causes many inflexibilities and public unrest in regional affairs.

In order to preserve stability, the Unitary State doctrine is strongly embedded in the regional autonomy system. On paper, Article 11 (1) regulates regional authorities consisting of provinces, districts and municipalities, which are responsible for concurrent obligatory and optional affairs. The regional governments, including districts and municipalities, can only stipulate legislation in 32 areas, six mandatory basic public

¹² *Ibid*, p.34.

¹³ Samsu Panggabean, “*Federalisasi dan Demokratisasi Indonesia*” [“Federalism and Democratization in Indonesia”] 1(3) *JSP*, (1998), 1-32, p.16.

¹⁴ Denny Indrayana, “Indonesian Constitutional Reform 1999-2002: Evaluation of Constitution-Making in Transition.” (PhD diss., School of Law, University of Melbourne, 2005).

service affairs, 18 selected affairs unrelated to basic public services, and eight optional affairs delegated from central government. However, most of the mandatory and other affairs are distinguished by the scale of those responsible, where districts and municipalities govern their geographical territories, while provinces have authorities over cross-regency or municipality matters.

The most relevant services for regencies and municipalities include education, health, infrastructure, social services, housing, and public order. In providing these services, regional governments must follow minimum standards set by the central government. However, the mechanism of maintaining central government control has drawbacks. The Bill of regional regulation must consider the norm, standard, procedure, and criteria (abbreviated as NSPK) of ministerial regulations, as the ministries are part of the central government. Hence, this rule allows the central government to unilaterally shape regional government policies. In other words, regional governments have no practical autonomy, because all regional legislation must uphold the limited affairs stated in the 2014 Act, and must undergo hierarchical delegative procedures. Due to the hierarchical delegative procedures, wide-ranging autonomy and legal pluralism have failed to materialise.

2. The Societal Development

In this study, the term ‘societal development’ describes a context-determined concept with vague actualization, making its use as a parameter for assessing legal pluralism problematic at best. President Joko Widodo (Jokowi), delivering a victory speech on the occasion of his success in winning the 2019 Presidential Election, stressed the government’s developmental focus in investment by soothing the mechanism of investment permits in Indonesia.¹⁵ This was a strong indicator that a ‘societal’ development should correspond with the investment regime. This indicator was proved in 2020-2021 when the government enacted the 2020 pro-investment Omnibus Law on Job Creation. The law strengthens plantations, particularly palm oil, as the formation of Indonesia’s development regime. It is important to note that multi-national companies control over 60 per cent of the plantation sector, a situation that is referred to as the ‘post-Suharto palm oil oligarchy’.¹⁶

The government encourages farmers to convert to mono-culture plantations, especially palm oil which is an agricultural commodity. Business-wise, palm oil is a

15 The Jakarta Post, “Jokowi’s March of Progress”, (2019), online: <<https://www.thejakartapost.com/academia/2019/07/16/jokowis-march-of-progress.html>>.

16 Barbara Beckert, Christoph Dittrich & Soeryo Adiwibowo, “Contested Land: An Analysis of Multi-Layered Conflicts in Jambi Province, Sumatra, Indonesia.” 7 *Austrian Journal of South-East Asian Studies*, (2014), 75-91, p. 86. See also, World Growth, “The Economic Benefits of Palm Oil to Indonesia,” (2011), online: <www.worldgrowth.org/site/wpcontent/uploads/2012/06/WG_Indonesian_Palm_Oil_Benefits_Report-2_11.pdf>.

promising project, as the international market demands it as a crucial ingredient of food products, as an oleochemical and for biodiesel. However, the government disregards the production basis of its society which is multicultural in mode of production, whilst unrealistically forcing the farmers to be equally productive as the companies. In his speech, Jokowi emphasised that, “if the company can produce 8 ton of CPO (Crude Palm Oil) per year, the farmer must also produce the same.”¹⁷ He did not (or pretended not to) realise that the smallholder farmers and companies are not on the same footing. These kinds of development policies have created injustice and discrimination for marginalised people, especially traditional farmers.¹⁸ Judging from these current policies, Jokowi has been considered a new developmentalist leader.¹⁹

This plantation policy, as a development priority, entrenched a racial-social divide at the heart of the social order, and bolstered political relations that are antithetical to human rights and enfranchised citizenship.²⁰ These mono-culture plantations are prone to monopoly, as only a large-scale company can manage a large palm field and endure its expensive production costs. Additionally, palm oil is water-gourmand; it creates water shortage in the dry season and flooding in the rainy season.²¹

The clash between marginalised society and oil plantations is nothing new in Indonesia. In the early 2000s virtually every plantation company in Sumatra had a dispute with surrounding communities.²² The Consortium for Agrarian Reform warned that “plantation related social conflicts accounted for one-third of all forest and land conflicts in the country.”²³ Customary land rights, traditional agricultural lifecycles, small-scale farms, and ordinary citizens continue to struggle to keep up with this type of ‘development.’ Unwritten laws and traditions are inferior when compared to state law, incompatible with economic development demands, and a disincentive to foreign

17 Tempo, “Jokowi Resmikan Peremajaan Sawit Rakyat di Musi Banyuasin,” (2017), online: <<https://nasional.tempo.co/read/1024517/jokowi-resmikan-peremajaan-sawit-rakyat-di-musi-banyuasin/full&view=ok>>.

18 Christopher Duncan, “Mixed Outcomes: The Impact of Regional Autonomy and Decentralization on Indigenous Ethnic Minorities in Indonesia” 38 (4) *Development and Change*, (2007), 711-22, p. 31.

19 Eve Warburton, “Jokowi and the New Developmentalism.” 52 (3) *Bulletin of Indonesian Economic Studies*, (2017), 297-320.

20 Tania Li, “In the Wake of the Plantation: Law and Human Rights in Indonesia 1870-2020”, (2021), online: <<https://www.universiteitleiden.nl/en/research/research-output/law/law-and-human-rights-in-indonesia-1870-2020>>.

21 Alain Rival & Patrice Levang, *Palms of Controversies: Oil Palm and Development Challenges*, (Bogor: Center for International Forestry Research, 2014), online: <<https://www.cifor.org/knowledge/publication/4860/>>.

22 John McCarthy, “Shifting Resource Entitlements and Governance Reform during the Agrarian Transition in Sumatra, Indonesia.” 55 *Journal of Legal Pluralism*, (2007), 95-120.

23 The Consortium for Agrarian Reform, *Reforma Agraria dan Penyelesaian Konflik Agraria disandera Birokrasi*, (KPA, 2015), p. 19.

investment.²⁴ The conditional requirement of ‘accordance with the societal development’ must be interpreted in the context of self-determined development. Neither national interests nor development projects can negate the rights of traditional farmers. These drawbacks are capitalised by national and local elites to support their economic and political interests.

III. ELITES AND POLITICAL DYNASTY

Elite theories are part of conflict theories, which aim to explain the function of competition, embedded political or economic powers within social groups. These theories focus on the roles of a few influential people who are allowed to rule and determine the trajectory of the majority of people. Elites, as part of a modern democratic society, are inevitable, because they arise from stratification and hierarchy, confirming that there will always be rulers and the ruled.²⁵ This is a realistic perspective of the role of power within a modern democratic society. Once established, elites are incredibly durable, and as a minority group with great material and political powers have their own consciousness and awareness of their smallness.²⁶ Therefore, they must be coherent or united under the same platform, which is possible with the support of their political and material powers.²⁷

From a realist’s perspective, elites conform to the democratic setting, and their prevalence can be said to be the reason for democracy’s existence.²⁸ The current debate on elite theories is not a contradiction vis-à-vis democracy or polyarchy but a proposal to tame elites and prevent their transformation into elitists.²⁹ Previous research suggests a shift in focus from the actions of elites to the state’s management of their interests.³⁰ In theory, a good scenario is that the elite becomes benign by knowing their legal and political limitations under the law. However, this study posits a different argument, that elites’ interests would prevail and become more predatory by exploiting and discriminating marginalised groups, including farmers. The degree of modern developmental projects managed by elites in Barito Kuala was evaluated in this study to determine the effectiveness of the constitutional rights of citizens. The study also examines the guarantees and protection of the interests of marginalized farmers in Barito

24 Nobuyuki Yasuda, “Law and Development from the Southeast Asian Perspective: Methodology, History, and Paradigm Change,” in C. Anton, ed., *Law and Development in East and South Asia*, (London: RoutledgeCurzon, 2003). See, Butt & Lindsey, *supra* note 8.

25 Gaetano Mosca, *The Ruling Class*, (London: McGraw-Hill Book Company, 1959). See, Robert A Dahl, *Democracy and Its Critics*, (New Haven and London: Yale University Press, 1989).

26 Vilfredo Pareto, *The Mind and Society*, A. Livingston, ed., (New York: Harcourt, Brace & Company, 1935)

27 Wright C Mills, *The Power Elite*, (Oxford: Oxford University Press, 1956).

28 John Higley & Michael Burton, *Elite Foundation of Liberal Democracy*, (New York: Rowman and Littlefield Publishers, 2006)

29 Dahl, *supra* note 25.

30 Higley & Burton, *supra* note 28.

Kuala by elites through local governments. The central government elites, armed with a Unitary State doctrine, centralised and used regional autonomy rhetoric as a smokescreen while bridging national interests to the local level. National elites allow their local counterparts to establish their political dynasty, providing their interests are in line with national developmental projects. This means that there is an interlocking between central and local elites; in other words, there is overlapping and intersecting socio-spatial networks of power.³¹

Generally, elites reside within a dynamic context, and they must adapt and circulate dynamically.³² This article drew particular inspiration from the evolution of the political dynasty in Barito Kuala when examining the collaboration between national and local elites in imposing developmental paradigms that aimed to control regulations, as well as assess the durable ruling group.

Elites must be understood from their institutions. In Barito Kuala, the local government, bureaucracies and legislature are the loci of power. Hence, the subsequent empirical discussion focusses on non-authority groups, such as traditional farmers practicing their traditions and understanding the law, examining the political decisions that affect them and determining the effectiveness of the public services delivered. Most importantly, this article examines the understanding of local legislators, state bureaucrats and officers on regional development, the importance of environmental protection and marginalised groups and their connections to political groups. A detailed investigation of their circumstances reveals a complex picture of how development undermines them.

IV. CASE ANALYSIS

This section begins with a brief description of Barito Kuala District, presenting its administrative governmental structure, geographical conditions, and the genealogical nature of the inhabitants. Further sections discuss the practice of farmers' traditional agricultural lifecycles, including the significance of handils construction, and depict their experiences in facing developmental challenges. The local government officers also share their thoughts on the development projects in Barito Kuala to create a balanced perspective.

1. Sociological Analysis: The Practice of the Traditional Agricultural Lifecycles and their Challenges

Barito Kuala is one of the districts in South Kalimantan, Indonesia, crucial for water management because it is located between two large rivers: Barito and Kapuas. In early 2021, the South Kalimantan Province, Indonesia suffered several floods, which were the worst in the last 50 years in terms of depth and the overall area affected. According to

³¹ Michael Mann, *The Sources of Social Power*, (Cambridge: Cambridge University Press, 1986).

³² Pareto, *supra* note 26.

the National Board of Disaster Management,³³ the Barito Kuala District was among the most affected, with 19,142 casualties and approximately 3,000 hectares of paddy fields ruined. The Mandastana sub-district was the most severely disturbed. This flooding became a bigger threat during the rainy season, as it affected most of the handil.

The rural areas in Barito Kuala have been gradually converted into over-crowded suburbs, with the citizens favoring road construction over the preservation of agricultural traditions and irrigation systems. This road-oriented development undermines South Kalimantan's natural geography, which is surrounded by wetlands situated 16 centimeters below sea level that are prone to flooding due to their decline of one centimeter every year.³⁴ Against this backdrop, an initiative to regulate and preserve handil, as well as the traditional agricultural life cycles of Barito Kuala farmers, was founded to prevent further flooding and boost the agricultural sector.

The majority of these villages comprise farmers who rely on handils and rainwater for their water supply. As mentioned by Saberi Thanoor, the Head of Barito Kuala Agricultural Department, Barito Kuala is the primary rice producer that ensures South Kalimantan's food security. The main characteristic of its agriculture, namely rice fields, is its dependence on the ebb and flow of the sea and rainwater. Both types of rice farming rely on handils to guide water to the field for the ebb and flow, maintain its levels, 'wash' the acidity, and avoid flooding in the paddy fields.

This agricultural lifestyle was inherited from the indigenous peoples of Dayak Bakumpai, a sub-tribe of the Dayak in South Kalimantan, who live on Barito and Kapuas Riverbanks close to the Central Kalimantan border. Unlike other Dayak tribes that choose the practice of shifting cultivation, Iyansyah, a farmer, stated that these groups are inclined to follow more permanent farming techniques involving their traditional irrigation system, handils. However, he stressed that this 'technology' is not exclusive to them, as many Banjarese or Muslim Malays and Javanese immigrants have adopted the method. As a result, the majority of Dayak Bakumpai are Muslim due to the processes of cultural assimilation in the populations above.

Since permanent farming in wetland areas is dependent on the ebb and flow of the sea, the land is extremely dry during the hot season and prone to bushfire. Pa'ijo, the Village head, stated that the locals refer to this hot and humid season, which occurs from November to April, as wayah pandang, while flooding is anticipated in the rainy season, wayah danum, between June and October. A few other farmers mentioned many types of ebb and flow farming and relayed that Barito Kuala's wetland falls into a category where the land is entirely flooded when 'flow' occurs. Consequently, the traditional

33 BNPB, "10 Kabupaten/Kota terdampak banjir di Kalimantan Selatan" ['10 districts and cities affected by flooding in South Kalimantan'], (2021), online: <<https://bnpb.go.id/berita/-update-10-kabupaten-kota-terdampak-banjir-di-kalimantan-selatan>>.

34 Saïdy Akhmad & Yusuf Azis, 'Sea Level Rise in South Kalimantan, Indonesia - An Economic Analysis of Adaptation Strategies in Agriculture', (2009), online: <<https://econpapers.repec.org/paper/cepreport/rr2009081.htm>>.

agricultural lifecycle followed by the indigenous Dayak Bakumpai peoples and villages in Barito Kuala is divided into four steps.

The first step is wayah manunggal where villagers choose their land, clean up bushes, build the handil and burn dry grass. Once the land is ‘clean,’ it is prepared for planting by two farmers, where the first person creates a hole with a long stick, into which the other inserts the seed. Then, the seed grows around 5 cm and 10mm in diameter and is then called tugal. The second step is wayah malacak, a seedbed process, where the tugal is removed and placed in a wooden container, babasung, which consists of 30 to 40 tugal. Subsequently, 12 babasung can be planted in one hectare of land. The following step is wayah manatak/maimbul where farmers re-clean their land by cutting the grass and using it as natural compost. Rat pest control is used to ensure the land is clean, while soils are ‘flipped-over’ before planting with a special technique to ensure sufficient acidity. The flipped soil serves as a barrier for the paddy rice which can also be planted with cassava, rambutan fruit, and coconut. Then, the seeds (tugal) are re-planted. The last step is wayah gatem, a time of harvest, where farmers traditionally bring family members to the rice paddy to help each other ensure harvesting is finished simultaneously. Then, a thanksgiving ceremony is conducted by giving a prayer.”³⁵

These sequences of TK are the expression of traditional culture that should be protected by the government, as a duty-bearer in human rights framework.³⁶ Hence, the process can be considered as an expression of the cultural rights of the community, a process which dominates their daily life and should serve as the basis for legal development.³⁷ It corresponds to the General Comment No. 23 of the ICCPR that stresses that culture manifests itself in many forms, including a particular way of life associated with the use of land resources which may include techniques concerning land use behaviour.³⁸

Ardiansyah, an older farmer, described the period their crops are harvested, which occurs once a year within the traditional cycle. Although considered unproductive in the eyes of modern development, it is an eco-friendly method that does not contaminate the soil, according to the farmers: “There are significant gaps between the steps that allow the land to ‘breathe’ and ‘grow’. Also, our livelihoods involve a diverse portfolio of activities, including fruit and vegetable production from gardens and the collection of non-timber forest products.”³⁹

35 Interview with traditional farmers, April 3, 2021. See also previous research on Dayak Bakumpai’s TK in MS Wahyu & Nasrullah, “Kearifan Lokal Petani Dayak Bakumpai dalam Pengelolaan Padi di Lahan Rawa Pasang Surut Kabupaten Barito Kuala,” online: <<https://ejournal.upi.edu/index.php.societas/article/download/1116/766>>.

36 Hossain & Ballardini, *supra* note 2.

37 Gervis, *supra* note 3.

38 General Comment No 23 on Article 27 (Rights of Minorities), the Human Rights Committee, UN Doc.A/49/40, 07-110, para 3.1, online: <<https://www.refworld.org/docid/453883fc0.html>>.

39 Interview with Ardiansyah, April 3, 2021.

Suratman, a farmer whose paddy fields were destroyed by flooding and poisoned by industrial waste, discussed their commitment to preserving this traditional method of farming: “We believe that the forest is a source of livelihood and do not want to overly exploit it. Therefore, the forest is ‘opened’ for three activities only, namely planting rice paddies and other livestock crops, producing rubber, an eco-friendly commodity crop that can be grown with other plants, and cattle ranching.”⁴⁰

These three activities are environmentally and economically stable, as they are not affected by monopoly and price fluctuation. The basic mode of production also requires collective and cooperative labour among communities.⁴¹ This traditional agricultural lifecycle is a particularly rhetorical activity involving events and people who aim to create a system of meaning, a way in which culture defines the possibilities of life for individuals and communities alike. It is a ‘law’ and rhetoric because it contributes to knowledge by informing people of knowable and demonstrable activities. It is also socially constitutive, aiming to change the object of its persuasion, as it constitutes the community and commended culture.

As the ‘living law’ and cultural expression of traditional community, this TK should be protected by the state. Based on the General Comment No. 25 of 2020, the government has an obligation to take measures to protect such knowledge, technology and wisdom through different means.⁴² Both the Human Rights Committee and the Committee of Economic, Social and Cultural Rights, stress that the protection of TK could possibly affect the survival and continued development of the community.⁴³ However, in the context of Barito Kuala, this TK is gradually being abandoned, as many villagers complain about the failure of regional governments to protect the interests of farmers. Pa’ijo mentioned that the handil maintenance is primarily performed by the villagers, as the government’s assistance in cleaning up and dredging the irrigation system is lacking. Some government officers, including A.B, acknowledged this fact and claimed that the maintenance of handil and rivers is not among their political and economic priorities. They also stated that such traditional activities should be eradicated to support modernisation. The attitude of these officers might be an expression of their underestimation of cultures and traditions, which they view as parochial, backward, and regressive compared to modern development. In A.B’s view, cultures and traditions are obstacles that should be removed for the interest of national development.

40 Interview with Suratman, April 21, 2021.

41 Yasuda, *supra* note 24.

42 General Comment No. 25 (2020) on science and economic, social and cultural rights (Article 15 of ICESCR), E/C12/GC/25, online: <
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Sza b0oXTdImnsJZZVQdxONLLJiul8wRmVtR5Kxx73i0Uz0k13FeZiqChAWHKFuBqpp%2B4RaxfUzqSAfyZYAR%2Fq7sqC7AHRa48PPRRALHB>>.

43 Andrea Muehlebach, “What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism” 10 *Global Studies in Culture and Power* (2003), p. 256.

However, this research maintains that the coexistence of this traditional agricultural lifecycle, as an expression of cultural rights, still need intervention. Hence, the government is responsible for ensuring that traditional communities can adapt and thrive, irrespective of modern development, by protecting their traditions as well as their communal rights and activities. This signifies that the state's intervention is inevitable, and part of its responsibility is to protect indigenous and traditional laws, ensuring their coexistence and connection with state laws.

Another issue regarding the preservation of agricultural tradition and handil maintenance is the government's land-based development paradigm. This development reached Barito Kuala, leading to a huge conversion of paddy rice fields into residential houses and government infrastructure. According to Murniati, the Head of Barito Kuala Agricultural Department, approximately 1000 rivers in South Kalimantan have receded, with 3000 rice paddy fields reduced in Barito Kuala alone. Suratman, a farmer, expressed his grievance by saying: "The number of rivers is rapidly declining, as the government and investors are more inclined to build roads and residential houses than maintain the traditional irrigation systems. Some roads and houses block the drainage and irrigation systems, causing many villagers to encounter difficulties flowing water to rice paddy fields and 'washing' the acidity into the larger rivers."⁴⁴ This condition contradicts to the government's obligation to ensure the survival and continued development of the culture and economy of the traditional community,⁴⁵ as the development project disregards socio-cultural aspects of traditional community.

According to ILO Convention No. 169 on Indigenous and Tribal Peoples, forced assimilation and intentional denial of the public rights of traditional communities are forbidden under international human rights law. Moreover, the Indonesian government ratified the ICCPR and ICESCR in 2005. As consequence, the government is obligated to ensure that the right to use and manage lands, territories, water, seeds, livestock and biodiversity are fully authorised to those who produce food. These are manifestations of the right to self-determination, which guarantee traditional farmers freedom to pursue their economic, social and cultural development.

The Barito Kuala government have stipulated a roadmap for development since 2010 in order to boost regional revenue by accepting industrial investors. Consequently, industrial plants, such as palm oil plantations, have advanced rapidly and overtaken rice paddy fields, forests, and swamp areas. This expansion has significantly affected the agricultural lives of farmers and the wetland environment. According to Saleh Mansur, an officer at the Environmental Department, several companies have penetrated many districts and villages in Barito Kuala, and only one district out of 17, named Mandastana sub-District, remains palm oil-free.⁴⁶

44 Interview with Suratman August 4, 2021.

45 Suarez, *supra* note 1.

46 Interview Saleh Mansur, August 5, 2021.

Furthermore, Sarifudin Alamsyah, a farmer affected by flooding, highlighted that palm oil plantations severely affect soil fertility. Planting a palm oil crop causes the soil to become dry, which prevents other agricultural crops from being grown. Another farmer, Alwi, mentioned that palm oil absorbs water voraciously, dries out the handil needed for rice paddy fields and summon pests that are detrimental to crops, while the residual leaves pollution and blocks rivers and handil. He stressed that palm oil plants are not eco-friendly, as no other crops can be grown nearby to them.⁴⁷

Another farmer, Amang Iyan, disclosed that harvesting once a year has proven difficult, compared to the one to two times executed in the early 2000s. The main reason for the reduction in harvest quantity and quality is flooding, caused by the poor maintenance of handil and blockages from palm oil residue. At the time of this documentation in August 2021, some villagers were unable to plant rice because the paddies were still flooding. This condition disturbs their traditional seedbed cycles, which comprise three steps, namely tugal, lambak, and lacak, and generally threatens the food security in South Kalimantan.⁴⁸

Many plants endemic to Kalimantan, including galam trees, known as the swamp tea tree, paperbark tea tree, and cajuput tree (*Melaleuca cajuputi* subsp. *cumingiana*), were cut down to accommodate palm oil. It is relevant to contemplate the existence of palm oil as a domesticated industrial crop. Some farmers expressed their regret over their decision to sell their land to companies and begin working in palm oil plantations. According to the farmers report, “the local government lured them with the promise of modernization through agroindustry, affirming that Barito Kuala will be established as a ‘satellite city’ of Banjarmasin, a promise that until now has not been fulfilled. The officers mentioned Acts created to secure the establishment of the Barito Kuala development policy and catapult our economic condition through agroindustry (palm oil). The officer once said that “profit will be more promising than the traditional farming method, so we agreed.”⁴⁹ In this context, a meaningful development that was rooted locally through participation by all communities, was disregarded by the government. Instead, an economy-driven development was chosen over a locally-driven development.

Furthermore, the expansion of palm oil plantations exacerbates conflict between villages, as Rahmat, a farmer at Bangkit Baru Village, narrated: “Residue stays in the water, affecting the acidity and rendering it unsuitable for paddy and other crops. Some villages, namely Bangkit Baru and Tabing Rimbang, which are the flattest surfaces in the Mandastana district, are adjacent to other villages with palm oil plantations and retain water when heavy rainfalls occur in mountainous areas. The adjacent villages refused to open their gates to allow the water to flow into the river, as they had enough water for the palm oil plants. However, they did so when the Barito River overflowed, and the water

47 Interview with Sarifudin Alamsyah, August 7, 2021.

48 Interview with Amang Iyan August 7, 2021.

49 Interview with villagers, August 22, 2021.

from palm oil stayed in both villages, polluting their water and rice paddies due to the high acidity level.”⁵⁰

The phenomena above point to the current laws, particularly regional regulations that control areas of development projects, agriculture, and irrigation.

2. Legal Analysis: Turning to Laws

This research cannot disregard the legal text stipulated in legislation. As mentioned earlier, regional autonomy allows each district to autonomously enact regional regulations to implement delegated affairs from the central government. After the transformation from a centralised to a market economy, Indonesia and its regions consolidated and revamped their legal system to follow global economic standards which were considered conducive to development. Consequently, four important pieces of regional regulations and will be examined.

a. Regional Regulation on Long-Term Development Road Plan

The first legislation is the 2012 Regulation on the Long-Term Road Plan for the Barito Kuala, which contains a general description of regional planning from 2012 to 2031. This legislation aims to develop 17 sub-districts and their villages into urban and industrial areas. To adapt to modern development, villages must be bound holistically and hierarchically to urban areas’ needs and orientation, meaning they must be aligned with top-down modernisation in urban areas, alongside provincial and central governments. However, villages have less autonomy and self-determination to regulate and maintain their affairs.

There are two major strategies use to connect villages and urban areas. First, all sub-districts, and their villages are linked to an integrated urban developmental area called Banjar Bakula, a Metropolitan Banjarmasin Raya, centred in Banjarmasin City.

The second involves the economically motivated linkage of villages and urban areas through agroindustry and through incentivising traditional farmers to transition into modern agricultural workers. In practice, S.H, a regional government official, disclosed that the agroindustry translates into palm oil plantations, which are not closely associated with farming and agriculture but with industry. S.H further elaborated that he personally disagrees with this development project, however as a state bureaucrat he cannot do anything.⁵¹ Hence, farmers are coerced into abandoning their farms to work for the agroindustry project. In other words, the concept of ‘agroindustry’ has encouraged traditional farmers to sell their land and work under the market-oriented industry, masking rapid industrialisation that disregards environmental and cultural effects. This

⁵⁰ Interview with Rahmat, August 21, 2021.

⁵¹ Interview with S.H, August 13, 2021.

Barito Kuala development plan has not discussed even a single provision on communities' cultural rights, let alone their handils as TK.

Elites are incredibly coherent and durable,⁵² especially when legislators, bureaucrats and businessmen agree, as there is a trade-off between national and local political dynasty. This regulation is one of corporate-friendly regulatory frameworks in South Kalimantan which has gradually dismantled state support and protection of traditional farmers and other rural constituencies and has subtly paved the way to deprive them of their living in favour of corporate interests.

This legislation regulates wetland farming areas by protecting their lands from reduction and preventing irrigation system blockage. However, wetland farming areas are increasingly being reduced, and the traditional irrigation system maintenance through handils as TK is ignored because the Act does not explicitly recognise, preserve, or regulate these traditional agricultural lifecycles and their traditional irrigation system.

b. Regional Regulation on Sustainable Agriculture

The 2019 Regulation on Sustainable Agriculture stresses the commitment of the Barito Kuala Regency to maintaining its agricultural development. Consequently, this legislation creates three strategies to boost the productivity of agriculture. The first is intensification, which states that the government shall accommodate modern farming technologies for high-quality seeds, nurseries, and fertilisation. However, this intensification does not regulate any empowerment of traditional agricultural lifecycles and handils. The second strategy is diversification, affirming that the government allows farmers to utilise several methods of farming depending on the soil conditions, although it does not cover the necessitation of diversity of plants to support agricultural life and biodiversity. Meanwhile, the third is extensification; the government promises to expand farming lands, but there is no elaboration on the method to be used or how to prevent fields from being converted into modernisation projects. Therefore, these strategies would provoke more issues than they would prevent. Additionally, the Act does not regulate traditional water management systems: handil and how farmers can use it effectively, let alone acknowledge and preserve traditional farming and agricultural life cycles as TK.

It is a well-known fact that there are contradictions between traditional values (community force) and modern development (market force) in some developing countries.⁵³ In this regulation, the contradictions are made manifest in several circumstances, such in the conflict between sustainability and productivity. Traditional farmers prefer to plant sustainable plants like rubber, vegetables, and livestock crops, which can be grown in the same area, thereby supporting biodiversity. However, monocultural industrial plantations (the market force) consider this system unproductive

⁵² Mosca, *supra* note 25.

⁵³ Yasuda (2003), *supra* note 24, p. 27.

because the most pivotal aim of development is enhancing productivity, leading to over-exploitation.

A second contradiction pertains to spirituality and rationality, where the ‘slow’ lifecycles of the traditional farmers with a strong interconnectedness to nature and the spiritual world are considered backward, lazy and irrational by modern development, which extols ‘rationality’ and ‘progress.’ The centrifugal power of the market force offers calculable rationality and predictability, with the ultimate aim of expelling and dissolving the community force to create modernisation beyond the state where capitalism evolved. In Barito Kuala, the ‘market force’ is far superior to the ‘community force,’ and this unbalanced relationship is worsened by regional regulations that purport to protect traditional farmers, but actually obey the central and local elites in government and companies.

c. Regional Regulation on Irrigation

The 2016 Regulation on Irrigation reinforces the three tiers of government division regarding to irrigation maintenance, as stated in the 2014 Regional Autonomy Act. Subsequently, the central and provincial governments are responsible for maintaining the primary and secondary canals respectively, while regencies maintain the tertiary canals. However, this legislation does not regulate handil, which are part of tertiary canals. It also cedes the management of tertiary irrigation systems to a self-autonomous organisation, the ‘Farmers as Water Users Organisation’ (FWUO) which comprises of a group of farmers that depend on water through the ebb and flow farming method. This organisation exists in all villages, which are mutually coordinated from district to regency levels. However, the existence of FWUOs does not necessarily negate the responsibilities of regional governments to maintain irrigation systems, as local democratic associations still need government support and intervention. Social associations cannot be entirely separated from state legal system, because state and social associations are coexistent and interwoven.⁵⁴ The government cannot justify its inactivity based on the thesis of ‘strong’ legal pluralism. Furthermore, this legislation remains silent on traditional irrigation systems and traditional agricultural life cycles. In other words, there is no acknowledgement of or protection for traditional farmers in wetland areas.

The ineptness in maintaining handil and rivers is blamed on the division of authorities between the central, provincial, and regional governments. The 2014 Regional Autonomy Act divides governmental authority to maintain irrigation systems under ‘infrastructural affairs’ into three tiers. Irrigation areas less than 1000 hectares in length are to be maintained by regency or municipality authorities, 1000 to 3000 hectares belong to the provincial government, while over 3000 hectares exist under the central government.

⁵⁴ Brian Tamanaha, *Legal Pluralism Explained*, (Oxford: Oxford University Press, 2021) p. 173.

According to a government source, 13 irrigation systems, including the three largest rivers in Barito Kuala, fall under the central government's authority. 17 are in the provincial domain, whilst 99 belong to regencies. Safrani, an officer at Barito Kuala Development and Infrastructure Department, expressed his concern that this division of authority creates bewilderment in maintaining handil in Barito Kuala, particularly because they are often over-lapping and inter-connected. This confirms the previous research that there is a very high potential of overlapping authorities causing bewilderment when regulating and enforcing regional government policies.⁵⁵

d. The 2022 Act on South Kalimantan Province

Although the 2022 Act has a strong development orientation for South Kalimantan Province as a counterpart for East Kalimantan, (which is predicted to become Indonesia's capital city in 2024), this article highlights several of its drawbacks. First, development planning has ignored the agricultural mindset of the South Kalimantan people. The Act explicitly states that the priorities of developments are mining, industry, tourism, and trading. Meanwhile, the agricultural sector was briefly mentioned, and its existence was circumscribed by the central government's investment planning. The development goal in South Kalimantan is crystal clear and is, "... to reach the economic structure of industrialisation." This becomes undeniable evidence that market force has systematically eroded community traditions and cultural particularities of South Kalimantan.

Second, the Act ignores the geographical and sociological context of South Kalimantan, particularly its wetland farming areas and lifecycle. Instead, developmental programs remain preoccupied with land-based projects, entirely disregarding the rivers and the rights of persons dependent on them for their livelihoods. For sociological context, the Act broaches on the acknowledgment of indigenous traditions and villages but reduces their significance to merely a subsection of tourism rather than explicitly discussing their substantive rights.

Third, the Act does not explicitly detail the State's responsibilities regarding human rights, particularly in terms of cultural rights and natural resource exploitation, let alone communities' TK. It lays out the minimum norms on the ecological aspects of development but comes nowhere near providing a clear description of economic, social, and cultural rights. Additionally, the Act is consistent with the 2014 Act on Regional Autonomy, which categorically limits the regional governments' authorities. The 2022 Act on South Kalimantan Province corresponds to the doctrine of Unitary State and symmetric regional autonomy paradigm.⁵⁶ This means the Act ignores contextual conditions of South Kalimantan Province.

⁵⁵ Butt & Lindsey, *supra* note 8, p.23.

⁵⁶ Interview with T.S & H.B, August 13, 2021.

Their perspectives, however, were not surprising. Elites, both at national and regional levels, have agreed to symmetrical autonomy in order to soothe their developmental projects. These political and business-interest hegemonies are reflected through legislation and regulations which extol the strong control of the central government over regional governments. As a consequence, regional regulations are also mimicking the central government's development paradigm. As a trade-off to regional governments, the central government is silent to the development of political dynasty in regional levels, and the Barito Kuala government is no exception. Local government is politically crucial for national government, so long as it supports the national government's developmental projects. This network aims to ease investment flow and strengthen political bonds to business actors and vice versa. Currently, the Head of Barito Kuala District is the wife of the former head, who ruled Barito Kuala for two consecutive terms. This dynasty is supported by political parties, mainly the Golkar Party, a strong political machine of the New Order regime that has dominated Barito Kuala's political landscape for decades and shows no signs of diminishing.

Furthermore, our informants, bureaucrats at local government departments, T.S and H.B, admitted that the local government has a strong linkage with business interests, and this affinity has resulted in massive exploitation of natural resources, as the local elites distribute incentives, such as land concessions, mining, and plantation permits, to their political allies. Also, F.A, our anonymous informant, disclosed that these extractive developmental projects are a priority because they attract major foreign investments. These business interest projects obtain legitimacy by funding the personal wealth of local elites through collusion. This activity shows how the elite inter-mingled and evolved into oligarchs, where their main struggle is to accumulate and defend their wealth, while traditional agricultural activities and farmers' interests fall secondary to industrialisation, which benefits the regional government and its political allies.⁵⁷ This developmental and unification mindset is the barrier to full-fledged decentralisation in Indonesia.

This research confirmed the previous investigation, which discovered that elites inter-mingled dynamically through different connections.⁵⁸ The legislative creators of the regional Acts have realised the need for consistency with the central government's development interests. This is because a deviation from these interests will result in the local government's contradiction with the doctrine of the Unitary State. Hence, the 2022 Act on South Kalimantan Province must follow the symmetric pattern. The findings of this research showcase that the rigidity of this doctrine can undermine national unity, and ignoring diversity can gradually erode national stability while strengthening and linking the hegemony of the oligarchy at the central to the regional level. This highlights that the normative-constitutional purpose of the 'wide-ranging autonomy' is a mere illusion.

⁵⁷ Dahl, *supra* note 25.

⁵⁸ Pareto, *supra* note 26.

V. CONCLUSION

The conclusion of this research is based on the analysis of legal and sociological/empirical investigations. The empirical analysis revealed that the expression of local government bureaucrats in implementing their obligations to protect and maintain the handils and traditional lifecycle as TK is susceptible to elite interest. The analysis of regional regulations in Barito Kuala showcases the government's development paradigm, which prioritises modernisation and market interests over rural and villages' interests and needs. Also, the findings discovered that elites are acting non-consensually by obeying the democracy and rule of law, instead creating national and local laws as instruments to lure and subordinate society, gradually yet coercively shifting farmers' economic mode of production into 'agroindustry'. It demonstrates that the interests of central and local elites matter to the legislative process and implementation while significantly affecting farmers in a way that makes worse rather than improves their lives. In addition, the farmers and villagers are coerced into submitting to the modernisation projects and enticed to succumb to the forced assimilation.

The cultural rights in general and TK in particular, including traditional lifecycles, and handils of the farmers in Barito Kuala could remain politically invisible to the regional government. The reason is that the preservation of these practices is not one of the development priorities (elite interests), despite the possession of legal authority by the regional government. Consequently, this current mode of regional autonomy will only succeed in strengthening the political and economic relations among national and local elites.

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