



THE AUSTRALIAN NATIONAL UNIVERSITY

School of International, Political and Strategic Studies

State Society and Governance in Melanesia

DISCUSSION PAPER

Discussion
Paper 2011/5

COMPENSATION AND STATE AVOIDANCE IN THE BUGIS FRONTIER OF THE MAHAKAM DELTA, EAST KALIMANTAN

INTRODUCTION

JAAP TIMMER

Haji Idris of Sungai Banjar came from South Sulawesi with his wife and three children to the Mahakam Delta in East Kalimantan in 1997.¹ Idris began to work for a local pond owner, and within two years a local businessperson and the pond owner trusted him to operate ten hectares of ponds near Sungai Banjar. At the time, the number of ponds in the region was growing rapidly as profits were mounting. Idris built a large house in Sungai Banjar, which he furnished nicely with an impressive set of couches and two tall cabinets filled with porcelain. After some time, Idris managed to collect big harvests and he and his family cashed large sums of money. They saved a part of it and went on pilgrimage to Mecca three times in a period of five years.

Since 2003, harvests began to decrease and by now Idris is unable to collect shrimps any more. He now fishes small shrimp, which he and wife dry on the jetty in front of their house. They

sell the dry shrimp to buyers from the nearby town of Samarinda. It is hard for them to make ends meet and at the same time they face a significant debt (about IDR50 million or AUD\$6,100) with the *punggawa* (patrons) who are no longer willing to give loans. This is how Idris expresses his concern:

There is almost no hope. We don't know what to expect. We have no money to go elsewhere so we try to survive here. We still eat but we're not sure about tomorrow. The government should come and see how we live, how we suffer. They should teach us about what to do. It would be great if Total [Total E&P Indonesia, a sizeable oil and gas industry active in the region]² is going to compensate the land that I own [*tanah milik saya*] so I can use that cash to pay off my debts and move to another coastal region. It seems they are not going to com-

pensate us for the pollution that killed the ponds. That is not fair. But they come to listen and they gave assistance to the mosque and they are funding the rehab of our school. The government is not at all listening. Not sure what is all behind that. Alas, the little people do not have power. (Interview with Idris (42), Sungai Banjar, 10 June 2008)

A growing number of Bugis shrimp farmers in the delta of the Mahakam River experience injustices with respect to limited redress from the oil and gas industry by Total E&P Indonesia (henceforth: Total) and the government. The redress sought relates to declining or even loss of shrimp produce that people link to environmental changes allegedly caused by the activities of Total. The social, economic and cultural background of these injustices and the grievances that they have evoked are identified in this paper. I will show how local livelihoods of shrimp farmers who work within a patron–client system have become increasingly linked to large-scale resource exploitation and, as also indicated in the quote from Idris, hope that the government might provide justice.

Since the end of President Suharto's New Order regime in 1998, the Indonesian state and society are experiencing the devolution of central power and concurrent increases in regional autonomy with its own political dynamics (Schulte Nordholt and Van Klinken 2007). One would expect that a region like the Mahakam Delta would by now fully fall under autonomous regulations promulgated by the province of East Kalimantan, and that local Bugis elites would have significant control over state governance. While Bugis elites are powerful in provincial politics, Bugis in the Mahakam Delta enjoy a different form of autonomy — a frontier culture that is hardly controlled by the state but relates to the state in a different way.

People in the delta are generally not keen to engage with the government and they do not respond to the greater autonomy afforded by Indonesia's new political constellation. In this sense, they do not fit in the kind of situation that is addressed by Indonesia watchers such as John McCarthy and Carol Warren (2009),

who appraise the prospects for more equitable and more sustainable models of governance. Bugis evade the state systematically unless there is a demand for justice to which some kind of state procedure is mandatory.

The ways in which the Bugis patrons in the Mahakam Delta relate to the state illustrates the argument by James Scott in his book *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (2009). Scott's is an area study that focuses on the periphery of nine Asian states in which numerous peoples are not fully incorporated into nation-states. He sees that these

hill peoples are best understood as run-away, fugitive, maroon communities who have, over the course of two millennia, been fleeing the oppressions of state-making projects in the valleys — slavery, conscription, taxes, corvée labor, epidemics, and warfare (Scott 2009:ix)

Generally, the livelihoods, social organisation, ideologies and their largely oral cultures are mostly read in terms of weapons of the weak, 'designed to keep the state at arm's length' (2009: x). Scott argues, however, that 'for those living in the shadow of states, such evasion is perfectly compatible with derivative, imitative, and parasitic state forms in the hills' (2009:x).

The argument that Scott puts forward is counter-intuitive yet works for understanding the case discussed in this paper.

My research among Bugis shrimp farmers in East Kalimantan indicates that much of their culture, in particular those of the patrons who keep in place a patron–client system, is an adaptation designed to evade both state capture and state formation. These Bugis see the state as attractive, and patrons in particular mimic elements of the state to legitimise their position and to facilitate access to the waters and lands of the delta, to exploit the shrimp ponds, and to engage in trade with shrimp buyers. As a result, they enjoy a great deal of sovereignty. Most patrons in the Mahakam Delta present themselves as the state in terms of providing money and welfare to their clients. They suggest to their clients that they are the only

reliable state as the other state is uncertain due to unclear and ever-changing plans and programs and its own interest in terms of subordination and taxation.

The other elite in the delta are the Bugis who represent the village-level government. The village heads, in much the same way as patrons, like to be seen as a state, while they are also keen to steer safe from the state unless it provides funds for projects. For these purposes, they mimic the state at the local level. Physically, attempts are also made to mimic the 'magic' of the state. The village heads' tidy offices have desks and filing cabinets like in real government offices, with clear signs indicating functions and department, for example financial officer, planning officer, first secretary, and so on. The jetty in front of these offices often has curbs painted with black and white stripes imitating government offices in towns and cities. This copying of the state has, however, hardly any power, and most of their 'subjects' laugh at the rhetoric on strict regime, effective law enforcement, and smooth bureaucracy.

From the point of view of the clients or subjects, the state and the company have become immediately important for accessing compensation monies. While the Indonesian government outside their realm in the delta holds little attraction for them, they are inclined to see the state as a provider of justice, as an alternative system to the one that subjects them. They need this alternative system to get access to compensation with the idea that large amounts of cash will give them more control over resources. They are, like their patrons, keen to avoid all the evil that they see in wider Indonesian society: drudgery, subordination, and immobility.

The tension between the patrons and the clients partly illustrates Scott's thesis and shows that the Bugis elite controls the local economy on the basis of patronage, that they appreciate a high level of sovereignty to safeguard themselves from that system by mimicking that system, but that the clients are keen to engage with the state by using it to get access to compensation payments by the company. The position of the clients is illus-

trated in this quote from one of my interviews:

Look, you know the delta. This is a place with no government regulations and in which the company acts arbitrarily, and where the people are legally illiterate [*buta hukum*]. When the investors [migrants] came and opened ponds there was no sharing and there was no control whatsoever. Since 2002, the fishery department says that the ponds we have made in the past are no good. What's that? For ages they told us that they should be devoid of any form of vegetation. Now they are supposed to be green. Should we oppose that? Those who still believe in ponds plant mangroves, get some money for it from the government and hope that the green pond will produce good harvests. There is no protest. People are in debt and feel they can't demand anything as long as they owe millions of *rupiahs* to someone else. Shame! People can't be free in the delta. People are slaves [*budak*]. It's the *punggawa* [patrons]. The government does not realise that by being absent they actually allow the colonisation of a whole group of people who as a result become vulnerable. He does not think like a leader. He is not a leader. The government has the guts to govern, but it does not dare to take responsibility. We, the people, have little knowledge. We just enjoy the things that we can still enjoy here while not being concerned about the future. The government behaves like a king [*raja*]. They bring security guards when they visit us. Allah knows what kind of system that is. What are we, who are we, what can we do, what should we stand for? They don't help us to answer those questions. (Pak Amir, Sungai Banjar, February 11, 2009)

While the Bugis patrons in the Mahakam Delta successfully keep the state at bay and operate as shrimp producers with a high level of sovereignty, the state does see the delta as a useful territory. It has given the area in concession to Total from which it reaps tax payments. For the extraction of oil and gas,

neither the state nor Total need to firmly control this ungoverned region as long as the Bugis shrimp farmers do not obstruct the operations. Most Bugis see Total as another frontier actor, as a sovereign body who is working hard to grab resources. This reflection on Total informs much of the way in which Bugis conceptualise their right to access compensation payments from the company.

To show how the Bugis's art of not being governed informs their ideas about compensation, this paper will discuss the frontier culture and Bugis's self-identification as sovereign and not belonging to the state, while at the same time being the state for their own subjects. I also include an overview and analysis of the role of the government to show that by systematically neglecting the Mahakam Delta in terms of planning and regulation, it allowed this frontier culture to evolve and protract. The government failed to develop and implement clear policies that could have fostered an environmentally more sustainable and socially more just future for the people of the Mahakam Delta.

Below, I will identify these perceptions of injustices and situate them in the Bugis culture of sovereignty and people's relations with the state. This paper is of particular importance for policy making on the issue of access to justice in the aquaculture frontiers of Indonesia. These frontiers are often areas where people master the art of not being governed and as such should receive specific policy attention. Moreover, the sheer scale of these frontiers in most of Southeast Asia, and the human problems involved warrants for specific policies. For policy advice purposes, the legal analysis in the section of this paper 'Claiming compensation for the declining shrimp harvests' is a good starting point.

COMPENSATION

It is in the situation sketched above that people increasingly seek compensation from the company. As mentioned earlier, Bugis tend to see the company as a potentially equal partner in a frontier of opportunities but painfully realise that it is an unequal competitor and a source of compensation monies. Since

the production of shrimp began to decline, discourse around environmental damage ensued. This, however, does not mean that the issue is solely environmental or ecological. This is because people are fundamentally concerned with control over resources and the control sought is expressed in terms of relationships. As Stuart Kirsch (2006: 79–106) points out with respect to the impact of the Ok Tedi mine in the Upper Fly-Digul Plateau of Papua New Guinea, Yonggom people accusing the company of being a sorcerer inflicting harm should be seen in terms of their relations with the mine.

The resulting compensation claims show how pollution should be seen as a social relationship rather than an environmental problem that can only be addressed by technical means (Kirsch 2006:106).

The case of the Bugis and Total examined in this paper is also best understood when grounded in the fundamental aspect of social relations within the region. Glenn Banks (2002) eloquently sets the agenda for such an approach in a comparative analysis of the explanations of conflicts generated by the Ok Tedi, Panguna and Freeport mine sites in Melanesia. It allows for the incorporation of subsistence resources derived from the natural environment (such as the shrimp production in East Kalimantan), as well as other socially and culturally constructed resources (such as the patron–client system among Bugis and Bugis migrant's emphasis on autonomy) (Banks 2002: 41). The greatest value of the approach proposed by Banks is that it replaces frameworks that solely focus on an 'ecological crisis' and that it allows for recognition that the environmental impacts of the mines have created the possibilities for accessing justice by tapping into political, legal, and media resources. 'In this sense community complaints over environmental issues may be symptomatic of wider problems' (Banks 2002:42).

As I will show below, certain groups in the Mahakam Delta are keen to access compensation payments by Total by framing their problems as environmental, in tune with the language of their lawyers and NGO advisors,

because it will be heard by the company. The wider problems faced by these people are, however, about degrading ponds, reducing shrimp catches, low shrimp prices, massive debts with their patrons, and unrequited reciprocity with the company. On top of that, there is a sense of limited control over resources (patrons own the land and have control over collection and sales of shrimp), and loss of direction in their lives (as only those with funds can invest in a new region).

The presence of Total and the environmental impact (whether real or alleged) of its operations impinge further on people's already limited security over their resources. Some see themselves as victims of allegedly toxic gas leaks from pipes of Total installations (as I detail below) particularly if it opens an avenue to compensation payments. This also explains that in their discourse about pollution Bugis in the Mahakam Delta link Total's evils to the end of their autonomy (and concurrent growing interest in linking with the government) and the ordeal of moving on to a new region and starting anew as opportunistic migrants, which is a costly and uncertain venture.

A FRONTIER ECONOMY

To understand the situation in the Mahakam Delta, it is important to see the region as a 'frontier economy'. It is a region of opportunity, where previously intractable mangrove has been turned into privately owned land albeit without official consent of the state that formally claims the whole delta as state land (apart from a few plots for which people hold official land certificates). Bugis pioneers arriving from regions where their freedom of movement and residence became restricted, ventured into this land considering it as open access, as common property, where they could be self-reliant by growing shrimp in ponds. Each arriving family or group had its own independent access to land and waters for building shrimp ponds. Right from the beginning of shrimp farming in the Mahakam Delta, an ethos of independence began to underpin the frontier culture.

The newcomers were attracted to the

region because of the potential of aquaculture, especially when US dollar-related export prices for shrimps increased sharply due to the drastic devaluation of the Indonesian *rupiah* during the Asian financial crisis that hit the region in 1997 and lingered through 1998. In particular, those who felt marginalised in their Bugis homelands in South Sulawesi because of growing pressure on land and other resources, sold their land and houses and tried their luck in East Kalimantan. They invested cash and manpower to clear vegetation and to construct ponds, mostly of two hectares in size but sometimes up to hundred hectares.

After they cleared the mangrove and established signs indicating the borders of the land claimed, the migrants would arrange a new Civil Registration Card (*Kartu Tanda Penduduk*) and next a so-called *segel* or *izin garap* (a permit 'to till', 'to cultivate' or 'to work on' the land) from the most accessible village head (*Kepala Desa*) or head of the village neighbourhood or hamlet or sub-village (*Bapak Rukun Tetangga*). Next they hired an excavator for digging the ponds, purchased baby shrimp (*benur*) and fertilisers, constructed a dwelling at the pond, and recruited pond workers. Over a period of two decades, more than half of the landmass of the delta was converted into shrimp ponds.

To harvest a quality product, the pond needs acceptable water quality — something that is hard to maintain in the delta due to improper water management and salination of the soil. There is also significant competition for the natural food in the pond. Many farms are concentrated in a small area in the delta and this, along with the other factors mentioned above, have a negative effect on the environment and reduce pond productivity. Shrimp diseases have also entered the ponds as a consequence of the use of the commercial feedstuffs used to speed up growth rates. These produce large amounts of waste and fertile conditions for the growth of viral and bacterial shrimp diseases. Pollution of the waters — due to a combination of the oil and gas industry, upstream deforestation, and the local use of feedstuffs — has also contributed to the decreases in harvests.

The evolving social and economic relationships are typical of the contemporary migrant Bugis patron–client system. It involves seemingly unconstrained exploitation facilitated by inequitable profit sharing, and belongs to a tradition that is foreign to the region but is typical of contemporary Bugis (see Timmer 2010). In line with Christian Pelras's (2000) descriptions, scholars see other current manifestations of Bugis patron–client systems primarily as examples of the effects of modern capitalism. Studies report changes in 'traditional' patron–client systems not only in the Bugis South Sulawesi heartland but also in migrant communities elsewhere. In general, these groups experience shifts from more encompassing ties between contingent leaders and their followers to more circumscribed commercial connections between patrons and clients, reaching a general pattern of indebtedness (see Acciaioli 1989, 2000; Ammarell 2002; Vayda and Sahur 1985, 1996). For example, as Greg Acciaioli points out with respect to patron–client relationships in commercial fishing in a North Sulawesi Lindu fishing community,

Unlike the wide-ranging obligations recognized by more traditional *punggawa* ... the *bos* or *pengusaha ikan* maintains his relations with subordinate fishermen by one primary mechanism: debt. Characteristically an operator of a kiosk, he provides daily necessities — rice, salt, kerosene, soap, etcetera — to a fisherman on credit. But the fisherman is then obliged to supply only him with the major portion of his daily catch (Acciaioli 2000:224–25).

This appears to be the dominant type of patron–client system among Bugis abroad, including those who settled in the Mahakam Delta. The Bugis in the Mahakam Delta include *punggawa*, entrepreneurs who act not so much as employers dealing with wage earners in the shrimp businesses as they do heads and regulators of complex networks of dependents, including family and relatives, helping their workers cover expenses for building a house, medical or other emergency expenses, school fees, expenses of ceremonial obligations, and so on.

A recent study by Andrew P. Vayda and Ahmad Sahur (1996) indicates that the above characterisation of the patron–client system also applies to contemporary relations between Bugis entrepreneurs and their relatives who work for them in sharecropping in Teluk Pandan of East Kalimantan.

The characterisation can be expected to apply all the more in the case of Teluk Pandan enterprises insofar as those regularly working for others in Teluk Pandan appear to be mostly their poorer and/or younger relatives (Vayda and Sahur 1996:16).

In the Mahakam Delta as well, there is a strong preference for having relatives as workers. Like some of the Teluk Pandan entrepreneurs, *punggawa* in the delta also invoked the following Bugis saying: 'If you have a relative work for you, you are blind in only one eye; with a non-relative, you are blind in both' (Vayda and Sahur 1996:16).

In other recent studies of Bugis in frontier areas outside their homeland, the increasingly modern economic context of the operation of leader–follower relations is a recurring theme. Acciaioli (1989:172–79) describes the generally significant erosion of the totalistic nature of patron–client ties among Bugis. The increasing impact of direct rule by the Dutch East Indies government eliminated the need for local leaders to compete for political power. The advent of modern capitalism has also contributed to the dwindling of many of the displays of protection, loyalty, sponsorship, and followership that marked patron–client relations in the past (Acciaioli 1989:172).

The development of individually claimed tracts of land for shrimp ponds in the delta appears to have produced a more secular and more individualistic patron–client system. On top of that, *punggawa* take from the state certain principles for legitimising their role as entrepreneurs and 'service providers'. Using largely New Order regime terminology, they suggest that they bring government (*pemerintah*) — the most crucial aspect of bringing development (*pembangunan*) — in a region where the state fails to do so.

The social fabric among the migrants has developed in particular ways upon settle-

ment in the Mahakam Delta. The *punggawa* as provider of services, insurance company and pension fund that Pelras (1996:333) observes, functions in the delta as long as the aquaculture business supports it. Now, with the decrease in shrimp productivity combined with the advance of individually claimed tracts of land for shrimp ponds has produced a rather individualistic patron-client system. The *punggawa* is the intermediary between the smallholders (owners) and keepers of shrimp ponds and the shrimp traders or the cold storage plants. Most *punggawa* lend money to their clients for building a home. They also provide money and materials for the maintenance of the sluice in the discharge channel. These investments and related achievements give them status and allow them to behave as elites and find culturally accepted ways of moving shrimps through the delta.

The owner or the small *punggawa* usually puts the baby shrimp in the pond and they are also present at harvest time. In the past, harvest time was exciting, as harvests would generally be good and both the patron and his client could begin to count their shares in millions of *rupiah*. The customary profit sharing (*bagi hasil*) is 75 per cent for the *punggawa* and 25 per cent for the *anak buah* ('*bagi empat*') but this catch-sharing arrangement may vary and is subject to negotiation especially when harvests are poor and income for the *punggawa* appears uncertain. Moreover, the negotiations include consideration of the debts that are deemed necessary to be repaid and subsequently will lead to further deduction of the share in the profit-sharing agreement.

Nowadays, harvest time comes with increased anxiety and stress, as pond produce is poor, while the price is lower than ever before. A few years ago, people would harvest around five times a year and experience at worst one poor harvest every year. Nowadays, one or two good harvests a year is seen as unusual luck. It is in this situation that the disparity of wealth between *punggawa* and clients grows with the dependency of the latter on the former mounting. Nowadays, to minimise risks, the *punggawa* are reluctant

to lend money. However, most clients remain entangled: they have debts with a patron that should be repaid before breaking the relationship, and the *punggawa* have agreed among themselves that they will not buy shrimps from another *punggawa's anak buah*, leaving an *anak buah* with little choice but to remain with his patron.

Besides being in a relationship of debt, there is still loyalty that comes from the fact that the *anak buah* has so far relied on the help of the *punggawa* for housing, health costs, school fees, and expenses when suffering a misfortune such as the death of a relative, or when needing to arrange and celebrate marriages. *Punggawa* would ideally also take care of 'retired' *anak buah*. However, as investors in the region, the big *punggawa* bear little risk even though some may have high debts with the cold storage plants. This means that when they spot opportunities elsewhere they will pull out of the delta and leave most of their dependants behind in dismay.

FINDING A CULPRIT FOR DECLINING SHRIMP HARVESTS

Do people blame themselves and the ponds they operate or is the culprit for the declining situation to be found elsewhere? I have already indicated that there is a tendency to blame Total, but to fully understand this it is instructive to look at a number of factors, including social and economic success and social and economic differences.

A survey conducted in February 2009 reveals that income inequality is wide, ranging from IDR4 million to estimates of IDR1 billion to IDR1.5 billion (about AUD\$275 to AUD\$68,000 to AUD\$103,000) per year.³ The higher numbers are estimates by the financial assistants of *punggawa*, who stress that their bookkeeping is sloppy and merely account expenses and earnings.⁴ Many also try their luck in gambling.

Overall, incomes tends to rise and drop rapidly because, revenue-wise, most are largely dependent on aquaculture and fishing. These activities both experience quick and significant price changes due to unstable

international markets and changes in the rate of the Indonesian rupiah against the US dollar. This dependence on aquaculture also makes people vulnerable to the effects of exhaustion of ponds.

Because of this context, the decline of shrimp harvests has had a devastating impact. This has led the poor and vulnerable shrimp farmers in the Mahakam Delta to complain or express grievances about the environmental pollution that they believe has inflicted the misfortune. In particular, pollution is believed to reduce the productivity of shrimp ponds (sometimes to zero) and the subsequent action of making a charge or even a claim is directed towards Total. This is, however, hard to prove for local people because they do not have access to the equipment and facilities needed to scientifically establish these links. At the same time, the immediate link people establish between Total and shrimp demise neglects other factors like shrimp diseases, or 'natural' exhaustion due to the shrimp production system exceeding the carrying capacity of its natural environment.

In other words, the risks related to shrimp farming feature less prominently in people's awareness than the normative frameworks that potentially offer redress for grievances that point to the wrongs of others as the cause of decreased productivity. Besides blaming Total, they also blame the government for having allowed the excessive expansion of ponds in the delta through lack of regulation and by stimulating production. Many argue that if the digging of ponds had been regulated initially there would be less crowding and competition and farming would be more productive as a result.

With respect to teachings about production enhancement, people are at loss about advice from the department of fishery to make mangrove-clean ponds (that are prone to exhaustion) and the use of certain kinds of feedstuffs (that increase the risk of shrimp diseases). Less immediately related to shrimp farming, people see that in general the government takes little responsibility for the people and the environment. Most concretely, the government does not compensate for losses and damages. In comparison to the government,

people see that Total provides aid to villages and compensates for losses although not always according to people's expectations.

Another problem faced by the shrimp farmers is that people see that their ponds regularly flood, likely because of a rising sea level, but according to the people, it is due to Total's drilling activity causing the land to sink. This observation is linked to anxiety caused by an increasing number of oil and gas platforms encroaching on their land and waters. Total is drilling increasingly more wells in what is known as the Mahakam Block. Angular, brightly coloured and firmly guarded offshore platforms mark the horizon of the sea, while pipes cutting through the land connect regulating units and plants. And there is an increasing amount of traffic associated with the production of oil and gas. Overall, people feel besieged by an industry over which they have no control.

The 2009 survey indicates a strong correlation between proximity to Total installations and the level of knowledge about company and state regulations (while education and income levels are the same). That is, people who have experienced the effects of seismic exploration and gas and oil drilling in the vicinity of their shrimp pond or in their fishing grounds are more aware of certain company and state regulations (see below). It is, therefore, no surprise that people living close to installations of the oil and gas company are more inclined to voice grievances towards that company. They blame Total's activities for reducing the productivity of their ponds due to pollution and geographic disturbances and demand the government take responsibility. It is also their perception of the natural environment that inclines them to do so.

The natural environment is a shared concern of many because it is crucial to their livelihoods. The aquaculturists see the delta as a commodity frontier in which they see themselves as 'super-natural' (above nature). To understand issues of access to justice related to the environment it is important to understand the cultural backdrop. For example, people tend to reason that if Total is allowed to exploit natural resources to the detriment of the natural environment,

then the people should be allowed to do the same. If Total hinders free access to land for ponds and waters for fish and limits successful harvesting of shrimp then it should compensate the people as an equal economic competitor in the Mahakam Delta frontier. Total and the people are considered equal actors in a frontier of entrepreneurial and capitalist exploitation. That Total thinks differently and may not always play the game according to Bugis's frontier culture leads to resentment.

The identification of blame is also grounded in people's awareness of laws and regulations. People learn about laws and regulations by experience, stories from others, and from explanations disclosed during information-cum-counselling sessions (*penyuluhan* or *sosialisasi*) by the state and the company. State law and company regulations are, according to most, in principle capable of providing justice for all and enabling the delta to be managed in such a way that all would benefit from its wealth.

CLAIMING COMPENSATION FOR DECLINING SHRIMP HARVESTS

This section details the evolution of the Sungai Banjar case and discusses the way in which people bring allegations to forums and the kind of redress obtained. Fear, uncertainty, hampered communication, intermediaries, and self-interest play a major role. Self-interest is not only part of the frontier culture sketched above, but also emerges forcefully in the context of declining harvests, increasing economic hardship, and the absence of meaningful development from the state. Self-interest as part of the frontier culture of the shrimp pond workers relates to survival of the individual man and his family on the basis of the investment made and the venture developed in the frontier.

As of the year 2000, a number of people in Sungai Banjar began to suspect pollution of their shrimp ponds. They saw that one of the pipes of the Total platform named GTS TN 10 Charlie (henceforth: Platform Charlie) was leaking gas. Platform Charlie is situated about 300 meters from the shore of Sungai

Banjar, where the shrimp ponds begin. Fishermen saw a massive stream of gas bubbling up to the surface. This is continued at least until my last field visit in mid-2009. The surrounding water has a brown-yellowish colour, arousing suspicion and fear about environmental pollution.

Around the same time, the shrimp farmers of Sungai Banjar began to face increasingly severe declines in their shrimp harvests. In combination with the observation that Total must be the cause of this decline, they seemingly began to overcome frontier individualism. What united people was the realisation that organising themselves collectively may facilitate easier access to compensation money.

It took, however, until 2005, for people to establish the so-called *Kelompok Petani Tambak Mulai Maju* (Group of Shrimp Pond Farmers Commencing Progress) for claiming compensation from Total. The main driving force behind the establishment of *Mulai Maju* was Syaiful Kanibua, a lawyer based in Samarinda, who was invited to assess the situation in Sungai Banjar. Kanibua promised to be able to arrange compensation for environmental pollution if evidence could be established. He also told people to unite when voicing their concern.

Soon after Kanibua came on the scene, the number of members of *Mulai Maju* increased to 79, covering almost all shrimp farmers in Sungai Banjar. Many initially expected to benefit from the concerted action in relation to the assistance offered by Kanibua. They were soon to find out, though, that Kanibua's promises would not materialise as quickly as hoped. Those who were disillusioned quit the organisation and currently believe it is unlikely their financial contribution to Kanibua will be repaid, let alone receiving compensation. They have also become wary of outsiders who promise to assist in seeking redress through courts, negotiations, or lobbying.

In the beginning, Kanibua planned to focus the case around pollution due to seismic activity but, following discussions with Pak Amiruddin, the claim began to focus on the leaking pipe. According to the stories I

collected, upon the advice of Kanibua some shrimp farmers began to gather evidence from their shrimp ponds in the form of photographs and camera footage (usually with 1–2 megapixel mobile phone cameras). The photos show dead shrimp and the video footage gas bubbling up from the leaking pipe of Platform Charlie.

Again following advice of Kanibua, the members of *Mulai Maju* agreed upon a financial compensation of IDR15 million (about AUD\$1,800) per family, but Kanibua swiftly raised it to IDR60 million (about AUD\$6,100) per family. People were happy to agree, and on the basis of discussions with *Mulai Maju*, Amiruddin, Sungai Banjar's sub-village head (*Bapak RT*) and apparently also with the village head of the village of Sepatin, Pak Thamrin, Kanibua moved the case upward to the district parliament *Dewan Perwakilan Rakyat Daerah* (DPRD) of Kutai Kartanegara. He told the people that this step would bring them close to redress as Kanibua is well connected to a member of the DPRD named Pak Marwan.

The immediate result of Kanibua's efforts is that an official team went to the village to collect water samples from the shrimp ponds. The team included officials from the Environmental Monitoring Board (*Badan Pengawas Dampak Lingkungan Hidup*) of the Regional Planning Bureau (*Bappedalda*), and Total. The attention of some highly positioned officials made the members of *Mulai Maju* hopeful that their claims would be accepted.

Others reasoned that this may be an attempt by Total to wash its hands by proving to the government and the people that there is no environmental pollution. The water sample was taken to the laboratory of the *Pusat Pendidikan Lingkungan Hidup* at *Universitas Maluwarnan* in the city of Samarinda. The results of their investigation indicated that there was no evidence of pollution. However, this did not discourage Kanibua and Marwan. They continued to claim compensation.

People told me that at a certain stage Total made an attempt to negotiate with Kanibua a settlement of the case with a compensation payment worth less than the claim. Kanibua did not enter the negotiations,

arguing that he was merely representing the people who considered only the original claim just. Apparently, and according to local narratives, Total began to perceive Kanibua as a profiteer. In the end, Total no longer dealt with Kanibua and decided to pay IDR150 million to the people through one of its Community Development funds. But people allegedly received only IDR70 million, which had to be shared among 79 shrimp farmers. Seventy families received IDR1 million (about AUD\$120) each and nine families did not receive anything.

The kind of redress advocated by Kanibua and agreed upon by the shrimp farmers leads to distress. A potentially rewarding road to justice proved to be ineffective. The company handed out cash money to the claimants but this did not provide redress. Instead, as the amount was so little and nine families did not receive money, resentment towards Total grew. 'This is not how one does business in the delta, not with Bugis,' is how a woman expressed her anger.

To approach the company is not easy as its offices are in Balikpapan and further afield in Jakarta and Paris. This largely explains why they were keen to trust a mediator like Kanibua and strengthen themselves as a group with similar concerns, despite a frontier culture that encourages them not to work together. Previously, people tended to report their concerns about environmental pollution and declining harvests to Amiruddin, Sungai Banjar's sub-village head. They were vesting their hopes in him to process their complaints to a higher state forum. However, Pak Amiruddin and also other elements in the village government (*aparatus desa*) did not respond as effectively as expected by the justice seekers.

Disappointed, people reasoned that if the lowest level of government felt that there is no reason to advocate their concern to higher levels of the state, then those higher levels might disparage them. Having departed from a level they would describe as *buta hukum* (legally illiterate), they now felt let down by what they considered the only and the most powerful forum: the state. Many realise that this is part of the game of living frontier lives and as a result most do not complain much

but instead try to seek alternatives. These alternatives include petty business, catching small shrimp, producing and selling shrimp crackers, or moving to another region. The latter option is only available to those who have enough money to invest in a new venture. It is in this situation that most try to get what is potentially available, including compensation money from Total.

In terms of legal awareness, it is important to note that people realise the potential benefits of engaging with a lawyer, in particular with someone who is connected to people in the DPRD. The DPRD is an influential body nowadays. In the past, DPRD's were seen as rubber stamps of the central government but decentralisation has brought functions to the regions that have greatly increased its powers. The DPRD not only makes local rules and regulations *Peraturan Daerah* (PERDA) but also oversees and monitors the role of local governments. Law 32/2004 states that DPRD's have the obligation and authority to conduct oversight of implementation of PERDA and other regulations, decisions of governor regents/mayors, implementation of local budgets, local executive policy and implementation with respect to international cooperation in the region. The DPRD can play a role in settling conflicts between foreign companies and local communities. Realising the authority of the DPRD has likely encouraged Total to look seriously into accusations of environmental pollution and actively join government teams investigating situations on the ground. The Sungai Banjar case has increased awareness about the present role of the DPRD. This may provide others with the incentive to push the DPRD to act on complaints and grievances expressed by their constituents with respect to local policies and the quality of public services.

THE FAILURE TO IMPLEMENT GOVERNMENT REGULATIONS

Until today the government has failed to control the situation in the delta so as to foster the sustainable development of resources that would benefit everyone. The main reason behind this failure is lack of

interest, not the absence of regulations. Most of the previous studies on nature and development in the delta indicate that more or less proper regulations are in place and should in fact have prevented massive destruction of mangrove forests. But due to the failure of policies the delta has become the stage for a typical drama of the commons. Below I detail the history and evolution of official regulations and show that lack of state intervention has allowed this drama to evolve (see also Simarmata 2010).

Since the late 1960s, control of the delta's mineral resources were given to the national oil company Pertamina. The postcolonial government gazetted it as a Mining Concession Region or *Wilayah Kuasa Pertambangan* (WKP) comprising the Mahakam gas and oil fields — an area covering about 95 per cent of the estuary of the Mahakam River. With respect to land and natural environment, this concession demands that companies operating in that area should conduct a baseline environmental assessment as a precondition for permit granting. Furthermore, the company is obliged to protect the ecosystem, and prevent environmental pollution.

The Oil and Gas Act of 1960, the Mining Act of 1967 and a Presidential Decree of 1976 detail that oil and gas companies are not obliged to obtain right to land for their exploitation activities. They only need to compensate for land taken from local landowners, with the provision that compensation does not transfer rights to the company. After mining has ceased, the land should be returned to the original landowner, in most cases the state.

Recently, related regulations that were put in place at the time when Total was already extracting oil and gas in the region, outline that all land compensated by the company is expropriated to eventually become state land. This is ruled in a Government Regulation (*Peraturan Pemerintah*) of 2004 and in a Decree of the Head of the Oil and Gas Agency (BPMIGAS) of 2007. In addition to these two regulations, there are rules that say that landowners have to allow mining activities on their land by parties who can produce evidence of being a WKP conces-

sionaire or its contractor.

For the shrimp farmers, these regulations impact most significantly on the issue of who receives compensation and who does not. Confusion about this arises because the regulations are not clear about who has the right to be compensated. From a legal perspective, Total paying compensation to the pond owners who do not possess a land certificate is illegal. The ponds are illegal as they exist without any permit from forestry minister, governor, regent or the forestry agencies. A significant amount of ponds are also illegal because they are located within a protected zone.⁵

The provincial land-use planning agency declared the Mahakam Delta a protected zone in 1999 and the only legal ponds are those for which the owners have a land certificate — a total of only five percent of the landmass of the delta. None of the newcomers hold land certificates and feel no need for more legal certainty. They are sure that, when needed, they can sell or let the land, and in case the government wants to evict them, it will certainly pay compensation. Indeed, many farmers hope that Total will dispossess them so that they can collect a relatively high amount of compensation money for the land that is becoming increasingly unproductive. This will enable them to invest the money elsewhere.

If the legal status of the Mahakam Delta is a forest zone Total should secure permits before cutting mangrove. This is not happening. As a coastal region, the Mahakam Delta is a protected area where aquaculture and land registration for cultivation and settlements by the village governments are not allowed. If all these legal provisions had been implemented the delta would likely still look like it did some three decades ago. What went wrong?

Since the process of devolution of government power that commenced shortly after the fall of the Suharto regime, the regional level has become increasingly responsible for regulating extraction of natural resources. However, there appears to be a lack of political will to develop policy that may stimulate sustainable development of natural

resources. There are a number of reasons for this. The first has to do with a tradition or legacy of colonial policies relating to natural resource management.

Until the end of the nineteenth century there was little interest in the natural resources of the delta. The Kutai sultanate appeared to be unaware of a few small groups of settlers on the islands in the delta. These were mostly Bugis engaged in fishing and gardening (including coconuts) as well as trade with groups upstream the Mahakam River. The Kutai sultanate was more interested in levying taxes on trade of forest products from upstream Dayak groups to seafaring traders.

Next, the colonial government focussed heavily on resource exploitation and largely denied resource rights to local populations, let alone in sparsely populated areas like the Mahakam River Delta. The main resource extraction activity in that period was in the hands of capitalist ventures (then owned by Dutch). This practice continued after independence when the government faced the challenge of state building and chose to use structures left over from the former colonial power.

The ownership and management of resources for the local people were often not clear. Additionally, political elites did not have much trust in the state as its structure and ideology often changed during the republic's first two decades. As a result, they sought to maximise personal benefits and did not put much effort in establishing credible government structures.

The third reason is of particular importance to the situation in the delta, namely the nature of shrimp markets and the international system of resource use with respect to oil and gas. International trade in shrimp and the transnational oil and gas industry is largely skewed against regions such as East Kalimantan with plentiful natural resources.

CONCLUSION

The case of environmental pollution near Sungai Banjar shows how small-scale shrimp farmers try to hold the oil and gas industry responsible for declining produc-

tivity of their shrimp ponds. Since approximately 2002, shrimp harvests have declined across the delta. Concurrently, access to and control over social and natural resources have become tenuous. At the same time, the presence and impact of Total's gas and oil operations is growing and the prospect of receiving compensation payments for environmental damage has become popular. In this situation, a group of shrimp farmers in Sungai Banjar have come to see themselves as victims of supposedly toxic gas leaks from pipes of Total installations. They link the pollution to the end of their autonomy and the ordeal of moving on to a new region and starting anew as opportunistic migrants — an undertaking almost no-one can afford.

People in the Mahakam Delta are hardly motivated to develop their region for the common good. They see their activities and themselves as above nature and they are keen to remain autonomous from the state and other institutional frameworks. As a result, the recent hardships of settlers residing in the Mahakam Delta resulting from the decline in shrimp harvests does not necessarily translate into care for an environment that is allegedly destroyed by the oil and gas ventures of Total.

In this context, sustainability is not on people's minds, the focus is on sharing wealth. The *punggawa* think differently about sharing, and claim a larger share as they feel that they are like the state in terms of providing money and welfare to the people (their clients). They tend to think that the state provides uncertainty due to unclear and ever-changing plans and programs and its own interest in oil and gas exploitation in the delta. In many respects, Bugis's ideas about 'rights' to access to state services and company compensations are pitted against their supposedly inherent frontier self-reliance. As a result, Bugis's demands for justice do not contribute to a demand from formal institutions that may improve governance for the benefit of all or for the protection of the natural environment.

In this context the 'justice' of environmental justice is best understood as an ambiguous concept; in particular, varying claims about injustice appear to be attempts at trying to get

compensation from the oil and gas company for the decline of shrimp harvests. This kind of modern self-interest evolves when people's economic ventures are no longer productive. It appears to be the result of a realistic view that relates to development and compensation promises by the company, and, to a much lesser extent, the government.

People know that representatives of the government and Total come and make promises about financial rewards, bridges, restoration of nature, saving the delta and so on, which are unlikely to be sustainable. In these circumstances, people in the delta have a realistic view to get what they can, while they can. Hence, what is often seen as opportunism or greed is a response to the failure of the frontier as a productive zone and the failure of government policies to effectively regulate development.

In a coastal region that is abundantly rich in natural resources, where people do not share equally in the profits of shrimp ponds, fishing and other resource extraction, this kind of response is understandable. In other words, mounting claims for compensation presented to Total is not merely a condition created by the migrants or Total, but a condition that offers opportunities for people who know how to gain access to that particular kind of justice.

Policy action with respect to coastal shrimp frontiers should focus on outlining arrangements for controlling access for and the pace of scale of small-scale resource projects so as to ensure sustainable development. Regulation with respect to pollution should focus around compensation for damages that can actually be proven.

Any consideration of compensation should take into account past investments of the victim related to the amount of land or waters used and the size of the land or waters polluted. This is the reality that people in the delta are all too familiar with and which informs much of their understanding of current injustices. At the same time, one should realise that the absence of clear regulation about land ownership leads to confusion, tension, and claims that are hard to assess.

To effectively engage with the kind of frontier civil society that I have identified here, it is important to acknowledge the extent to which social organisation and people's attitude towards the state and companies is shaped by the long-term absence of the state and the prevalent local patron–client relations. In order to deal with the environmental degradation in the area, suitable mechanisms of dialogue are needed to ensure a smooth interface between all stakeholders — from villagers and village heads to *punggawa*, money-lenders and company representatives — to ensure sustainable development of natural resources and justice for the most vulnerable.

ACKNOWLEDGEMENTS

Ethnographic fieldwork for this paper was conducted during a number of visits to the region from July 2007 onwards. On top of that, a team of students conducted a survey on access to justice in February 2009. The Netherlands Organization for Scientific Research funded the research. I thank Akhmad Wijaya (MA Student at Universitas Mulawarman), Rikardo Simarmata (PhD candidate at Universiteit Leiden), and Rony Fardyan Paath and Bagus Rai Wibowo (Students in the Law Faculty at Universitas Mulawarman) for their assistance in the field and insight on versions of this paper. The usual provisos about personal responsibility apply.

AUTHOR NOTES

Jaap Timmer is senior lecturer and Director of the Master of Applied Anthropology at Macquarie University, Sydney. He is the author of *Living with Intricate Futures* (2000) and numerous articles on cultural change, millenarianism, and political developments in Indonesian Papua and Solomon Islands, and on political ecology and access to justice in East Kalimantan. He is currently focusing on the anthropology of the state, alternative constitutions, religion, and lost tribes in the Pacific region.

REFERENCES

- Acciaioli, G. 1989. Searching for Good Fortune: The Making of a Bugis Shore Community at Lake Lindu, Central Sulawesi. PhD dissertation, Department of Anthropology, The Australian National University.
- Acciaioli, G. 2000. Kinship and Debt: The Social Organization of Bugis Migration and Fish Marketing at Lake Lindu, Central Sulawesi. In R. Tol, K. van Dijk, and G. Acciaioli (eds), *Authority and Enterprise among the Peoples of South Sulawesi*. Leiden: KITLV Press, 210–39.
- Ammarell, G. 2002. Bugis Migration and Modes of Adaptation to Local Situations. *Ethnology* 41(1):51–67.
- Banks, G. 2002. Mining and the Environment in Melanesia: Contemporary Debates Reviewed, *The Contemporary Pacific* 14(1): 39–67.
- Bourgeois, R., F. Rahmadani, E. Sudiono, and B. Sulistiadi 2002. A Socio-Economic and Institutional Analysis of Mahakam Delta Stakeholders. Unpublished report.
- Kirsch, S. 2006. *Reverse Anthropology: Indigenous Analysis of Social and Environmental Relations in New Guinea*. Stanford: Stanford University Press.
- McCarthy, J. and C. Warren 2009. Communities, Environments and Local Governance In Reform Era Indonesia. In C. Warren & J. F. McCarthy (eds), *Community, Environment and Local governance in Indonesia: Locating the Commonwealth*. New York: Routledge, 1–26.
- Pelras, C. 1996. *The Bugis*. The Peoples of South-East Asia and Pacific. Oxford: Blackwell.
- Pelras, C. 2000. Patron-Client Ties among the Bugis and Makassarese of South Sulawesi. G. Acciaioli, trans. In R. Tol, K. van Dijk, and G. Acciaioli (eds), *Authority and Enterprise Among the Peoples of South Sulawesi*. Leiden: KITLV Press, 15–54
- Schulte Nordholt, H. and G. van Klinken 2007. *Renegotiating Boundaries: Local*

Politics in Post-Suharto Indonesia. Leiden: KITLV Press.

Scott, J. 2009. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven: Yale University Press.

Simarmata, R. 2010. Legal Complexity in Natural Resource Management in the Frontier Mahakam Delta of East Kalimantan, Indonesia, *Journal of Legal Pluralism and Unofficial Law* 62: 115–46.

Stonich, S.C. and P. Vandergeest, 2001. Violence, Environment, and Industrial Shrimp Farming. In Peluso, N.L., and Watts, M. (eds), *Violent Environments*. Ithaca: Cornell University Press, 261–86.

Timmer, J. 2010. Being Seen Like the State: Emulations of Legal Culture in Customary Labour and Land Tenure Arrangements in East Kalimantan, Indonesia. *American Ethnologist* 37(4):703–12.

Vayda, A.P. and A. Sahur 1985. Forest Clearing and Pepper Farming by Bugis Migrants in East Kalimantan: Antecedents and Impact. *Indonesia* 39:93–110.

Vayda, A.P. and A. Sahur 1996. Bugis Settlers in East Kalimantan's Kutai National Park: Their Past and Present and Some Possibilities for Their Future. CIFOR Special Publication. Jakarta: Center For International Forestry Research.

ENDNOTES

1. To protect the identity of my informants I use pseudonyms when referring to them and I have fictionalised any contextual clues to their identity.
2. Total is the Indonesian upstream unit of Franco-Belgian TotalFinaElf SA. It has been present in Indonesia since 1968, and is the country's leading gas producer. Total has been active in the Mahakam region since the early 1970s; production has been growing ever since, in particular with the discovery of massive fields in the late 1990s. The production in and offshore the delta now supplies most of the feed gas for the Bontang liquefaction plant from the

so-called Mahakam Block. The Mahakam Block is also a top-tier oil and condensate producer.

3. These numbers are consistent with the findings of a household survey reported by Bourgeois et al. (2002: 57–58). Other data from the survey also largely concur with their socioeconomic and institutional analysis of Mahakam Delta stakeholders. Moreover, the results of the survey echo issues in other tropical coastal regions where aquaculture and fishing are the main economic activities (see, for example, Stonich and Vandergeest, 2001). The presence of oil and gas mining in the Mahakam Delta adds a number of different problems that are detailed in this paper (and see Timmer 2010).
4. The Banjar fishermen who live on trawlers for extensive periods of time (for periods of up to three months) are generally better off. *Pedagang* or traders and shop and food stall entrepreneurs comprise a middle class of a sort. Also living in the villages are blue-collar employees of Total holding mostly fixed-term contracts (ranging from one day, one week to three months, but rarely to one year). These are mostly younger men and generally sons of fishermen who rank at the lowest economic level.
5. Since the Mahakan Delta is a coastal region, it is also subject to the so-called Joint Forestry and Agricultural Ministerial Decree of 1984, which outlines regulations for aquaculture in coastal forest (mangrove). This decree prohibits aquaculture on land masses (islands) smaller than ten square kilometres. For the delta, almost all its islands belonging to that category have become home to aquaculture and thus have little forest left. On top of that, a Presidential Decree of 1990 — the so-called organic regulation of the Environmental Law of 1982 — aims to prevent environmental damage in coastal and mangrove environments.

The State, Society and Governance in Melanesia Program (SSGM) is a multidisciplinary research unit within The Australian National University's College of Asia and the Pacific. The program conducts research on important contemporary issues affecting the Pacific, and especially Melanesia, including topics of particular relevance to Australia's aid program and to the Australian and partner government policies more generally.

SSGM's key objectives are to encourage scholarship on governance and state–society relations; generate dialogue throughout Melanesia and the Pacific Islands on these issues; and assist in bridging policy and research.

The program's research and outreach focuses on:

- Island Melanesia — Papua New Guinea, Solomon Islands, Vanuatu, New Caledonia and Fiji
- The culturally related region to the west including Papua/West Papua and Timor Leste
- The countries of the Pacific Islands region to the north and east.

State, Society and Governance in Melanesia
ANU College of Asia and the Pacific
The Australian National University

Telephone: +61 2 6125 8394

Fax: +61 2 6125 9604

Email: ssgm@anu.edu.au

<http://ips.cap.anu.edu.au/ssgm/>

For details of the SSGM Discussion Papers published from 1996, see
<http://ips.anu.edu.au/ssgm/discussion.php>

ISSN: 1328-7854