

# Chapter Eight

## Social, Environmental and Legal Dimensions of *Adat* as an Instrument of Conservation in East Kalimantan

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### Introduction

Since the 1980s, there has been a radical shift in thinking about environmental and natural resource management as being inseparable from issues of the welfare and human rights of minority or indigenous people (Chartier and Sellato 1998). This view was also shared in conservationist circles, where indigenous people acquired increasing visibility in the management of protected areas. Indigenous people and conservation organisations came to be perceived as natural allies based on the evidence that:

... most of the remaining significant areas of high natural value on earth are inhabited by indigenous people. This testifies to the efficacy of indigenous resource management systems (WWF 1996: 3).

The preservation of biological diversity and natural resources was not only regarded as compatible with the rights and traditions of indigenous people, but instrumental to the efforts of many forest communities to protect their forest and defend their land (WWF 1996, 1998).

In this context, the adoption and application of local management practices and customary law is viewed as the key to success. The devolution of management responsibilities to local institutions and local leaders is based on the belief that these people are endowed with a natural capacity to manage a protected area in the interest of sustainability and biodiversity conservation. At the same time, however, little attention is paid to the historical, social and legal context of local institutions and custom, with little understanding of the premises that would sustain their effective integration into different political and legal regimes.

By drawing on the experience of an experiment in community-based management in the National Park of Kayan Mentarang, East Kalimantan, Indonesia, this chapter examines the ways in which customary regulations can be integrated with national laws with regard to the management and protection of natural resources. I focus my attention on customary law, or *adat*, as an

ideological and ethical statement by the community with regard to criteria for resource management. I analyse the kind of resources regulated, and how they are regulated, as inscribed in local regulations among Kenyah and other communities inhabiting the area of the National Park. This is done in order to uncover potential points of intersection between criteria for natural resource management as practised locally, and the principles of management of protected areas contained in the documents of the Indonesian Government, and implemented by conservation organisations like the Worldwide Fund for Nature (WWF). I argue that uncovering potential points of convergence and difference is crucial to a productive engagement between law and custom, and the creation of future alternatives for effective and equitable strategies of conservation area management.

### ***Adat* Communities in the Kayan Mentarang National Park**

Stretched along the mountainous interior of East Kalimantan, Indonesian Borneo, the Kayan Mentarang National Park lies at the border with Sarawak to the west and Sabah to the north. With its gazetted 1.4 million hectares, it is the largest protected area of rainforest in Borneo and one of the largest in Southeast Asia. A strict nature reserve since 1980, the area was declared a National Park by the Minister of Forestry in October 1996.

The history of the natural landscape of the park is inexorably intertwined with the history of its people. Extensive archaeological remains in the form of stone burials are found in the reserve. They date from about 300 years ago and were used for secondary burial rites.

About 16 000 Dayak people live inside or in close proximity to the Kayan Mentarang National Park. Roughly half of these people — mostly Kenyah but with a small number of Kayan, Saben and Punan — are primarily shifting cultivators. The rest — mostly Lun Dayeh and Lengilu in the north — are mainly wet-rice farmers. The inhabitants of the park and surrounding areas depend on hunting, fishing, and collecting wild plants for their subsistence needs. Trade in forest products such as gallstones (from langurs and porcupines) and aloes wood or *gaharu* (*Aquilaria* spp.), as well as revenues from temporary employment in Malaysia, are the principal ways to earn cash to purchase commercial goods, pay for school fees, and cover travel expenses to the lowlands. These activities have allowed them to meet their basic needs and be self-sufficient under stable circumstances. Average income levels of the people in many areas of the National Park are above the average level for the province of East Kalimantan. However, transportation costs are very high. Only the existence of price subsidies has managed to keep prices of essential goods under control. Nevertheless, local prices are still on average three to six times higher than in the lowlands. People in parts of Krayan, Lumbis and Apo Kayan often travel across the border to Malaysia to get sugar, salt and gasoline at lower prices.

Individual claims to land are established by cutting trees or clearing forest. The right to use the land is then passed on to the succeeding generation. Useful trees like fruit trees, illipe nut trees, cinnamon and honey trees are owned by individuals or kin groups. When people decide to move to another community, they transfer rights over fallow land and trees to family members or, in more recent times, sell the rights to other villagers.

Traditional forest areas with protection status or strict management regimes exist and are known among the different ethnic groups as *tana ulen*, *tana ang* and *tana imud*. *Tana ulen*, for example, is *tana* (land) which is *m/ulen* (restricted/prohibited). It is an expanse of primary forest rich in natural resources such as rattan (*Calamus* spp.), *sang* leaves (*Licuala* spp.), hardwood for construction (for example, *Dipterocarpus* spp., *Shorea* spp., *Quercus* spp.), fish and game — all of which have high use value for the local community. In the past, *tana ulen* functioned as forest reserves managed by the aristocratic families of the community. Nowadays, responsibilities for the management of the forest reserves have been transferred to the customary councils that oversee *tana ulen* forests on behalf of the entire community and according to customary law (Eghenter 2000a).

All other forest in the village territory may be regarded as community land with open access regulated by social norms. Although the boundaries of the territory are known to the communities, these are not enforced in an exclusive way. The model is akin to what Casimir defines as a ‘social defense boundary’ strategy (1992: 11–13) where there is no strong sense of territoriality and perimeter defence, and neighbouring people can access the area provided that they ask for permission.

The communities living in and around the park are still *adat* communities, largely regulated by customary law or *adat* in the conduct of their daily affairs and the management of natural resources in the customary territory or *wilayah adat* (Eghenter and Sellato 1999, 2003). The customary chief (*kepala adat*) administers the customary law with the help of the customary council (*lembaga adat*). All elected officials at village level and prominent leaders of the community sit on a customary council.

In the past, the customary chief acted as coordinator and decision maker on civil and religious matters concerning the groups in the territory under the chief’s jurisdiction (*wilayah pemerintahan adat*). During the colonial period, the authority and jurisdiction of the chief were recognised, although the Dutch administration occasionally intervened to force changes to the boundaries of the territory or lend legitimacy to a particular group in case of dispute. It was only after independence, and the introduction of a new administrative system based on sub-districts (*kecamatan*), that the status of *wilayah pemerintahan adat* changed to become simply *wilayah adat* (customary territory). The *kepala adat* became a

sub-district headman, working with the sub-district officer and receiving an honorarium from the government.

Notwithstanding the assimilation into government bureaucracy, the role of traditional institutions like *lembaga adat* is still key to understanding the communities' views and the way they deliberate on issues of forest and natural resource management. The results of a recent participatory inventory of local institutions, conducted by the Community Empowerment Team in the National Park area of the Kayan Mentarang Project (Lawai 2001), show that the *lembaga adat* was used more for dealing with local affairs than the government administration. *Lembaga adat* were believed by local people to be the primary decision makers in issues such as conflicts with logging companies (over 50 per cent of respondents), monitoring and management of natural resources (over 60 per cent of respondents), and development and protection of the National Park (over 50 per cent of respondents).

### *Adat* Criteria for Natural Resource Management

Customary law — the part of *adat* concerned with sanctions — regulates access to and exploitation of land and forest products with regard to all forms of land and forest tenure. *Adat*, however, is neither fixed nor unchanging. As a social mechanism and judicial process, *adat* is transformed and adapted to new conditions in a constant evolution.

At annual meetings, which usually coincide with the harvest festival, members of the customary councils meet to discuss and update regulations and deliberate on social matters and natural resource management. Modifications to the regulations are often necessary as a result of changing circumstances, the negative effects of intensified harvesting pressure, or other changes in the natural environment and economic conditions.

Customary regulations specify modes of collection of forest products that tend to stress sustainability. Regulations emphasise not collecting more animals or forest products than needed, or harvesting in ways that would hamper their future reproduction or growth (for example, collection of hardwood resin is allowed throughout the entire village territory as long as trees are not cut down). In other instances, regulations may set temporal limits by determining how frequently a certain product may be harvested and for how long. With regard to rattan, for example, collection may occur only every two or three years. The period of collection is also limited to a two to three-week period. Modes of exploitation that employ chemicals and sophisticated technology which may have a damaging effect in the long term are outlawed.<sup>1</sup>

<sup>1</sup> For example, fish can only be caught using traditional tools like nets, rods, and fish traps, while the use of chemical poisons or electric shocks to catch fish is not permissible and offenders will be fined.

In recent deliberations of some customary councils, the hunting and trapping of animal species perceived as locally scarce was temporarily banned. These included the rhinoceros (a species that has supposedly been extinct in this area of Kalimantan for the last 40 years), clouded leopard, wild cattle (*Bos javanicus*), and the straw-headed bulbul (*Pycnonotus zeylanicus*). The latter, a common bird in the area of the National Park only a few years ago, has recently become a coveted item in wildlife trade and can fetch very high prices on regional and national markets.

Customary regulations commonly state that trees at the headwaters of rivers may not be cut. They also recommend that salt springs in the forest, which are common hunting grounds, may not be damaged by cutting the trees around the springs. While the first directive indicates a strategy of watershed protection and preservation of clean water supply for the community, the second one highlights the importance of protecting the habitat as a site of interrelated ecological and economic functions.

Based on these and other elements, it appears that communities are concerned with renewable supplies and the need to secure the future availability of natural resources for both consumption and commercial purposes. The regulations thus reflect what Western (1994: 500–1) calls a utilitarian value of conservation. Moreover, the emphasis on sustainability in the management of natural resources is a function of the current economic priorities based on the exploitation of forest products. However, if priorities change and the communities start to value the resources in their environment less, the interest in sustainable harvesting may cease.

Forest products with high use and market value, such as rattan, construction timber, fish, *gaharu* and other minor forest products, are commonly regulated but not to the same degree. For example, rattan — a diverse group of climbing palms — is a wild resource that is sometimes managed in locations where the resource is particularly abundant. Collection may be done only on a collective basis and upon deliberation of the community council. The harvesting is also limited to the older stems of the clump cut at a certain height from the ground, so that the rattan can grow back. On the other hand, *gaharu* — the resinous and fragrant heartwood produced by a fungus in trees of the *Aquilaria* genus — appears to be only slightly regulated. It is mandatory for *gaharu* collectors to report and pay a fee to the community council before going on a forest expedition, but collection may be done on an individual basis and at any time. Collectors are also expected to cut only infected trees.

It can be argued that differences reflect the products' natural characteristics and distinct population dynamics (Jessup and Peluso 1986), as well as local histories of control and exploitation. On the one hand, rattan tends to concentrate in certain forest areas and becomes a semi-managed resource under traditional

tenure. Rattan is a rather predictable resource in terms of location and yield. More rules are therefore necessary to prevent over-exploitation of the resource and guarantee its sustainable use. On the other hand, *gaharu* trees are dispersed fairly evenly and at low densities over the territory. Regeneration from seeds takes a very long time, and trees can be found in a variety of habitats. Moreover, only one out of 30 trees may be infected. Consequently, *gaharu* is highly unpredictable, the output of collection activities is more uncertain, and the risk of depletion is therefore relatively low.

The history of exploitation of the two resources is also very different. Rattan is a forest resource that has been consistently used at the local level and commercially exploited on occasions (between 1910 and the 1960s, and again in the 1980s) depending on favourable market prices. By contrast, the high commercial value of *gaharu* and its large-scale exploitation are a relatively recent phenomenon (since the early 1990s) in the communities of the interior of Indonesian Borneo, and there is also no local use of *gaharu*.

## **The Management of National Parks in Indonesia**

Official government regulations outline the legal and scientific framework for conservation management that is used and applied in all protected areas in Indonesia. These regulations are stipulated in documents like the *Government Regulations on Conservation and Protected Areas* (Regulation No. 68/1998) and the *Special Directive on the Management of National Parks* (attachment to Decree No. 129/Kpts/DJ-VI/1996), or the 1995 *Directive for Determining the Zonation of a National Park* (*Pedoman Penetapan Zonasi Taman Nasional*). Implementation is the responsibility of the Ministry of Forestry through the Directorate General of Forest Protection and Nature Conservation.

None of these documents explicitly deals with the rights of *adat* communities in conservation areas. The zonation system, however, comprises a 'traditional use zone' (*zona pemanfaatan tradisional*), where traditional activities and limited uses of plants and animals by local residents who are dependent on forest products are allowed (see also Regulation No. 68/1998 *Concerning Wildlife Reserves and Environmental Conservation Zones*). No animals protected by national law may be hunted, and only non-timber forest products may be harvested. One of the defining criteria for 'traditional' activities allowed in a National Park is the mandatory use of traditional tools like fishing rod and net, bow and arrow, or blowpipe and spear. Also, extraction or collection of forest resources should exclusively be for subsistence purposes or ceremonial *adat* needs. The Manual further indicates that only local people residing in the area are eligible for permits to use natural resources in the protected area, and the permits have to be granted by the park authorities.

Recent developments in forest policy include the ministerial decree (No. 677/Kpts-II/1998) on community forest concessions through the establishment of local cooperatives.<sup>2</sup> An internal draft instruction (Government of Indonesia 1999) discusses some possible new guidelines for use of natural resources in protected areas. Following the main directives of the ministerial decree, the draft proposes that the use of natural resources in protected areas be regulated as follows:

- exploitation of natural resources in ways and modes that are compatible with the main function of nature conservation;
- hunting activities in hunting parks with traditional methods such as dogs, arrows, spears or knives;
- harvest of only non-timber forest products (natural latex, birds' nests, traditional medicines, algae, honey, fruit, vegetables, edible roots or tubers, rattan), which means that no *gaharu* or timber may be cut nor minerals exploited;
- management of eco-tourism, natural resources, and hunting by local people organised in cooperatives in the use zones of the park, according to the specific functions of the protected area;
- management rights given to organised groups of local people or cooperatives for a definite period of time (30 years).

As with communities' forest concessions, local people are allowed to operate small businesses and manage natural resources in selected parts of the conservation area by forming joint enterprises or cooperatives. Permitted activities are those defined as 'traditional' and compatible with the function of protection of endemic flora and fauna in the park ecosystem. The government maintains full jurisdiction over the area through the park authorities. Park authorities also retain the right to monitor and evaluate activities, and to suspend the operating licence of a cooperative. This creates an odd legal situation whereby local people who, based on the authority of customary law, are the owners and managers of their customary land, would have to apply to the Minister of Forestry for a permit to operate businesses in 'their' land.

The internal draft contains no direct or explicit mention of *adat* or indigenous institutions, except with regard to the denotation of local people entitled to form enterprises:

... Indonesian citizens who were born and still live in and around the conservation area and possess the characteristics of a *komunitas* because of their social closeness, similarity of interests and means of livelihood

<sup>2</sup> This legislation has been suspended, and a revised version (Decree No. 31/Kpts-II/2001) has been approved.

that depend on the exploitation of natural resources, a common history, special bond to the land... (Government of Indonesia 1999: D-1).<sup>3</sup>

The issuing of the 1999 forestry law and the approval of the government regulations on *adat* forest will provide a strong legal mandate for enforcing changes to the management of conservation areas. New arrangements and regulations will have to accommodate the interests and rights of indigenous people as well as those of forest protection.

## **Recent Legislative Developments and the Status of *Adat***

A discussion of alternative management of conservation areas needs to take into consideration the 1999 *Forestry Law*, as several aspects of the law, particularly the aspects concerning customary rights and *adat* forest, will define future park management policy. Similarly, a definition of the role of local communities in the management of 'national' natural resources needs to be related to the recognition of *adat* rights under decentralisation and regional autonomy.

### **The *Forestry Law* of 1999**

Law No. 41/1999 reasserts the principle that all forest land in Indonesia is controlled by the state for the prosperity of its people (Article 4), including customary forest or *hutan adat*, where management, not property, can be devolved to an *adat* community (Article 5). Special management rights over forest land can be granted to educational or research institutions, social and/or religious organisations, and/or indigenous communities or *masyarakat hukum adat*.

The law also contains a definition of *masyarakat hukum adat* (Article 67), which claims that the state acknowledges and accommodates local *adat* rights as long as they exist and are legitimate and they do not conflict with national interests. If, in future, *adat* communities should no longer exist, the right to manage the forest would be returned to the state. The recognition of an *adat* community as well as its abrogation will be established in regional regulations.

According to this section of the law, legitimate *adat* communities are those where:

- the community is still organised or recognises itself as one association under a common law (the Dutch *rechtsgemeenschap*);
- there is an active institution and officers;
- there is a clear territory controlled by *adat* (*wilayah hukum adat*);
- there is legal enforcement (and legal institutions/regulations);
- the community members still harvest forest products for their daily needs.

<sup>3</sup> *Komunitas* is a term often used in scholarly papers and official documents to denote *masyarakat adat* (traditional communities).

Legitimate *adat* communities also have the right to:

- use and exploit forest products for a living to meet their daily needs;
- manage the forest on the basis of existing customary law as long as it does not conflict with the national law.

Moreover, Article 34 of the *Forestry Law* states that the history of local communities and their institutions must be considered, as well as their record in management and conservation of the ecosystem. Although not directly related to the management of protected areas, the statement provides a strong mandate for the recognition and involvement of local institutions in the management of forests where such institutions exist.

A contentious issue remains to be resolved in that the legal existence of the *adat* community is contingent on its recognition and legitimation by the government. Similarly, the government would also decide whether *adat* rights would be abolished when *adat* institutions ceased to exist. The relevance of *adat* is thus subject to legal provisions outside the context of traditional law. Although there is an explicit recognition of *adat* claims over forest land, this is done within the framework or nomenclature of a state forest (Nugraha 2000: 3).

This situation has the potential to undermine the authority of *adat* and the sustainability of arrangements involving *adat*. Chris Bennett argues that:

the key to a positive outcome is for *adat* or long established institutions to gain their legitimacy from below and from above, and allow the local community to decide which of its *adat* institutions should be formally recognised (personal communication, February 2001).

A draft government regulation on *adat* forest (Government of Indonesia 2000), which is currently being discussed, reinforces the basic principle of authority that *adat* forest is state forest. The draft specifies steps that need to be taken to recognise the existence of *adat* communities and establish the legitimacy of *adat* claims. It also clearly states (in Article 3) that *adat* communities that no longer exist cannot be re-established or resurrected. The Minister and regional government will form a research team comprising various experts in relevant disciplines who will determine the following:

- membership of the *adat* community;
- organisation and structure;
- boundaries of customary land;
- legal practices;
- management practices regarding forest products used in daily life and/or the cultural and religious relevance of *adat* forest;
- the history of the *adat* community.

The research methodology will be discussed and agreed between the Minister and the Indonesian Institute of Sciences.

As a cautionary note, potential shortcomings of this process must be indicated. For example, there might be a tendency to develop a standard methodological approach and impose it without due consideration of the local context. Moreover, the research process to establish the existence of an *adat* community and *adat* rights might take a very long time and entail high costs if it is to fulfill basic social science research standards, and ensure quality and reliability of results. There is a risk that short-term and superficial surveys by outsiders might be used to research the legitimacy of *adat* claims in order to cut costs and expedite the process. Moreover, there is no clear indication in the current draft of the government regulations whether existing documentation on *adat* communities and their claims to customary lands would be accepted by the government as valid. This would include evidence such as land-use and resource maps, customary regulations, and historical and cultural traditions. For example, in the Kayan Mentarang National Park area, the WWF project has already worked with the communities to compile thorough documentation on the existence of *masyarakat hukum adat* and the legitimacy of their claims over forest land by means of: long-term interdisciplinary research (see Eghenter and Sellato 1999, 2003); participatory community mapping activities (Sirait et al. 1994; Eghenter 2000b); and inventories of *adat* regulations and local institutions (Lawai 2001).

## Decentralisation and the Management of National Parks

The law on decentralisation and regional autonomy (No. 22/1999 and No. 25/1999) concerns the transfer of political and financial powers from national or state level to sub-national or regional level. In this framework, reference to conservation and management of natural resources is minimal (Articles 7 and 10). The law states that the management of natural resources is transferred to regional (provincial and district) governments, but conservation policy and the authority over the management and development of protected areas remain the full responsibility of the Ministry of Forestry and Plantations.

The law contains some ambiguity with regard to the separation of jurisdiction between national and regional authorities in the management of natural resources. It also raises some questions concerning the level of decentralisation, whether at provincial or district level, for certain functions. According to Sembiring (2000), this ambiguity might create confusion and undermine the process of decentralisation unless it is improved in future drafts of the basic law or by further government regulations.

At a workshop in 1999, organised by the United States Agency for International Development and funded by the Natural Resource Management Project, several experts met to discuss what kind of management models would

better suit the decentralisation scenario and guarantee more efficient management of National Parks. Saruan (1999) argued that management of National Parks in the new reality of decentralisation and regional autonomy would have to take into account the development plans of the regional or district government. In his view, these levels of government should be actively involved in setting up an efficient and transparent management system. Planning for the management of a National Park should follow a bottom-up approach and give priority to community-based models of conservation, where local conservation measures would be strengthened in the conservation area. Saruan further argued that the provincial office should be granted management autonomy while the central agency could act as a coordinating unit.

The integrity of a National Park in the future will not only depend on the effectiveness of conservation policies and application of existing laws, but also on compatible district legislation developed by the local parliament for the management of national natural resources which are located in its territory. The drafting of district regulations provides a good opportunity for conservation managers to work together with the local parliament on specific mechanisms outlining the role of the regional government in managing 'national' protected areas and for exploring collaborative institutional arrangements that would include the district government as part of the managing unit.

### **The *Masyarakat Adat* Management Model**

The preceding discussion establishes that there is a missing link between *adat* regulations and national regulations, between the legal framework of customary law and that of national law, with regard to the protection and management of conservation areas. However, it also reveals the potential points of convergence between the two perspectives and indicates the need for new models and legal avenues to create effective and equitable 'localised' management of protected areas. The proposed model would be 'localised' in that it would take into consideration the aspirations of local people for improving their welfare and taking part in the management of a protected area. It would integrate existing local *adat* institutions and regulations on sustainable use of natural resources as part of regional conservation efforts. There is not necessarily a contradiction between the efforts to conserve a forest area and local forms of exploitation. This is particularly true for areas like the Kayan Mentarang conservation area, with a history of sustainable use of natural resources (under stable conditions), low population density, little agricultural pioneering or illegal hunting, and where risks of over-exploitation are more likely to originate from outside the area.

The new forestry law explicitly states the criteria by which the government can recognise the legal existence of *adat* communities. These criteria include: the relative sustainability in the use of natural resources; the presence of strong social cohesion and traditional institutions; high reliance of communities on the

exploitation of natural resources; and a tradition of conservation measures. In the case of a conservation area that is claimed by *adat* communities, like the Kayan Mentarang National Park, an additional criterion for the acknowledgment of the legitimacy of *adat* claims would need to be considered. This criterion would be the level of dependence of the local people on the objectives and success of the project. The communities living in and around the Kayan Mentarang area are not only *adat* communities with functioning traditional institutions, customary territories, and a long history of occupation and use of the area. They are also economically dependent on the extraction of valuable forest resources from the park area and the conservation of its forest status. For example, the support for the protected area is highest among those communities who are most economically dependent on forest resources, so long as local communities are allowed to continue sustainable extraction. There is a strong correlation between the economic value of the forest (in the form of non-timber forest products) and support for the establishment of a National Park (which is the main objective of the project).

Some preliminary recommendations can thus be made in support of localised conservation agendas:

1. Secure official recognition of *adat* land and building the capacity of customary councils in their role as managers of the conservation area.
2. Preserve locally developed regulations on the use of forest products that guarantee sustainability, including suggestions and criteria for animal-population management. This strategy is likely to increase the chances of compliance among local people.
3. Accept *de facto* core zones as those areas which are too far from settlements and are not exploited by local people, but which would maintain important ecological functions in the conservation area.
4. Recognise that definitive and precise entitlements are probably more useful for communicating boundaries to outsiders and discriminating between *adat* and non-*adat* people (users and outsiders) than they are as criteria for management of the conservation area.
5. Create an inter-*adat* institution or forum that coordinates management activities and addresses environmental concerns that often transgress the local boundaries of customary lands.
6. Recognise that National Parks established in territories claimed by indigenous people are best managed and protected as indigenous or *adat* forest.

It is recommended that customary councils or *lembaga adat* be recognised as managers of the *hutan adat*, which is part of the National Park area. *Lembaga adat* are active and established institutions with a strong basis of tradition and legitimacy at local level. They, and the communities they represent, 'have the

same interest in securing access and use of natural resources and the ecosystem', which is one of the criteria discussed in the internal draft of guidelines to regulate community forest concessions in conservation areas. Moreover, the tradition of the customary councils in the area of the National Park indicates that they possess a strong commitment to protecting the environment and practising sustainable use. They also have knowledge and experience in the management of natural resources, which are additional requirements mentioned in the draft (Government of Indonesia 1999).

It is important to develop and enforce an *adat*-based management of the park by training and supporting local institutions. The opportunity for capacity building would strengthen local management and legitimise the role of local people, not just as simple users but also as managers of (their) natural resources in the park area. The process would take time and it would have to be adjusted to suit the ability and time constraints of the communities.

Developing an *adat*-based management of the park would also indirectly strengthen and reinforce a new social role for the customary councils at a time of extreme challenges and difficulties for *adat*. The example of the exploitation of *gaharu* in Apo Kayan is in many ways typical of the exploitation of natural resources in the interior of Kalimantan. Since the early 1990s, outside collectors, sponsored by Chinese and Arab traders based in the towns of the lowlands, have come in increasing numbers in search of *gaharu* and gallstones. Their mode of exploitation is drastically different from local practices. Being outsiders and belonging to different ethnic groups, they do not always acknowledge or respect local *adat* regulations and rights. They tend to cut indiscriminately infected and non-infected trees, and use chemicals and other means to poison salt springs where langur monkeys come to drink. They also spend extended periods of time in the forest where they establish semi-permanent camps. This mode of exploitation has increased the chances of over-exploitation of natural resources and has also exposed the limits of the local *adat* authority. For example, the customary councils often deliberate on the need to prevent outside collectors from accessing their land, and the options of confiscating the collectors' supplies and belongings. They denounce the situation but sometimes lack the necessary legal authority and internal consensus to impose their will. Enforcement of, and compliance with, regulations is an index of the strength of local *adat*. When traditional authority begins to lose its prestige and is eroded by competing normative systems, the effectiveness of the local management system is also inevitably weakened and may collapse (Eghenter 2005).

The WWF Kayan Mentarang Project has compiled and proposed a preliminary conservation agreement between the communities and the Directorate General of Forest Protection and Nature Conservation for the management of the park based on local *adat* regulations. Its conceptual and practical justification draws

upon the considerations of the local economic and social situation: the need to recognise and secure the exclusive and permanent usufruct rights of communities in the area of the park; the relevance of customary regulations where these stress conservation and sustainable use; the importance of allowing local enforcement and the imposition of customary fines for most infractions; the introduction of tools such as quotas and seasonal harvesting, or other measures of animal-population management, when and if conditions require. The conservation agreement has already been discussed in local meetings with the communities and the feedback was positive. The communities felt that their concerns were being addressed and that they could support plans for a National Park based on recognition of their *adat* claims and customary law (Eghenter 1999).

Participants in the 1999 workshop suggested that a management plan with a clear zonation system and division into core zone, wilderness zone, and traditional-use zone would help acknowledge, integrate, and accommodate the conservation functions of the protected area and the aspirations of local people. However, this recommendation alone might not be enough to achieve these objectives. Zonation should be established in ways that best suit local conditions. In this regard, not all kinds of zones might be appropriate in a given protected area, but only those most relevant for maintaining functions of biodiversity protection and securing the economic needs of local people. For example, in the Kayan Mentarang National Park, the entire area is claimed by *adat* and most of it has been exploited in the course of history. In these circumstances, the establishment of a large traditional use zone or '*adat* use zone' might represent a priority, while a core zone would only be determined following an assessment of local land-use patterns and trends, and on the basis of wide local consensus.

Another important consideration is that a zonation system imposes a sort of permanent micro-partition within the conservation area according to ecological, biological, research, and other functional criteria. This approach, unless it is the result of a consultation process and linked to local standards of land use, can raise suspicion among local people. For example, during participatory planning meetings for the Kayan Mentarang National Park, community representatives objected to the proposal to divide their territory into different zones, each with its own separate set of regulations and prohibitions. Moreover, they indirectly questioned the meaning of a permanent division into zones by asking, 'once a zone has been established, can we change it?' or, 'can we access a core zone once we have exhausted all resources in the other zones?'

In the recommended 'localised' management model, the day-to-day management of the park would be the full responsibility of the inter-*adat* institution — a coordinating institution formed by elected members from each of the customary councils in and around the conservation area. The creation of this institution would guarantee easier coordination between the various *adat*

units and better overall management and use of the entire area of the park. In the case of the Kayan Mentarang National Park, this institution would be the Forum Musyawarah Masyarakat Adat that was formally established in 2000.

In regard to the ideal role of central and regional governments in the management of National Parks, Yusuf (2000: 49) suggests that the central government only act to facilitate, advise, and provide guidelines. In 2000, the forum members made a recommendation to the Directorate General of Forest Protection and Nature Conservation with regard to recognising their role as managers of the park. Subsequently, it was proposed that a collaborative form of management be established. The proposed Dewan Penentu Kebijakan (Policy Board) was to include representatives and conservation experts of the ministry, representatives of the forum or the indigenous people of the park area, and representatives of the local government. In April 2002, the policy board was formally recognised by a ministerial decree for the collaborative management of the Kayan Mentarang National Park. The operating principles of the board emphasise the importance of coordination, competence, shared responsibilities, and equal partnership among all stakeholders.

The *adat*-based management model of conservation areas could have important social, economic, and ecological advantages. With the involvement and acknowledgment of local people as managers of the park, there would be reduced initial costs for activities like building, monitoring, boundary marking, and law enforcement. The implementation of this kind of management would entail a smaller opportunity cost for local people and avoid significant social costs. Local residents would be granted exclusive rights to use the forest sustainably and sell forest products. The legitimation of *adat* would guarantee a degree of tenure security to local communities. Moreover, their presence on the management board as equal partners could enhance their sense of responsibility and accountability in the management of the forest.

## Postscript (May 2004)

This chapter was originally completed in 2001. Although the discussion and challenges regarding the relationship between customary law and national law in the management of National Park areas remain valid, there have been some interesting developments in the meantime. With regard to the management of conservation areas, the most interesting aspect is the forthcoming Ministry of Forestry directive on collaboration in management activities in protected areas (*Pelaksanaan Kolaborasi Kegiatan Pengelolaan Kawasan Suaka Alam dan Kawasan Pelestarian Alam*). The principle of collaboration and 'stakeholder theory' would thus be established as conditions for more effective management of conservation areas in Indonesia. As mentioned in the section on basic principles for collaboration, it is suggested that the form of collaboration be adapted to the

social, cultural, and ecological conditions of protected areas. Interestingly, this aspect seems to further underline the need to 'localise' park management.

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