

Customary Rights in APRIL plantations

Findings from a field study



Marcus Colchester, Patrick Anderson, Harry Oktavian, Rudiansyah and Hasri Dinata

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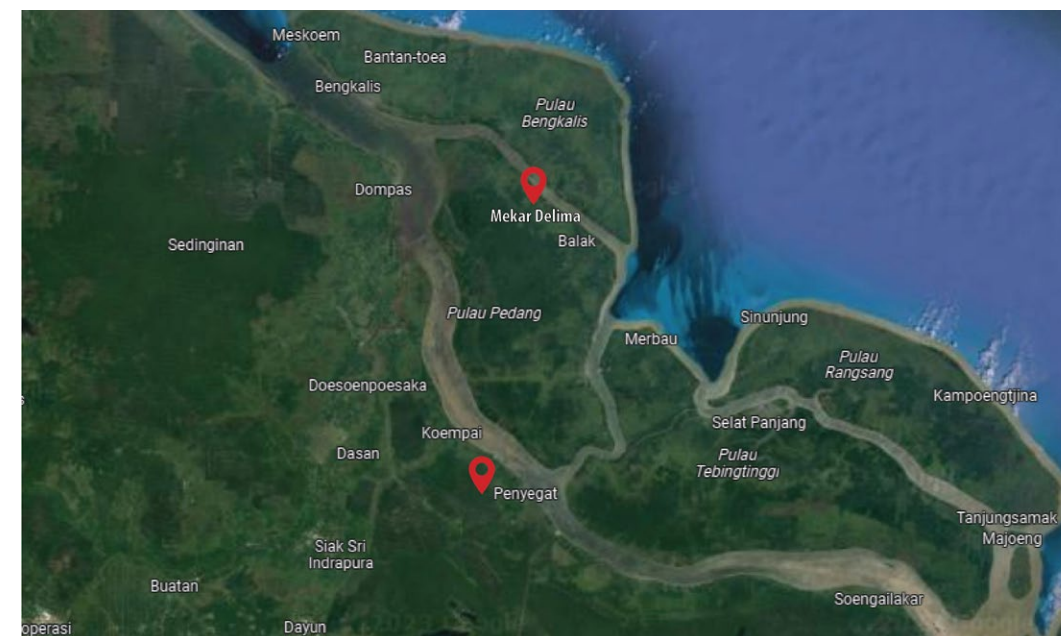
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Executive Summary

International human rights law upholds indigenous peoples' collective rights to their customary lands and territories and to restitution and remedy in cases where lands have been taken without their Free, Prior and Informed Consent (FPIC). These rights precede, and do not depend on formal recognition by, the State. Businesses have a responsibility to respect human rights and provide remedy where they have been violated. The Principles and Criteria and International Generic Indicators of the Forest Stewardship Council (FSC) make requirements of operators consistent with these norms.

The pulp and paper company, APRIL, has expanded its plantations in forest and peatland areas contrary to the FSC standards which prohibit forest conversion. Since 2014, APRIL has made public commitments to conform to FSC standards and re-enter FSC. This is now possible under FSC's new Policy to Address Conversion, so long as the company makes remedy for social and environmental harms in accordance with the FSC's newly adopted Remedy Framework. Since 2014, APRIL, and the wider Raja Garuda Emas/ Royal Golden Eagle group of which it is part, has adopted policies to respect human rights, including indigenous peoples' customary rights and right to FPIC. APRIL has also made public commitments to provide effective remediation.



Map showing location of the two field visits

Indonesia has ratified and endorsed the main international human rights instruments and the Constitution upholds customary rights but implementing laws are deficient and in practice most indigenous peoples' territorial and land rights have not yet been effectively recognised and protected. Extensive areas have been handed out to companies by the government to areas that overlap customary territories without these peoples' engagement let alone consent, resulting in widespread land conflicts throughout the archipelago.



Community meeting in Mekar Delima. Credit: Hasri Dinata

APRIL is already applying a conflict resolution procedure which provides options to regularise the land holdings of long-term residents and/or recompense individuals for losses but, so far, this does not address communities with customary rights. Forest Peoples Programme (FPP), with local partners Yayasan Masyarakat Kehutanan Lestari (YMKL) and Bahtera Alam (BA) have engaged in a dialogue with APRIL to explore how the company can now apply its own policies, in conformity with FSC standards and policies and in line with international human rights law, to respect indigenous peoples' customary rights.

By means of a simple questionnaire, Focus Group Discussions, community meetings and interviews, FPP, YMKL and BA have carried out an independent field study in two sites in coastal Riau which reveals clearly that indigenous peoples have long been resident in the area and have extensive territories subject to customary law. The Suku Anak Rawa and Akit peoples have lost large parts of these customary territories to APRIL's plantations without their prior rights being recognised and without FPIC. The affected communities list significant harms in terms of lost hunting grounds, fisheries, farmlands, sago groves, forests and forest products, medicinal plants, coconut crops and other damages, including pollution by run off from the *Acacia* plantations. Access to sacred lakes has been impeded and traditional identities and religious practices also harmed. Some benefits have also resulted, including access to markets, the provision of government services and Corporate Social Responsibility programmes, but the roads have also opened up their lands to oil palm plantations. Both communities welcome APRIL's recent commitments to provide remedy. They seek to recover their rights to their lands, and negotiate agreements with APRIL based on respect for their rights.

Indigenous Peoples' rights and the right to remedy in international law

After several decades of advocacy and negotiation at the International Labour Organisation and the United Nations, indigenous peoples, as well as holding all the universal human rights ascribed to other individuals and citizens, have been recognised as holders of collective human rights.⁶ As peoples, indigenous peoples are explicitly recognised as holding rights to:

- self-determination (albeit within the framework of the nation states in which they now find themselves),
- ownership and use of the lands, territories and natural resources that they have customarily owned, occupied or otherwise used
- self-governance through institutions of their own choosing
- exercise their customary law
- own and control their traditional knowledge
- give or withhold their free, prior and informed consent (FPIC) to measures that may affect their rights, in particular to their lands.

International laws with respect to indigenous peoples' rights have grown out of the colonial encounter and drawn on the less discriminatory aspects of the colonial powers' laws in order to strengthen protection of indigenous peoples. For example, definitive court judgments based on English common law and applied in countries as varied as Nigeria, Canada, the USA, Australia, New Zealand, the Philippines and Malaysia, have upheld the notion of 'Aboriginal Title', which recognises that indigenous peoples' rights in land do not depend on an act of the State but derive from customary rights, practices and usages and obtain until lawfully extinguished. Such rights may extend over hunting and fishing areas and seasonally occupied foraging areas and explicitly go beyond settlements and cultivated fields. Moreover, such rights are both collective and inter-generational, even where lands within these territories are individually owned by persons or families.⁷

⁶ Most obviously ILO Conventions 107 (1959) and 169 (1989) and the UN Declaration on the Rights of Indigenous Peoples (2007).

⁷ Kent McNeil, 2016, Indigenous Territorial Rights in the Common Law, *Osgoode Legal Studies Research Paper Series* 173. Likewise in Indonesia, the Dutch administered their colonies through existing authorities and recognized customary law. For a summary see Marcus Colchester, 2019, Legal obstacles to territorial rights recognition, sustainable commodity production and forest conservation on forest peoples' lands in South-East Asia with a focus on Malaysia and Indonesia, *Hunter Gatherer Research* 4(1): 81-112.

These legal principles were brought into international law, initially in ILO Convention 107 on Tribal and Indigenous Populations when it was adopted in 1959.⁸ They were then upheld in the revised ILO Convention 169 of 1989 and now underpin the United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in 2007 which states:

Article 26:

(1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

(2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired (emphasis added).

International human rights courts, such as the InterAmerican Court of Human Rights and the African Court of Human and Peoples' Rights, as well as the decisions of the International Labour Organisation and the UN treaty bodies, which oversee the application of States' human rights obligations, have elucidated how these rights should be respected and protected in specific circumstances. In the Americas, the Inter-American Commission and Court of Human Rights have been very consistent and clear that indigenous and tribal peoples' rights to their territories derive from their human right to property. The Court has repeatedly called on States to recognize these peoples' territories noting that a '*guarantee of the right to territorial property is a fundamental basis for the development of indigenous communities' culture, spiritual life, integrity and economic survival*'. The Court affirms that for such peoples their territories are their '*communal property*' and '*extend beyond settlements of specific villages to include lands that are used for agriculture, hunting, fishing, gathering, transportation, culture and other purposes*'.⁹ Likewise in the African Court on Human and Peoples' Rights a series of judgments have upheld the principle that indigenous peoples' property rights in their lands derive from custom and do not depend on State recognition.¹⁰

This large and rapidly growing body of jurisprudence of the UN treaty bodies and the ILO, has been applied also to cases in Indonesia. Notably, both the ILO and the UN's Committee on the Elimination of Racial Discrimination have urged Indonesia to recognise indigenous peoples¹¹ and to adjust its laws to recognise and protect indigenous peoples' rights, especially to their lands and territories and to FPIC. Not to recognise indigenous peoples' inherent rights in land based on custom amounts to a form of racial discrimination, by disqualifying them from the protection of their human rights as afforded to other citizens.¹²

⁸ Gordon Bennett, 1978, *Aboriginal Rights in International Law*, Occasional Paper No. 37, London, Royal Anthropological Institute of Great Britain and Ireland.

⁹ OAS (Organisation of American States) 2009. *Indigenous and tribal peoples' rights over their ancestral lands and natural resources: norms and jurisprudence of the inter-American human rights system*. 30 December 2009. <https://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>

¹⁰ Jeremie Gilbert, 2014, *Nomadic Peoples and Human Rights*, London, Routledge at pages 107-108.

¹¹ https://www.ilo.org/gb/GBSessions/GB342/WCMS_803941/lang-en/index.htm; <https://www.forestpeoples.org/sites/default/files/documents/Ompu%20Ronggur%20ILO111%20Art24%20Representation%20%2B%20Annexes.pdf>

¹² CERD Concluding Observations: Indonesia, CERD/C/IDN/CO/3, 15 August 2007, available at https://www.ecoi.net/en/file/local/1079411/470_1219158150_cerd-c-idn-co-3.pdf; CERD Communication under EW/UA Procedure: Indonesia, 13 March 2009, available at <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia130309.pdf>; CERD Communication under EW/UA Procedure: Indonesia, 30 August 2013, available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_7098_E.pdf; CERD Communication under EW/UA Procedure: Indonesia, 28 August 2015, CERD/87th/EWUAP/GH/CG/ks, available at <https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf>



Interview with women's representative in Penyengat. Credit: Harry Oktavian

The right to remedy

It is a norm of international law that violation of a human right gives rise to the right to remedy. The objective of such remedy should be to wipe out all consequences of the violation and re-establish the situation which would have existed without it. Remedies include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.¹³ Notably with respect to land, the ILO has ruled since 1959 that there should be no forced removals of indigenous and tribal peoples from their lands 'without their free consent' except in exceptional circumstances, noting also that in cases of forced removals

... they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. Persons thus removed shall be fully compensated for any resulting loss or injury.¹⁴

¹³ For further exploration of the right to remedy in relation to forest peoples, see: Fergus MacKay, 2002, *Addressing Past Wrongs. Indigenous Peoples and Protected Areas: the right to restitution of Lands and Resources*, <https://www.forestpeoples.org/sites/fpp/files/publication/2010/08/ipsrestitutionprotectedareasoct02aeng.pdf>; Hannah Storey, 2020, *Non-judicial grievance mechanisms as a route to remedy - an unfulfilled opportunity*, <https://www.forestpeoples.org/en/briefing-paper/2020/non-judicial-grievance-mechanisms-route-remedy-unfulfilled-opportunity> Anni Bangiev and Lucy Claridge, 2021, *The Right to Remedy for Indigenous Peoples in Principle and in Practice*, <https://www.forestpeoples.org/en/Report/2021/right-to-remedy-indigenous-peoples>

¹⁴ ILO Convention No 107 on Tribal and Indigenous Populations in Independent Countries, article 12: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

In 1989, a revised Convention No 169 on Indigenous and Tribal Peoples was adopted which further ruled that in the case of forced removals in exceptional circumstances,

these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. Persons thus relocated shall be fully compensated for any resulting loss or injury.¹⁵

In 2007, the UN Declaration on the Rights of Indigenous Peoples further clarified that:

Article 28:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.¹⁶

The UN has also made clear that businesses have a responsibility to respect human rights and make remedy for any harms even if the laws or practices of the national governments where they operate do not require this.¹⁷ The UN Guiding Principles on Business and Human Rights are also clear that companies should make remedy for harms caused by third parties on lands that they acquire.¹⁸

¹⁵ ILO Convention No. 169 on Tribal and Indigenous Peoples in Independent Countries, Article 16. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

¹⁶ See also report of UN Expert Mechanism on Rights of Indigenous Peoples: A/HRC/45/38

¹⁷ OHCHR, 2011, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement> https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁸ OHCHR, 2012, *The Corporate Responsibility to Protect Human Rights: an interpretative guide*, UN, Geneva. Page 39 specifically states: 'if an enterprise acquires another enterprise that it identifies as being, or having been, involved in human rights abuses, it acquires the responsibilities of that enterprise to prevent or mitigate their continuation or recurrence. If the enterprise it is acquiring actually caused or contributed to the abuses but has not provided for their remediation, and no other source of effective remedy is accessible, the responsibility to respect human rights requires that the acquiring enterprise should enable effective remediation itself, to the extent of the contribution.'

APRIL and the FSC

This report focuses on specific communities being directly affected by the Indonesian pulp and paper company, PT Riau Andalan Pulp and Paper (PT RAPP), which has about 448,000 hectares of plantations in Riau Province in Sumatra, Indonesia. It runs a vertically integrated, pulp and paper mill in Pangkalan Kerinci in Riau, which is supplied by its own plantations and by 32 supply partners. The company started pulp production in 1995, paper production in 1998 and has been expanding downstream ever since. PT RAPP is owned by Asia Pacific Resources International Limited (APRIL) registered in Singapore, while APRIL is in turn part of the Raja Garuda Emas/ Royal Golden Eagle (RGE) group, which is owned by the Indonesian billionaire Sukanto Tanoto and his family.

APRIL companies have not been eligible for FSC certification according to the FSC Principles and Criteria, as - until recently - they disallowed certification of corporate groups controlling operations where there has been forest conversion since 1994. However, in 2006 FSC adopted a policy which allowed users of FSC certified products to mix certified product with up to 30% of non-certified products that were deemed to be 'controlled wood'. These are wood products that do not come from certified sources but where the producer companies provide assurances that the controlled wood is harvested from operations that are: legal; respect human and traditional rights; not from forest conversion; not damaging High Conservation Values and; not from forests with genetically modified trees.¹⁹ Accordingly, PT RAPP began marketing some of its pulp and paper products as 'controlled wood'.

PT RAPP's FSC certificates for Controlled Wood were suspended in April 2010 following audits by Rainforest Alliance/Smartwood that showed multiple non-conformances with the FSC standards including continuing forest conversion and inadequate protection of High Conservation Values.²⁰ The company was simultaneously criticised for weak implementation of its then recent commitment to respect customary rights and Free, Prior and Informed Consent, for imposing land use plans and plantations without due consultation and for purchasing wood for its mills from operators where there had been serious human rights violations including killings.²¹

In 2013, the NGOs, Greenpeace, WWF-Indonesia and Rainforest Action Network filed a complaint with the FSC claiming that the company was in violation of the FSC Policy for Association in that it was still causing extensive deforestation and destruction of areas of High Conservation Value, neither of which is permitted by FSC. FSC disassociated from the company in August 2013 after APRIL unilaterally decided to file a withdrawal of the FSC certifications held by the group.

¹⁹ <https://fsc.org/en/fsc-mix-and-controlled-wood-labels> and <https://fsc.org/en/our-history>

²⁰ Memo from Rainforest Alliance/ Smartwood 15th April 2010.

²¹ <https://www.forestpeoples.org/sites/default/files/publication/2010/05/indonesiaaprilfpplettermay10eng.pdf>



Interview session in Penyengat Credit: Marcus Colchester

Later in 2014, APRIL told FSC that it was willing to comply with the Policy for Association and from 2016 the company has been in discussion with FSC about the terms under which it might be able to re-associate with FSC. Subject to statutory changes in FSC procedures, this process of re-association would include restoring forests and making remedy for social harms (and see section 5 below). Informal dialogue began. In 2016, FSC analyzed APRIL's SFMP (Sustainable Forest Management Policy) and stakeholder engagement. FSC entered into a formal dialogue with APRIL based on this evaluation. In December 2017, FSC performed a re-evaluation of APRIL's readiness to engage in a dialogue with FSC towards ending the disassociation. The FSC Board of Directors agreed to continued dialogue between FSC, APRIL and complainant NGOs.

In preparation for this process of re-association, in 2020, FSC commissioned a study of APRIL's performance by Forest Finest Consultants, to estimate the extent of any potential past environmental damage and social harms in violation of FSC's Policy for Association. A public summary of the study was made available in 2021. The study concluded that APRIL and its suppliers had converted some 530,000 hectares of forest between 1994-2019, of which over 430,000 ha. was irretrievably lost. The study estimated that c. 405,000 hectares of HCVs had been lost. The study also identified 124 'potential land tenure conflicts' in the supply chain during the period assessed.²² Following the results of the study, APRIL publicly acknowledged in a letter to FSC the impact of its operations since 1993, including the associated potential environmental and social harms, in Riau, Indonesia where it operates. An independent study of the performance of Royal Golden Eagle carried out by Aidenvironment in 2022 noted that APRIL and its supply partners have planted on 240,000 hectares of peatlands and that RGE had several unresolved land conflicts in its holdings in Sumatra.²³

²² Forest Finest, 2020, *FSC Baseline Analysis of APRIL Group: Public summary*, November 2020. For unclear reasons the study noted that these land tenure conflicts 'do not constitute a violation of the FSC PFA per se'.

²³ Aidenvironment, *Sustainability issues of a wood pulp giant: the Indonesian Royal Golden Eagle Group*, March 2022.

APRIL is not the only member of the Royal Golden Eagle/ Tanoto group that has faced controversy. One of Sukanto Tanoto's earliest pulpwood plantations and pulp mills, set up in the highlands of North Sumatra, faced protests even during the Suharto era. Initial protests focused on the forest clearance and the water pollution caused by the rayon mill in Porsea. Since the 2000s, after the company changed its name to Toba Pulp Lestari (TPL), controversy has focused on TPL's alleged land-grabbing from the Toba Batak indigenous people. One community that very strongly opposed the takeover of its lands was Pandumaan-Sipitahuta, which, after a lengthy campaign, supported by international NGOs, and following the intervention of the Indonesian President, was accorded rights to a customary forest (*hutan adat*), which was then excised from TPL's HTI – a move that TPL acceded to.²⁴

The Toba Batak allege that TPL has taken over their customary lands without FPIC, damaged the people's livelihoods and traditional occupations, including clearing their agroforests, from which the Toba Batak harvest frankincense resins that they have traded internationally for thousands of years. RGE notes that TPL operates in government-issued concessions based on land use allocations by the Indonesian government. One of the affected communities took its case to the International Labour Organisation, seeking return of their customary lands and forests, in order to restore their traditional occupations.²⁵ The ILO called on the Government of Indonesia to recognise the Toba Batak as an indigenous people, as a first step towards recognition of their rights and resolving the conflict. The legislature in Tapanuli Utara has since passed a local regulation (PERDA) recognising the Toba Batak as an indigenous people (*masyarakat hukum adat*) and, so far, three communities have received recognition of their resin forests as customary forests (*hutan adat*).²⁶ However, TPL has yet to admit causing social harms, let alone make remedy.

The wider RGE group includes several other major companies, including the Asian Agri palm oil group and Asia Pacific Rayon in Indonesia, Sateri and Asia Symbol in China and Bracell, a large producer of dissolving cellulose in Brazil. Bracell used to be FSC certified while it was an independent company but its certificate was revoked when the company was bought out by RGE. NGOs also allege that the Tanoto family group includes a number of other companies, some of which have been incorporated in secrecy jurisdictions disguising their links to RGE. This study does not address these wider concerns about RGE's responsibilities.

²⁴ <https://www.mongabay.co.id/2021/06/16/masyarakat-pandumaan-sipituhuta-rawat-dan-pulihkan-hutan-adat/>

²⁵ Marcus Colchester, *The Toba Batak and Toba Pulp Lestari: seeking remedy through the International Labour Organization*, AMAN Tano Batak, SERBUNDO, Forest Peoples Programme, Briefing July 2020.

²⁶ Peraturan Daerah No. 4 Tahun 2021 tentang pengakuan dan perlindungan hak Masyarakat Adat di KabupatenTapanuli Utara ; Roganda Simanjuntuk pers. comm.

Existing FSC policies on indigenous peoples and customary rights

Since its inception the FSC has sought to uphold the rights of indigenous peoples. The Principles and Criteria (P&C) adopted in 1994 required operators seeking certification to respect both legal and customary rights, recognising that in many countries peoples' customary rights in land are often inadequately recognised and protected.

These requirements were progressively tightened in successive revisions of the P&C and, with the adoption of the International Generic Indicators, the link between what FSC requires, the UN Declaration on the Rights of Indigenous Peoples and the International Labour Organisations Conventions were made explicit.²⁷

The current P&C require operators to identify indigenous peoples likely to be affected by planned operations and then, through appropriate engagement with these peoples, identify, recognise and uphold their customary and legal rights to lands and the use of resources, and identify areas where these rights are contested (eg between indigenous peoples and governments). Operators are likewise required to recognise these peoples' rights to control the forests on their lands unless they delegate such control through a procedure that allows for their free, prior and informed consent and which leads to a binding agreement. Operators are likewise required to identify and protect sacred sites and respect indigenous peoples' traditional knowledge.²⁸

The FSC P&C make the distinction between legal and customary rights exactly because, in some countries, governments have not yet legally titled or otherwise affirmed these rights. Likewise, they require operators to identify areas where such rights are contested because FSC requires that operators recognise both nationally recognised rights and customary rights which are legal under international law but may not yet be secured under national laws or procedures. Accordingly, FSC upholds the UNDRIP and defines customary rights as:

Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.²⁹

27 FSC, 2018, *FSC Principles and Criteria for Forest Stewardship*, FSC-STD-60-004 V1 EN Principle 3. <https://connect.fsc.org/current-processes/fsc-std-01-001-v5-2-fsc-principles-and-criteria-pc-forest-stewardship>

28 Ibid. emphasis added.

29 FSC-STD-01-001 V4-0



Reviewing the overlaps of customary lands and plantation permits. Credit: Harry Oktavian

Since 2013, FSC International Board has been advised by a Permanent Indigenous Peoples' Committee, which has urged the FSC to improve the way indigenous peoples' rights are upheld in practice. This led FSC to develop a guide on how to implement FPIC while, at the same time, it commissioned a series of detailed reviews of the implementation of FPIC in selected locales. These studies revealed serious shortcomings in the way operators actually deal with indigenous peoples.³⁰ In 2021, FSC adopted an updated set of Guidelines on FPIC, a 'non-normative' document, which sets out best practice on how forest managers should uphold indigenous peoples' rights to FPIC.³¹

30 Eg Rosamel Millaman and Charles Hale, 2016, *Chile's Forestry Industry, FSC Certification and Mapuche Communities*. FSC, Bonn. <https://ga2017.fsc.org/wp-content/uploads/2017/10/Chiles-Forestry-Industry-FSC-Certification-and-Mapuche-Communities-FINAL.pdf> and see: Marcus Colchester, 2016, Do Commodity certification systems uphold indigenous peoples' rights? Lessons from the Roundtable on Sustainable Palm Oil and Forest Stewardship Council, *Policy Matters* (21):149-165; Marcus Colchester, 2021, Reforming commodity certification systems to respect indigenous peoples' rights: prospects for the Forestry Stewardship Council and Roundtable on Sustainable Palm Oil, in: Daniel Brinks, Julia Dehm, Karen Engle and Kate Taylor (eds.) *Power, Participation and Private Regulatory Initiatives: Human Rights under Supply Chain Capitalism*, University of Pennsylvania Press, Philadelphia: 74-95.

31 FSC Guidelines for the Implementation of the Right to Free, Prior, and Informed Consent FSC-GUI-30-003 V2.0 – EN

New FSC policies on deforestation, remedy and re-association

FSC has long been reviewing how it should deal with companies that have already converted forests, exploring how it could encourage companies to halt any further deforestation and make remedy for past environmental and social harms, rather than just exclude such companies from certification. There has likewise been a lengthy discussion about how to encourage companies to make remedy for human rights violations and environmental damage rather than immediately excluding operators from association with the FSC. These discussions have been going on within the FSC for over 12 years and FSC has begun discussions about such matters with some of the implicated companies in Indonesia since at least 2015. The aim has been to make FSC a promoter of social justice and environmental restoration in forests.³²

In 2022, FSC agreed a bundle of policies designed to set a new path that would encourage more responsible forest management across corporate groups. A new Policy for Association and linked declaration procedure were adopted by the FSC's International Board of Directors in September 2022. This policy redefines what is a corporate group and the procedure sets out how companies should declare the extent and performance of their operations. The new policy became effective in January 2023.³³ At the same meeting, the FSC Board also agreed a new Policy to Address Conversion, which would allow companies that have converted forests or damaged HCVs between 1994 and 2020, to associate (or re-associate) with the FSC on condition they commit to and make remedy for any social and environmental harms associated with conversion. Taking the lead from international human rights norms, the policy likewise requires companies that have acquired lands where such conversion has taken place to make partial remedy, including for all violations of human and customary rights. This policy was dependent on the FSC membership agreeing to a change in the P&C. In November 2022, the General Assembly of the FSC voted to amend the P&C so that this new policy can come into effect.³⁴ This policy will become effective from mid-2023.

A critical element in this new policy is the 'Remedy Framework', which sets out the procedure that companies should follow both to remedy any violations of the Policy for Association and any social and environmental harms associated with conversion. This Framework was adopted by the Board of Directors in December 2023, and included amendments recommended by the FSC's Permanent Indigenous Peoples' Committee and in accordance with a Motion passed at the latest General Assembly requiring significant strengthening of the draft Framework as endorsed in September 2022 by the Board, subject to refinements.

32 <https://fsc.org/en/newscentre/an-in-depth-look-at-key-motions-passed-at-the-fsc-general-assembly-2022>

33 <https://fsc.org/en/newscentre/fsc-introduces-an-updated-policy-for-association-0>

34 <https://fsc.org/en/newscentre/motion-passed-fsc-principles-and-criteria-will-enable-the-policy-to-address-conversion>



Developing a sketch map of the community's territory based on customary rights. Credit: Harry Oktavian

Under the Remedy Framework, corporate groups that have converted forests between 1994 and 2020 – or acquired lands where such conversion has taken place – will be required to commit to uphold and implement this remedy procedure. This will include an independent assessor determining which social harms have been done and to whom, and then negotiations between rightsholders and the corporations involved to agree a remedy plan and its implementation. At several points in this process, FPIC will be required from customary rightsholders that they accept the identification of harms, the remedy plans and that adequate progress has been made for the company to be reassociated with FSC and progress towards certification. Adoption of these policies by FSC now provides an avenue for APRIL, along with the wider RGE corporate group, to end its disassociation with FSC, as long as it complies with the Remedy Framework and these other policies.

APRIL and RGE's policies on human rights, remedy and indigenous peoples

Since 2014, APRIL has adopted new social and environmental policies which very clearly set out its commitment to uphold human rights. Its human rights policy, updated in 2022, embraces its *'corporate social responsibility to respect human rights, including the rights of indigenous peoples and communities'* and commits APRIL to uphold the United Nations Bill of Rights, the ILO Core Conventions, the UN Guiding Principles on Business and Human Rights and the UN Declaration on the Rights of Indigenous Peoples.

The policy notes that APRIL will:

strive to manage and mitigate human rights risks in our operations and supply chain through our Human Rights Due Diligence Framework. We recognize that communities and their livelihood rights, and the rights of vulnerable groups such as indigenous groups, women and migrant and temporary workers, are important in the locations where we operate.

By this policy APRIL also commits itself to *'develop and apply a Human Rights Due Diligence framework to identify rightsholders and their rights and the potential and actual impacts of our activities'*. It then commits to prevent, mitigate and remediate any impacts and engage with stakeholders and develop a grievance process to deal with concerns, including those related to human rights.³⁵

This new policy on human rights amplifies and complements its commitment made by APRIL in 2015 and also updated in 2022 on Sustainable Forest Management.³⁶ Alongside a commitment to eliminate deforestation and limit damage to peatlands from its supply chain, the 2015 policy commits APRIL to *'respect human rights throughout its wood supply chains'*. It notes that this policy incorporates Royal Golden Eagle's own Sustainability Framework, which was adopted in 2014 and updated in 2022.³⁷ With respect to indigenous peoples and communities, APRIL's policy on SFM explicitly notes that:

APRIL respects the rights of indigenous peoples and rural communities and commits to the following:

- Respect the Universal Declaration of Human Rights, national laws and ratified international treaties, on human rights and indigenous people;
- Respect of the tenure rights of indigenous peoples and rural communities;
- Respect of the rights of indigenous peoples and communities to give or withhold their Free, Prior and Informed Consent (FPIC) to operate on lands where they hold legal, communal or customary rights prior to commencing any new operations;
- No tolerance for the use of violence, intimidation or bribery;

³⁵ APRIL Human Rights Policy, signed by Praveen Singhavi, President of the APRIL Group, January 2022. Emphasis added.

³⁶ APRIL Group's Sustainable Forest Management Policy 2.0, 3 June 2015.

³⁷ <https://www.rgei.com/images/pdf/RGE-Sustainability-Framework-English.pdf>

- To ensure that relevant international best practices in FPIC are followed, APRIL will actively engage with stakeholders, including communities, government, customers and civil society at the local, national and international levels;
- Resolution of complaints and conflicts through mutually agreed, open, transparent and consultative processes that respect customary rights;
- To develop Standard Operating Procedures (SOP) and maintain processes for the responsible handling of the list of all complaints from communities and other relevant stakeholders. These processes will be developed, updated, improved, monitored and reported to the SAC and other relevant stakeholders.³⁸

In 2022, APRIL published a sustainability report which summarises the progress it is making in developing its human rights due diligence framework. As part of this policy, a review was undertaken to identify salient human rights challenges. The sustainability report notes that:

Based on the review, the following human rights issues are found to have high salience priority level: occupational Health and Safety; Land Acquisition and Use; Indigenous Rights (Social, Cultural, and Civil Rights and Land); Community Livelihoods; Environmental Impacts; Responsible and Sustainable Procurement; Diversity, Equity, and Inclusion; Human Rights Violations by Security Personnel; and Climate Impacts.

The output from the review will inform the next step, which is a Human Rights Impact Assessment (HRIA), to identify and assess APRIL's actual and potential human rights issues and the performance of the APRIL's management systems in managing and mitigating those identified risks.³⁹

The sustainability report further notes that APRIL is committed to *'provide and cooperate in effective remediation through timely, equitable and legitimate processes, including dialogue and engagement'*.⁴⁰

It is in the spirit of these commitments that APRIL agreed to dialogue with Forest Peoples Programme, which is also an active member of the FSC, to inform its human rights performance and remedy procedures.⁴¹ The immediate aim from APRIL's point of view was to discuss its land claims resolution process and receive recommendations on how to strengthen this, particularly in light of APRIL's objective of ending its disassociation with FSC. APRIL and RGE's policies on human rights should create a useful framework for APRIL, and RGE more broadly, to recognise both legal and customary rights to land and provide remedy to impacted communities, and, thereby, bring the corporate group into alignment with FSC standards.

³⁸ APRIL Group's Sustainable Forest Management Policy 2.0, 3 June 2015.

³⁹ APRIL Sustainability Report 2022 page 86.

⁴⁰ APRIL Sustainability Report 2022 page 86.

⁴¹ FPP notes that PT Toba Pulp Lestari has contracted the NGO, Earthworm, to assess and advise on the social and human rights performance of TPL, APRIL's sister operation. Earthworm is also assisting APRIL with its community conservation partnerships.

Summary of Indonesian legal framework on customary rights

Indonesian laws related to indigenous peoples are confusingly contradictory. On the one hand, Indonesia as a member of the United Nations, has ratified the main international human rights treaties and made these part of Indonesian law (although it has not ratified ILO Convention 169 nor the previous ILO Convention 107). Indonesia also voted in favour of the UN General Assembly's adoption of the UN Declaration on the Rights of Indigenous Peoples. After the fall of President Suharto's New Order regime, the revised Constitution recognised the rights of indigenous peoples (*masyarakat hukum adat*)⁴² 'as long as they still exist'. In 2001, the People's Consultative Assembly (MPR) legislated the need to secure indigenous peoples' rights and ordered the House of Representatives (DPR) to adopt appropriate legislation to achieve this.⁴³ Various Presidents over the past twelve years have since made public statements, including in international forums, promising to pass such an organic law recognising indigenous peoples' rights but, although various drafts of this Bill have been circulated in the DPR, and it was for over a decade in the national legislative programme (PROLEGNAS), it has been blocked by vested interests and is no longer being actively discussed by the legislature.

On the other hand, the current legal framework and its application has not been effective in securing indigenous peoples' rights. The 1960 Basic Agrarian Law (BAL), which remains the main law regarding land in Indonesia, does accept that collective customary tenures (*ulayat*) exist. Moreover, somewhat like the English Common law concept of 'Aboriginal Title' noted above, *ulayat* rights are considered to derive from customary law and precede any act of the State.⁴⁴ However, the BAL treats *ulayat* rights as usufructs (use rights) encumbering State land which must give way to national development.

Similarly, until 2012, the Forestry Law, under which 70% of the country was classed as Forest Area (*Kawasan Hutan*), was interpreted by the administration as treating the whole Forest Area as State Forest Areas (*Kawasan Hutan Negara*), defined by the law as forest areas 'where there are no rights'. This continued despite a belated acknowledgement by the Ministry of Forestry that some 33,000 administrative villages (*desa*) were within or overlapped areas classed as *Kawasan Hutan*. The Ministry treated customary land and forest use by communities as legacies of a pre-modern era and the Forestry Law classed 'customary forests' (*hutan adat*), as lying within State Forest Areas, thereby implying that customary uses might be tolerated but were not based on a right, explicitly noting that these should give way to forestry development plans. Consequently, some 60 million hectares of logging concessions and over 6 million hectares of timber estate concessions have been handed out by the Ministry of Forestry (now the Ministry of Environment

42 Article 18B. This report translates as 'indigenous peoples' both the Indonesian term *masyarakat hukum adat*, as used in the Constitution, and the term *masyarakat adat*, as used in the vernacular and by peoples who self-identify as such. This is also how the English term is applied by international agencies such as the World Bank, Asia Development Bank and many other aid organisations, as also by the Indonesian human rights commission, national and international NGOs working in Indonesia, and also by FSC. For an early discussion of this matter see Marcus Colchester, Martua Sirait and Boedhi Wijardjo, 2003, *The Application of FSC Principles 2 & 3 in Indonesia: Obstacles and Possibilities*. WALHI and AMAN, Jakarta. <https://www.forestpeoples.org/en/region/indonesia/publication/2010/application-fsc-principles-2-3-indonesia-obstacles-and-possibilities>

43 TAP MPR 2001/IX

44 T.O. Ihromi, 1999, *Masyarakat adat dan pengurangan kemiskinan dalam masa transisi: kebijakan, aksi dan implikasi, beberapa butir pemikiran*. Makalah dalam Lokakarya Masyarakat Adat dan Penanggulangan Kemiskinan, Jakarta, 25-26 September 2001.

and Forestry) to private companies without considering the rights of prior residents including indigenous peoples. The result has been an escalation of land and forest conflicts throughout the archipelago, as amply documented by the Indonesian national human rights commission, which has called on the Government to effectively recognise indigenous peoples' customary rights to their lands and territories.⁴⁵

The contradictions between these two bodies of law came to a head in the early 2010s in a case brought to the Constitutional Court by the national indigenous peoples' organisation (*Aliansi Masyarakat Adat Nusantara - AMAN*). In 2012, the Constitutional Court recognised that, in line with the Constitution, indigenous peoples do have rights in lands and forests, 'so long as they still exist'. According to the judgment, where indigenous peoples' customary territories overlap areas designated as Forest Areas, these overlaps are to be considered as customary forests but not within State Forest Areas. The ruling left unclear exactly what the status of these areas was and what this implied about any overlapping concessions. Since then, after much hedging, the Ministry passed a regulation clarifying that customary forests are 'rights forests' (*Hutan Hak*), an almost unused category in the Basic Forestry Act,⁴⁶ and a further, baffling regulation has been issued requiring that, where forestry concessions overlap customary forests, any differences should be resolved in accordance with 'customary wisdom'.⁴⁷

This has left indigenous peoples seeking to secure their lands and territories in the challenging position of having to prove that they 'still exist'. In the absence of the much-needed organic law on indigenous peoples, the Ministry delegated this matter to district or provincial governments to address. An arcane process is required, in which academic opinions are sought to provide evidence that certain communities do still identify as indigenous peoples with separate identities and continue to exercise customary law. Once such information has been assembled and reviewed by the local government and committees set up by the local legislatures, these decentralised legislatures may then pass a regional legislative regulation (*Peraturan Daerah [PERDA]*) recognising the existence of certain specifically named indigenous peoples, implying, often without much clarity, that they thus have territorial rights. It then falls to the communities to apply to the Ministry of Environment and Forestry for it to agree which areas of these, often unmapped, territories can be designated as customary forests. The process usually takes years, sometimes decades, and consequently only some 60,000 ha. of customary forests have yet been recognised, out of between 40 and 75 million hectares of customary territories which indigenous peoples, researchers and NGOs estimate exist in Indonesia. To date something like 20 million hectares of claimed customary territories have been mapped by communities with NGO help, but most of these mapped areas remain unrecognised by the national government.⁴⁸

These legal and administrative realities create challenges for forestry companies operating in Indonesia. They have to follow national laws and administrative practice but in order to comply with international human rights standards and voluntary certification schemes, such as FSC, they must also go beyond these minimal requirements. The rest of this report explores these dilemmas in the case of APRIL's plantations in Riau.

45 <https://www.forestpeoples.org/en/topics/legal-human-rights/publication/2016/indonesian-human-rights-commission-national-inquiry-ind>

46 PermenLHK 21/2019 Tentang Hutan Adat dan Hutan Hak.

47 PermenLHK 17/2020 Tentang Hutan Adat dan Hutan Hak.

48 <https://brwa.or.id/wa/>

Reasons and Methodology for the Field Study

Forest Peoples Programme along with the local NGO, Scale Up,⁴⁹ has been interacting with the APRIL group since 2009, when APRIL first publicly committed to respect customary rights and uphold the principle of Free, Prior and Informed Consent.⁵⁰ In 2021, RGE reached out to FPP to renew dialogue with the group, and specifically with APRIL, which FPP agreed to in the light of RGE's 2015 'NDPE' commitments, APRIL's Sustainable Forest Management Policy, updated social and environmental policies and its continued commitment to end its disassociation with FSC.

Discussions have focused on the need for APRIL to make remedy for ongoing and unremedied social harms resulting from its operations and its past conversion of forests, and on how to identify rights and violations. These discussions made clear that, in line with its policy commitments outlined above, APRIL is actively applying a remedy procedure and grievance mechanism. APRIL's current procedure distinguishes between: long established communities whose presence in the area precedes its conversion or receipt of a HTI permit; recent settlers occupying HTI areas and; palm oil smallholders established within the company's HTI. The company plans to negotiate settlements with the first group, require the removal of the second group and, in line with a recent local regulation in Riau, allow the oil palm cultivators to regularise their smallholdings.

These discussions also clarified that, up to that point, APRIL was not seeking to identify areas of customary rights but only to negotiate over existing individual land holdings. It was pointed out by FPP that this would not bring APRIL into compliance with FSC's standards (P&C) or its draft Remedy Framework (nor with its own policy commitments). FPP thus undertook to raise funds so that it could independently explore these matters, carry out field assessments and then discuss the findings with APRIL with the goal of helping them to develop mechanisms for identifying customary rights and then negotiating remedy appropriately, in line with FPIC norms and FSC standards.

Accordingly, in July 2022 FPP, with partners YMKL and Bahtera Alam, carried out an initial visit to communities in Siak and Meranti districts in Riau to ascertain that target communities were willing to participate in such a study and in September 2022 this was followed up with a field visit to the same communities to document their situation and assemble ideas for what a due process could entail. A third field visit was carried out in February 2023 to share a draft of this report and confirm its validity with the community members interviewed.

⁴⁹ Scale Up was wound up in 2019 and its main programme taken up by the new NGO Bahtera Alam.

⁵⁰ For summaries on this interaction see: <https://www.forestpeoples.org/en/topics/pulp-paper/publication/2010/pulp-and-paper-giant-april-continues-seek-impose-its-expansion-pl>; <https://www.forestpeoples.org/sites/default/files/publication/2010/05/kampar-peninsula-2009-briefing.pdf>



Focus Group Discussion in Mungkal. Credit: Hasri Dinata

Two communities were selected for the field visits. The first is a community that Bahtera Alam knew to be an indigenous people (*masyarakat adat*) and the second was one where this had not yet been clearly established. A questionnaire (see Annex 1) was then developed for use in the field and then field visits were made to each village and some of their associated hamlets to interview community members through focus group discussions, semi-structured interviews along the lines of the questionnaire, one-to-one conversations and directed interviews with women's spokespersons.

The research team spent two days in each locale in September, stayed with the communities in their houses and used the time available to clarify in more detail the intentions of the researchers, the commitments being made by APRIL, the policies of the FSC and the prospects for improving their situation offered by the FSC's new Policy to Address Conversion and the Remedy Framework. The intention was not to fully document the communities' situations nor make full inventories of all impacts and alleged human rights violations – as will be required when the FSC Remedy Framework is rolled out – but to assess what methods should work to ensure that both APRIL and these assessors can identify customary rights and do not overlook them in their future assessments.

Findings from Penyengat

The people and their land

Penyengat is an administrative village of some 500 families on the eastern seaboard of Riau Province in Siak District. It is also the site of PT RAPP's main port where much of the wood to be processed in APRIL's mill in Pangkalan Kerinci is brought ashore from APRIL's plantations on other islands and from other distant suppliers. It also acts as the international port from which ocean-going ships export APRIL's paper, pulp and other products that come from the mill to foreign countries. The port's installations thus include a government-manned customs post, security personnel, a canteen, warehouses and lodging for officials and workers.

Long before PT RAPP commenced operations in Penyengat, the site has been inhabited by an indigenous people known locally as the Suku Anak Rawa (Swamp Children Tribe) who are still the majority population in Penyengat. The Suku Anak Rawa's traditional territory extended all down the coast from Sungai Kumpai south to the mouth of Sungai Lakar. According to their own history, the Suku Anak Rawa have always lived in this area and they have no history of migration. Their origin myth tells of the beginning of the tribe.

The Suku Anak Rawa went hunting for wild boar. They only found one pig and they ate it all up while still in the forest. But a local who had joined the hunt asked for the liver of the pig because his wife was pregnant and he really wanted her to eat pork liver. The group of hunters asked everyone not to tell the others that they had found a pig and eaten it in the forest.

After the liver was eaten by his pregnant wife, it turned out that she also told other women in the village that her husband had been hunting and had killed a wild boar. This caused ill-feelings among the fellow villagers of being deceived. It caused conflict and war among all the villagers. This war led to almost all the residents being killed. The Rawa river turned red due to the large amount of blood of the dead residents. This incident is called "Lacur Darah" (the river turns red).

All the villagers died except for two, a brother and sister who had previously fled into the forest. They survived in the forest until they were adults and eventually an incestuous marriage occurred. This is the origin of the remaining descendants of the Suku Anak Rawa.

According to the interviewees, the Suku Anak Rawa have always lived close to the sea and along the small creeks leading down to the sea. After Lacur Darah, the fight and the incest, the people moved upstream, as they were ashamed of what had happened. The original village was called Kampung Tragedi Lacur Darah near the location of Sungai Dorak, where Kampung Sungai Rawa is today.⁵¹

⁵¹ See also Kompas for a journalist's recording in 2018 of this founding myth of the Suku Anak Rawa <https://www.kompas.id/baca/utama/2018/08/10/mengenal-suku-anak-rawa-di-siak-riau>



Government signboard showing that Penyengat is officially recognised as an original customary community.
Credit: Harry Oktavian

The people's oral history recounts that they were in this area long before the Dutch imposed their rule over Sumatra. The oral histories tell of the first traditional leader of the Suku Anak Rawa that they can still remember, who was called Batin Rimbun. He was succeeded by Batin Ambun, and then by Batin Teng. After administrative reforms, imposed by the Dutch, their Batin were replaced by Penghulu. Their next leader was Penghulu Bagin, after which came Penghulu Nong, Penghulu Kok, Penghulu Depa, Penghulu Habid and Penghulu Abok. During the Suharto era, their leadership system was changed again with their Penghulu being replaced with *Kepala Desa* (village head). Now that the *desa* system has been imposed by the government (since 1979), they have customary leaders (*ketua adat*) and a customary council, who are chosen by the community members.

Until relatively recently, the Suku Anak Rawa's livelihoods were mainly subsistence oriented. They practised some shifting cultivation for the cultivation of rice, bananas and vegetables but their staple was sago from managed sago stands. The forests were also important for medicinal plants.⁵² Hunting for wild game, such as deer, mouse deer and wild pig, was important and they fished extensively in the rivers and interior lakes, as well as in the sea. Some cash income was generated from harvesting damar resin, rotan and also the bark of a tree used to make a mosquito repellent (*kulit jangkang*). 'In those days there was a lot of game. You never had to go far to find game. There was very little money.'

⁵² Research carried out in 2018 by Indonesian investigators found the Suku Anak Rawa still recognise 194 species of plant medicines (<https://repository.ipb.ac.id/handle/123456789/96113>)

Although they recognise that their traditional institutions are now weakened by the impositions of government and company operations, notwithstanding, they feel their customary laws are still relevant and are used to deal with disputes within the community and also in community dealings with the village administration. When their customary decision-making is carried out, their meetings include all the relevant family heads and customary leaders and decision are reached by consensus. *'The voice of elder women are respected and some have quite a lot to say in these meeting and even some younger women have a strong voice'*, we were told. There is a women's representative (*tokoh perempuan*) who speaks for the women in community meetings. In some cases, sanctions are still applied to villagers who are not following agreed norms. All the same, they note, there is a weakening of respect for custom and some people no longer accept the authority of customary leaders and these collective decisions. They also note that there are cases where their customary laws do not fit with the new government regulations and this causes confusion.

As explained by the interviewees, before the arrival of the companies, the rules regarding land were simple. Everyone had rights to their lands through customary law and everyone knew these rules. There was no need for land titles or SKT (see below). Access to lands was free for all community members. The important thing was that other villagers knew what any other members were planning to do and accepted it, whether it was to extract some timber for boat-building or housing or cutting sago or opening gardens (*ladang*). The traditional religion of the Suku Anak Rawa included spirit houses linked to their ancestors and local spirits. Ritual specialists (shamans) would intercede with these spirits to bring health and harmony to the community.⁵³ Rituals were carried out to clear new lands. Nowadays, such matters are referred to the village administration or the heads of RW (hamlets).

As explained by the interviewees, some of the village territory is communally owned while other parts within it are allocated to specific families where they farm, manage sago or harvest forest products. Family-owned lands are inherited by all the heirs in a family, although more land goes to men than women as women get access to lands through their husbands once they marry. According to customary practice, while wedding ceremonies are celebrated in the house of the bride, after marriage the norm is for the wife to go and live in the husband's house or hamlet.⁵⁴

In 2010, the community made a map of their traditional territory with the help of the Pekanbaru-based NGO, Scale Up. The map shows the full extent of their territory between Sungai Kumpai and Sungai Lakar. Today there are three different villages (*desa*) within this ancestral territory and the Penyengat community now only claims rights down the coast between Sungai Rawa and Sungai Belat and as far inland as sacred lakes, known as Tasik Belat and Tasik Metas.

⁵³ For a journalist's account of the Suku Anak Rawa's traditional beliefs see: <https://www.goriau.com/berita/baca/kisah-suku-anak-rawa-penemu-danau-zamrud-hingga-jelmaan-harimau.html>

⁵⁴ See also: <https://bahteraalam.org/2020/07/24/tata-cara-nikah-kawin-suku-asli-anak-rawa-kampung-adat-penyengat/>



Map showing the extent of the customary territory of the Suku Anak Rawa of Penyengat.

The community does not have formal title to its territory nor has there been any government recognition of land ownership. The government's land reform programme has never been applied in their area and, so far, only a few individuals have been accorded ownership titles (*Sertipikat Hak Milik*) for their dwellings. Nor have many people bothered to get notes of land transfer from the village administration (*Surat Keterangan Tanah*, issued on official paper).

Basic chronology since independence:

During the Suharto era the Suku Anak Rawa learned that the forest areas inland from the villages, where they traditionally hunted, fished, gathered sago, forest products and opened dry rice gardens (*ladang*), were classed as State forests. About that time, companies acquired logging permits (HPH)⁵⁵ from the government to extract timber from these hunting grounds, starting in 1970s with the Seraya National Timber Group (later to return as an oil palm plantation). They were not consulted about these developments.

According to one set of interviewees, when PT RAPP got its HTI licence within their territory there was no negotiation. The company officials just announced that they had a permit and commenced planting. *'We lost our land because the government gave them a permit... We (also) lost access to the land and resources that we use for our own livelihoods. Now there is no forest left there. We lost a lot of farmland (ladang) there too.'*

⁵⁵ HPH, HTI and HGU are the acronyms for the concessions granted by the government for logging, timber plantations and agribusiness developments respectively.

According to the interviewees, no participatory mapping was done then nor since by the company to ascertain where their customary territory is and how they used the land, nor has the government ever provided such maps. It was pointed out that there is a big difference between their customary territory and the village administrative boundaries as determined by the government but these latter have not yet actually been defined,⁵⁷ nor has their territory yet been recognised by the government (and see below).

[illegible]

Sketch map of Suku Anak Rawa of Penyengat.

56 It may be that an AMDAL was carried out but, if so, from this evidence it seems it was not shared.

57 The Village Law (Undang Undang Desa) actually requires the government to map administrative village boundaries, but this has not yet been done in Penyengat (or if it has been done the map has not been shared with the village).

Impacts

The losses of livelihood have made them far more dependent on cash incomes for subsistence yet the main cash income they had previously enjoyed from fishing has also been seriously harmed by the constant traffic of ocean-going ships at the port. Fishing nets regularly get fouled by the ships and interviewees reported at least one occasion when a ship, arriving after dusk, smashed into a fishing craft sweeping the fisherman into the sea. He was only able to save himself from drowning by clinging to and then clambering up the anchor chain despite his injuries. Other fishermen note that the *Acacia* wood which spills from the port of PT RAPP often damages their fishing nets and PT RAPP never coordinates with the fishermen about where the ships will be anchored off the port.

Reflecting on their experience a spokesperson for the women's group in Penyengat stated:

Interviewees do note that there have been some positive changes. The roads have allowed the government to bring in schools, electricity and other services. They now have greater access to markets such as selling their pineapples in Keramat Jati market (Jakarta). Student

58 See also a short film made by NGOs with Penyengat in 2021: https://www.youtube.com/watch?v=-pBlcZZ-MIQ&ab_channel=RODHIYANADQUBWI

scholarships are provided as part of the company's CSR programme, and the company also helped the community start commercial pineapple farming by providing seedlings and fertilisers, and helping them get access to credit. Community members now run this business on their own account, and it has proven quite lucrative. Trucks take the produce almost daily to market, even as far as Jakarta, a journey of three days.

Other impositions

Lands between the coast and PT RAPP's plantations are also occupied by a large oil palm company, PT Triomas, which is part of the Uniseraya Group. Interviewees expressed confusion and dismay about how all these companies get their permits and note that in any discussions with the government about these matters there tends to be confusion between the traditional authorities and the village administration. The latter tend to be those with whom any 'socialization' may get carried out but this means that the customary authorities and wider village membership are routinely excluded.

In Dusun Mungkal, a hamlet further down the coast, interviewees noted that all these problems start with the government which hands out the permits to the companies. They told us that *'many promises get made'* but *'the people come from Jakarta, they manipulate us and they lie to us'* and sometimes our leaders are afraid to speak out. *'The oil palm company came and took over our land even though there were banana gardens and other crops there and they just cleared it all and planted their palms'*. The HTI (PT RAPP) is further inland.

'The companies come in and take over our land and leave us with no way of making a living', they said. Although the oil palm company did pay some compensation for the release of land, PT RAPP never paid any. *'Later we were ashamed that the headman had agreed to the companies' presence here'* noted one resident. According to them, the boundaries of the HTI were never made clear and so they only found out the extent of the plantations once the trees were planted and drainage canals were cut across the land. *'There are many promises. What we want is for things to be honest... but now money is king here...'*

In response to a query, they noted: *'No, we have not sent any complaints to the government or the companies. Because we are not a literate people, we just live from the land. We are not familiar with the procedures of townspeople who live in cities like Pekanbaru and Jakarta.'*

In Penyengat, the interviewees noted that the generic problem is that once the companies start negotiating to take land, *'they prefer to deal with us as individuals and not to negotiate with us as a community'*. Interviewees admit that some compensation has been paid to individuals for clearance of sago stands. In addition, they note that there has been an influx of migrants come to work on the plantations, most notably in the oil palm plantation which has attracted contract labour from Flores, Nias, Java and North Sumatra. Interviewees recalled that in 2007 there had been demonstrations about the land conflicts but they remain unsure whether or not PT RAPP recognises that they claim customary rights. As one expressed it: *'They have heard our land claims but it goes in one ear and out the other.'*



Barge at APRIL's port next to Penyengat village loading Acacia. Credit: Harry Oktavian

The people argue now that they should have the authority to engage with the company and negotiate proper plans with proper budgets and clarity about how lands would be compensated for. *'Who is going to protect these lands if not ourselves? We need to be fully engaged as a community, not just one or two people.'*

Recently another subsidiary of the APRIL group, Asia Pacific Chemicals has approached the community to socialise its plans to establish a chemical factory on the site to produce caustic soda needed in PT RAPP's paper-making mill. Company representatives are said to have promised that the factory would create opportunities for further employment. In that meeting, the village headman and other village leaders, including some representatives from the women's group, are reported to have rejected the proposal on the grounds that it would cause pollution and that it was doubtful the local people would qualify for the jobs being created. However, it is also reported that the company has already started acquiring lands from another individual from Mungkal hamlet in order to set up its office. The community is also concerned that yet another company is seeking to acquire an ecosystem restoration concession in the very same area that the community has applied for recognition of 18,000 ha of the community's lands as a customary forest.⁵⁹

The interviewees explained that the arrival of the companies on the community's lands has massively changed things. Now traditional knowledge is greatly weakened and people's ways of working the land is transformed: *'now there are companies everywhere'*.

⁵⁹ APRIL has clarified that they have not applied for an ecosystem restoration concession in Penyengat. They are in discussions with the community about a community conservation partnership.

Nowadays the majority of the people have become Christians but there are also Muslims, Confucians and Buddhists and some still follow the traditional beliefs. The change to adopt world religions started in 1984 (other interviewee said 1995) and before that they followed their traditional beliefs. They are proud to note there is great tolerance of people's personal preferences and often members of the same family profess different faiths and yet hold communal celebrations on national and religious holidays.

Government recognition

In 2015, the local legislature in Siak passed a local regulation (PERDA) recognising the Penyengat village as the Original Anak Rawa Village of Penyengat.⁶⁰ This was followed up by a regent's decree (SK Bupati) in 2020 which named 8 villages as indigenous peoples (*Masyarakat Hukum Adat*) including the Suku Anak Rawa of Penyengat, 4 administrative villages of the Sakai people further up the coast and the customary villages of Lebuk Jering Kampung Tengah and Kuala Gasib.⁶¹ In 2018, the community of Penyengat filed an application with the Ministry of Environment and Forestry for recognition as customary forest of 18,000 hectares of their customary territory which had been classed as Forest Area. This application is still being processed by the Ministry.

Aspirations

There should be a discussion about sharing lands but not taking lands that we own... They [the company] need to deal with us as the rightful owners of our lands. They need to have a clear process for reaching an agreement. There needs to be a free process for the community to be engaged in such a negotiation... We want good relations with the company.

This report does not pretend to summarise exactly how the community and APRIL should resolve their differences which is a matter to be concluded between the people and the company in line with APRIL's own policies and according to the relevant requirements of the FSC Remedy Framework. However, in our discussions, community interviewees listed some of their key demands which include:

- Restore destroyed forest,
- Stop affecting the fishing,
- Improve the infrastructure,
- Help with the education of the children,
- Hand the land back to the people to whom it belongs, as company permits are soon to come to an end so maybe there is an opportunity to renegotiate with the community.

The main point for you to share [with the Government and the company], is that this land belongs to us and should come back to us.

60 PERDA No 2 Tahun 2015 Tentang Penetapan 8 Kampung Adat di Siak.

61 SK Bupati Siak No 469.a Tahun 2020 Tentang Penetapan Kesatuan MHA Kabupaten Siak.

Findings from Mekar Delima

Mekar Delima is an administrative village (*desa*) mainly populated by Malay people, on the north coast of the island of Pulau Padang in Meranti District off the coast of Sumatra. One of its hamlets, a few kilometres east of the village, is inhabited by about 14 families of the Akit people. According to the Akit whom we met on this trip there are some 3,500 Akit on Pulau Padang and neighbouring Pulau Rangsang, who live widely dispersed across these peat-swamp islands in small hamlets which are administratively linked to larger Malay villages.⁶² The islands are mainly made up of peat-domes which – before being developed as plantations – were covered with waterlogged forests in their interiors and ringed with mangroves.

The Malay (*Melayu*), whom we did not interview on this trip, are said to have been resident on these islands for a long time. They are mainly farmers and fisherfolk and used to have quite extensive dry rice paddies and to render tribute to the pre-independence sultanate of Siak, which was closely connected by intermarriage and political alliance with the sultanates of Johor and Malacca on the further side of the strait.

The Akit recount a tradition that they originally came to Sumatra from further east, variously explained as Malacca, Singapore or Borneo and before that China. For a long time, according to these tales, they lived in the Riau archipelago and developed a coastal way of life, fishing, hunting the coastal forests and using rafts. They then moved to the mouth of the Siak River in Riau where they became subjects of the Siak sultanate. However they suffered the attacks of wild beasts and slavers linked to the Dutch. Seeking refuge they explored Padang Island, where the resident spirits, a husband and wife, permitted them to stay subject to a lavish payment by the Siak Sultan. Since that time they have lived on these offshore islands along the coast of Riau.⁶³

While the etymology of the term Akit is uncertain, it is not a self-designation originally used by the Akit, as they found it pejorative, referring to their supposedly uncivilised mobile way of life which depended on hunting, fishing and rafting between settlements. However, we were told, the current generation have become more used to being referred to by the term and, as far as we could tell from our short visit, it seems now to be accepted.

62 A study by Pekanbaru researcher, Mita Rosaliza, estimated the total Akit population in 1984 at 4,500 people. Mita Rosaliza, 2018, Akit Tribe and Existence of Mangrove Forest in Berancah Village, Bengkalis, Indonesia. *IOP Conf. Series: Earth and Environmental Science* 175 (2018) 012060 <https://iopscience.iop.org/article/10.1088/1755-1315/175/1/012060>.

63 <http://suku-dunia.blogspot.com/2014/08/sejarah-suku-akit-di-sumatera.html>; <http://suku-dunia.blogspot.com/2014/08/sejarah-suku-akit-di-sumatera.html>



Akit house

The Akit recognise that they have a common origin with the Suku Anak Rawa but have long ago become a separate people. Even longer ago they believe that they shared an origin with the Malay people who have now become Muslims and they are aware that all the peoples of Sumatra are thought to be descended from peoples who migrated to SE Asia from China.⁶⁴ They recognise that their own dialect is quite different from the Malay spoken in the nearby settlements and different again from Bahasa Indonesia, which is now mainly used for commerce and dealing with the administration.⁶⁵ The Akit are also well known for their distinctive, square architectural house-style and construction technique which makes use of sago leaf ribs and *nipah* palm leaves for roofing, both of which are readily available in the swamp forests that they inhabit.⁶⁶

⁶⁴ See for example: Peter Bellwood, 1991, The Austronesian dispersal and the origin of languages, *Scientific American* 265(1):70-75.

⁶⁵ For a more detailed summary of Akit ethnography see: Julianus Limbeng, 2011, *Suku Akit di Pulau Rupert*, Kementerian Pariwisata dan Ekonomi Kreatif, Jakarta. <https://repository.kemdikbud.go.id/7746/1/SUKU%20AKIT%20DI%20PULAU%20RUPAT.pdf>

⁶⁶ See also G Faisal and R Amanati, 2018, Akit's house: identification of vernacular coastal architecture in Meranti Island IOP Conf. Ser.: Earth Environ. Sci. 126 012011 <https://repository.unri.ac.id/xmlui/handle/123456789/9734>



Demonstrating a traditional hunting spear

Akit Fishing Boat

Traditionally and still sometimes today, the Akit hold common festivals which bring together the widely dispersed settlements for traditional dances. At these times weddings are held and adjudications made by the leaders in line with traditional norms.⁶⁷ Likewise marriage disputes need to be resolved by the traditional leaders, which in the old days was the Batin but today is done by the *Kadus* (*Kepala Dusun* – head of the hamlet). We were told that the administrative norm of regularising marriages through formal documentation is very new in Mekar Delima – maybe as late as 2018. According to the interviewees, traditionally marriages were frequently annulled, and people would change partners and get married again, even getting married again to the same person, sometimes several times over their lifetime. Such divorces and marriages could be initiated equally by either husband or wife. This custom is only slowly changing as new religions and regulations start to be introduced. In the past, Akit married according to customary law first and then they would marry according to the religion they professed. The new legal requirements have not been well explained by the government, so the Akit people say they have become confused.

According to the Akit of Mekar Delima, they have been in this area for a very long time, since around 1923 but they only came to occupy the current exact site of Dusun Sukadamaï in 1972. At about that time, some of them became Christians, while others now say they are Buddhist, but respect for traditional beliefs is still strong. In 2011, some of the Akit of Sukadamaï, also known as the Sungai Trenggiling area of Mekar Delima, separated and set up a new hamlet, in 2012, named Dedap, which is located a few kilometres further east on the other side of Sungai Dedap.

⁶⁷ The Akit we interviewed did not initially equate their customary systems for recognising marriages, adjudicating disputes and agreeing land transfers as 'customary law' (*hukum adat*). For a discussion of the Akit's customary dispute resolution systems see: <https://www.atlantis-press.com/proceedings/ramlas-21/125973356>



Elderly Akit from Melar Delima demonstrating how to sift sago flour. Credit: Marcus Colchester

Rubber tapping is also practised on a small scale. Credit: Marcus Colchester

In recounting their past way of life, elders in the community recall that in their youth people still adopted the traditional clothing made from bark (*kulit kayu*) and palm fibre (*karung*). Their livelihoods centred around fishing and the management of sago which provided their staple, supplemented with the cultivation of fruit trees and bananas. Hunting was carried out by men, sometimes accompanied by their wives, and was done with spears.⁶⁸ The main game was deer (*rusa*), mouse deer (*pelanduk/ kancil*) and wild pigs, of which they recognise two varieties a smaller kind along the coast called *isim* and a larger type inland called *nangoi*. *Rusa* deer are highly valued and, when still available, could be sold in local markets for a good price. Today, because of the plantations of PT RAPP, they are very rare. About 50 years ago they also used to eat a species of tortoise (*kura-kura hitam*).

Fishing used to be carried out in the blackwater peat lakes in the interior where the prized species, *toman*, was prolific, and they also fished extensively in the creeks and the sea. They are recognised as a fishing people but they also collected and harvested forest products – including the resin of a local tree (*getah pohon sonde*) highly valued for customary ceremonies, which they used to sell through middle-men from Singapore. Women would also sell baskets made from forest species and palm leaves.

68 Our interviewees told us that some Akit on the other islands used to use blowpipes.

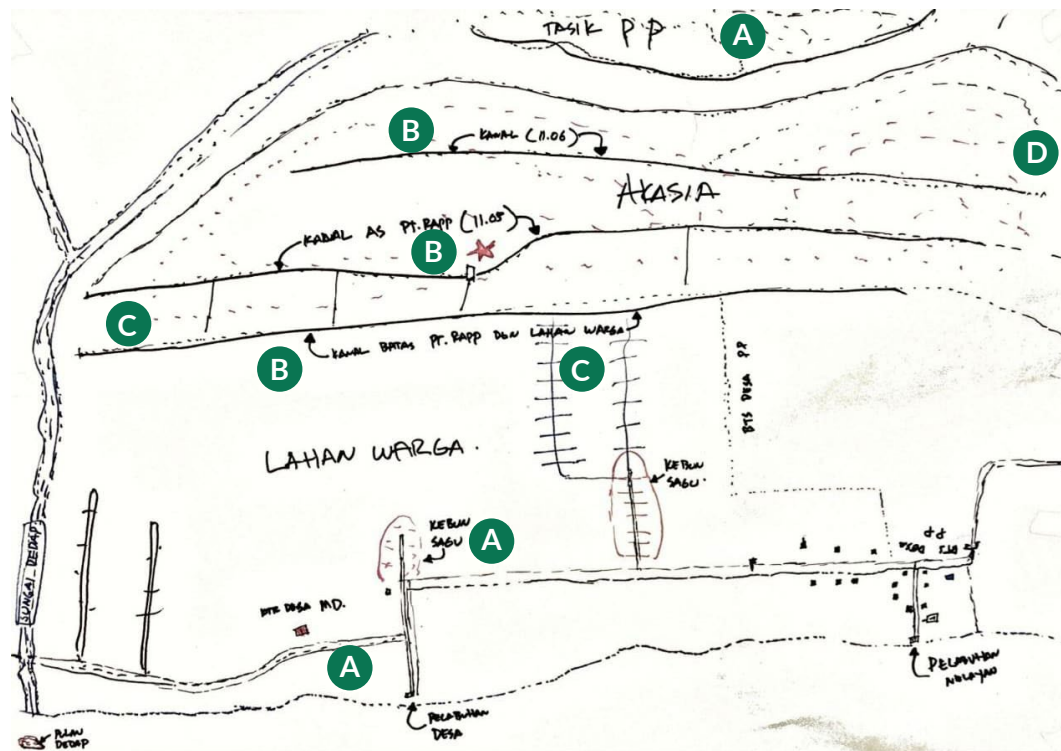
During the Suharto era, the villagers were encouraged to plant coconut plantations, which are still there today. However, after the *Acacia* plantations were established in the village area, many coconut palms died due to weevils. Currently not many coconut palms remain and if they want to have a party or thanksgiving, the community is forced to look for coconuts from outside the village. Their sago palms are also affected by these beetles. At this time too, they began to develop mechanised commercial fishing using larger boats, that they make themselves, diesel engines and nylon nets. Some of the Akit also work on much larger trawlers that now operate far across the archipelago.

Although we found the terms *wilayah adat* (customary territory) and *tanah adat* (customary land) did not have currency among the Akit, they do recognise these notions in practice. They identify the forest area stretching inland from the coast to the central lakes as their area. This communally held area is used by all members of the community as their hunting grounds, fishing areas and from which they collect medicinal plants and manage their sago groves. While gardens and managed sago groves are considered personal property, the other areas are open to the use of any community members but non-members should only use resources in these areas with the permission of the community leaders. Persistent violators of these norms maybe sanctioned and fined. They have no tradition or memory of a land market in their area but farmed areas and sago groves could traditionally be transferred between members. According to custom, land is inherited by sons while women access lands through marriage.

Their traditional healing links them to the forest for curing illnesses and in Sukadamai they have three locations for their spirit houses. If people fall ill while fishing, they are first taken for curing to the spirit house by the coast. If they fall ill while farming or collecting sago, they are taken to the spirit house inland (see frontispiece) but if they are seriously ill or these cures are unsuccessful then shamans take them to the sacred lake of Tasik Tanjung Padang to invoke their ancestral spirits through prayers to help them combat those spirits causing disease. According to the interviewees, the spirits in the interior lake are quite different from those in the gardens or by the sea. Water from the sacred lake would also be brought back to the village for healing. The ritual leaders (*bomo*) are also required to make invocations when new gardens are opened up and also when new houses are being constructed. All the main events of their lives require the intervention of the spirits.

Unlike the Suku Anak Rawa, the Akit have not yet been officially recognised as an indigenous people (*Masyarakat Hukum Adat* - MHA) by the local government, yet at the national level their customary systems of law, belief and identity have been documented by the Ministry and Tourism and Creative Arts.⁶⁹ A discussion with the local government in Meranti District to have the Akit recognised as MHA is however underway.

69 Limbeng 2011 op cit.



Akit land claim and the impacts. Key to map:

- | | |
|------------------------------|--|
| A Sacred curing site | C Spill-over pollutes streams |
| B Canals block access | D Satpam prohibits access by road |

Relations with PT RAPP

According to our interviewees, PT RAPP first entered their area in 2009. Although there were protests, they say nothing came of it. The company did cease operations for a while in 2011 but they then restarted their operations. We were told that at no time was there any discussion about their lands or their customary rights, no efforts were made to map their system of land use nor have they ever heard of High Conservation Values (*Nilai Konservasi Tinggi*). The company just came in, cleared the forests, dug canals to drain the land, planted the *Acacia* and built roads to truck the wood out.

These developments have had major impacts on the Akit. Of greatest concern to them is that their access to the interior lakes is now blocked by the canals and the plantations. This prevents them being able to access their sacred sites in the interior and they claim that, when they try to get there via the company roads, they are prevented from having access by the company security guards. For its part, APRIL explains that as the HTI license holder, PT RAPP needs to register anyone who enters the concession and provide safety guidelines, including rules such as no burning.

According to the Akit, the loss of forest and the draining of the peat has also led to a major reduction in game for hunting along the coast while access to the interior forest is likewise blocked. Some of the forest clearance has eliminated sago groves on which they depended. Forest products and medicinal plants are no longer available. The Akit complain that the lakes, creeks and groundwater have been polluted by the chemicals used by the company and they allege that this pollution has damaged their crops in their interior farms. (APRIL notes that it regularly monitors water quality). They are also concerned that their drinking waters have been polluted and they blame the changed ecology for a sudden upsurge of pest infesting their coconut palms. *'The planting of acacia so close to the shore is also having an impact on the mangroves'*, we were told (although APRIL notes that the *Acacia* plantings are 5 kilometres from the coast). In 2020 there was an extensive land fire due to the drying out of the peat, caused by the plantations and canals and by a hot dry season. The rapid regrowth of scrub in the fire damaged area now further impedes their access to the interior. *'They have taken away our livelihoods and now we need an alternative. We need something to replace these losses'*, was how one interviewee summed it up.

They are aware that the village does receive benefits from the government for community development but complain that they are not included in decision-making and rarely benefit from these monies. They are also aware that PT RAPP has provided money to the community through a *kemitraan* (partnership) arrangement but claim that this has not been fairly apportioned to them. At the time of our visit, this was a major topic of grievance and conversation among the community members and it was clear to us that they feel discriminated against by the Malay majority who dominate the village administration.

'During the time of the Batin we had our own domains, but the government has now taken things over. There are police everywhere. The justice of the situation has been lost' said one villager. One old lady reflected ruefully on the prospects for the new generation: *'The children now go to school but I wonder what will become of them? Will they learn to make a living from the land? They no longer have the chance to learn this.'*

It is clear that the Akit do want to negotiate with the company to resolve their grievances and redress the damages caused by the imposition of the plantations. In discussing what they thought should happen next, they were clear that they want:

- A negotiated solution
- To regain access to their sacred lake
- CSR to promote their traditional religion
- Return of the land
- Improvements to their farming
- Help with fishing gear and their fishing cooperative.

Conclusions from the field study

The *banua* and its constituent *desa* form a sacred landscape inscribed by the memory of a continuous history of human settlement and migration, and re-inscribed through origin narratives and ritual performances at sacred sites of origin which are marked by shrines or temples. This multi-layered process of inscription defines how different groups of participants relate to the land in terms of spiritual ownership or obligation but also in terms of their practical ownership of land as a primary material resource.

Thomas Reuter⁷⁰

These snapshot views of the two communities of Penyengat and Mekar Delima reveal two peoples with strong, distinct identities, detailed ethnohistories and close connections to their lands and forests and the wider natural resources on which they depend. The Suku Anak Rawa maintained their traditional system of beliefs based on shamanism, spirit houses and curing rituals linked to sacred inland lakes right up to the 1990s, while the Akit people retain their own system with similar beliefs until today. This is, in itself, quite remarkable given that both peoples live almost within sight of the Malacca Strait, which has been a busy artery of international trade between East Asia and the Middle East for well over 2,000 years.⁷¹

In their outline, the Suku Anak Rawa and Akit peoples' histories and relations to their lands, as gleaned from this short survey, are typical of Austronesian societies.⁷² The Suku Anak Rawa's myths recognise the priority of their founding ancestor as providing a charter that legitimises the people's rights in land and the authority of their leaders, *Batin*, over this land. Likewise, in common with many other Austronesian societies,⁷³ the Suku Anak Rawa and the Akit conceive their relationship to their lands as linking their identity as a people to their right of collective ownership and control of their ancestral territory. As the first to occupy their area, under custom they have territorial rights to their area to the exclusion of others, while within this communal territory community members, as individuals or families, establish exclusive rights through their own efforts of clearing forest lands for farms and managing their sago groves.

In the case of Penyengat, the distinctive identity of the Suku Anak Rawa is not just affirmed by the people themselves but has been recognised by the regency legislature and government through a specific regulation and a decree. Academic studies have looked into various aspects of Suku Anak Rawa society and have established the complexity of their traditional knowledge systems and customs. Anyone arriving in the community will notice an official signboard telling visitors that the village is recognised as a customary community. Moreover, the community has made maps showing clearly the extent of their

⁷⁰ Thomas Reuter, *Ritual Domains and Communal Land in the Highlands of Bali*, in Thomas Reuter (ed.), 2006, *Sharing the Earth, Dividing the Land: land and territory in the Austronesian world*, Australian National University Press, Canberra: 65.

⁷¹ Heather Sutherland, 2021, *Seaways and Gatekeepers: Trade and State in the Eastern Archipelagos of Southeast Asia, c. 1600-c.1906*, NUIUS Press, Singapore; PM Munoz, 2006, *Early Kingdoms: Indonesian Archipelago and the Malay Peninsula*, Editions Didier Millet, Singapore.

⁷² James J. Fox and Clifford Sather (eds), 1996, *Origins, Ancestry and Alliance: explorations in Austronesian Ethnography*, Australian National University Press, Canberra.

⁷³ Thomas Reuter (ed.), 2006, *Sharing the Earth, Dividing the Land: land and territory in the Austronesian world*, Australian National University Press, Canberra.



Saying goodbye to the Akit residents of Mekar Delima. Credit: Harry Oktavian

ancestral territory. It seems to the authors to be uncontested that the Suku Anak Rawa are an indigenous people with customary rights who were never given the chance by the Government or APRIL to negotiate the terms of PT RAPP's presence on their lands. They are entitled to remedy for this intrusion, not just in terms of international human rights norms but also in line with the requirements of the FSC Remedy Framework.

The Akit people's situation is very similar but differs in two respects. While their own customs and oral history unambiguously show they are an indigenous people with strong, sustained and spiritual ties to their customary territory, they live as a minority in a Malay-dominated village and the local government has yet to recognise them as *masyarakat hukum adat*. However, a process to gain such recognition is now underway and an Akit NGO has begun discussions with the local government and legislature to undertake this procedure.

Notwithstanding, the authors' contention is that the Akit should be accepted as an indigenous people with customary rights to their lands and forests and APRIL needs to recognise these rights and the need to make remedy for the harms caused by the Government handing out of HTI concessions to PT RAPP over the Akit's lands without their Free, Prior and Informed Consent. Fortunately, APRIL and RGE's standards also uphold these principles, so a negotiated settlement with both the Suku Anak Rawa and Akit seems achievable in principle.

This study has not addressed adequately the rights and perspectives of other long resident communities in APRIL's plantations from other ethnic groups. In particular, we note that the ethnic category of Malay (*Melayu*) contains many peoples with very different histories, identities, notions of rights and widely different customary laws relating to land tenure.⁷⁴

Some Malay communities do in fact self-identify as indigenous peoples (*masyarakat adat*) including some in APRIL concessions in Riau. Some are even members of AMAN, the national indigenous peoples' alliance. Some Malay groups have customary tenure systems very similar to the Minangkabau people of West Sumatra, which very strongly assert the collective land rights of self-governing villages (*nagari*) and the lineages and members within these territories. These traditions probably stem from an earlier era when the highland Minang people controlled many of the communities in the lowlands, what they call the *rantau*. Some other elite Malay families claim *ahli waris* rights of inheritance deriving from claims in land before the Malay sultanates were abolished after independence. Still other Malay communities claim customary rights over extensive areas of forest, swamps and farmlands due to their very long association with these areas. Perhaps, in some cases, this is because these communities have absorbed, or derive from, other ethnic groups who exercised such customary rights before they converted to Islam and 'became Malay' (as expressed locally, *masuk Melayu*). These local realities require further study and discussion with the peoples concerned so that FSC's standards can be applied properly.

These realities do pose challenges to PT RAPP, APRIL and the wider RGE/Tanoto Group. On the one hand international law makes clear that indigenous peoples, referred to in Indonesia as *masyarakat hukum adat* and *masyarakat adat*, do have rights to the ownership and control of their territories and lands, rights which derive from custom and do not depend on any act of the State. The taking of such areas without FPIC is a human rights violation and UN norms requires companies to make remedy, including where possible through the restitution of lands so taken. The FSC's policies and the newly adopted Remedy Framework require companies to respect human rights, including explicitly the UN Declaration on the Rights of Indigenous Peoples, and make clear that companies should recognise both legal and customary rights. Further, as summarised above, RGE and APRIL's policies uphold the UNDRIP, including the right to FPIC, provide for mechanisms to remediate social harms and the resolution of conflicts 'through processes that recognise customary rights.'

However, the field studies show that when PT RAPP acquired its HTI concessions from the government over the Suku Anak Rawa and Akit peoples' lands and territories, the allocation was made without first recognising their rights and without seeking or acquiring the consent of the communities concerned. The plantations established by PT RAPP have placed limitations on the peoples' rights and livelihoods, which harms they continue to suffer today. Although the Indonesian legal framework, both nationally and in Riau, is beginning to recognise indigenous peoples' customary rights in lands and forests, these procedures have yet to be effectively applied in these villages.

⁷⁴ Leonard Y Andaya, 2008, *Leaves of the Same Tree: Trade and Ethnicity in the Straits of Melaka*, University of Hawai'i Press, Honolulu; Anthony Milner, 2011, *The Malays*, Wiley-Blackwell, Chichester; Maznah Mohamad and Syed Muhd Khairudin Aljunied (eds), 2011, *Melayu: the Politics, Poetics and Paradoxes of Malayness*, NUIUS Press, Singapore; Arifin Omar, 2015, *Bangsa Melayu: Malay Concepts of Democracy and Community 1945-1950*, SIRD, Petaling Jaya.

Recommendations

For Indonesian forestry companies seeking certification under FSC's standards and thus needing to check if legal or customary rights overlap their lands, they should first check with the National Land Bureau to ascertain if any individual rights are registered in the area. Secondly, they should check with the local office (DINAS) of the Ministry of Environment and Forests to ascertain if any areas have been recognised as customary forests (or other social forestry tenures) or if there are applications pending for such and, thirdly, check with the local government to ascertain if any PERDA or regent's decrees (SK Bupati) have been passed recognising any indigenous peoples' existence.

However, as explained above, they cannot rely only on such legal recognition but need to go beyond the limitations of national law to explore the existence of customary rights that are not yet recognised by the State.⁷⁵ To do this they must consult with the local communities to ascertain their views of their rights and interests in lands and forests.

In engaging with the communities, our experience is that independent visitors can readily find out a great deal about how a people relate to their lands in just a couple of days. The questionnaire we developed proved quite useful in guiding such lines of enquiry but some of the terms are not immediately understood by the people, being part of NGO and government discourse rather than the local vernacular. We are sure that a longer visit would provide a great deal more information, clarifying how the peoples relate to their lands and territories, providing more detail about the kinds of engagement they have had with the companies over time and establishing more clearly the impacts of the plantations and the social harms, losses and damages that have been caused, as well as any benefits.

Key elements in any enquiry should be to clarify:

- Local languages, identities and history
- The customary systems of government, decision-making and dispute resolution of the peoples concerned
- Their relations to their lands and territories
- Customs governing land transfers, inheritance and land markets (if any)
- The extent of their territory, which may be first ascertained through sketch maps and then more properly understood through participatory mapping using handheld GPS
- Customary systems of land use and resource management
- Chronology of changes in land use especially those caused by new permits for logging, plantations, agribusiness and others
- Procedures to be followed for dealing with the communities and addressing the rights of the local peoples
- The impacts and benefits of government-sanctioned concessions
- Possible modalities for negotiated settlements.

⁷⁵ The need to go beyond the limitations of national laws and titling is a key consideration for the protection of customary rights. See for example The Land Rights Standard which notes that '*realization of this Standard should be grounded in the understanding that land, territorial, and resource rights are defined by customary use and ownership for Indigenous Peoples, and many Afro-descendant Peoples and local communities*': <https://rightsandresources.org/wp-content/uploads/Land-Rights-Standard-Updated-04-2022.pdf>

Annex 1:

APRIL Field Study: semi-structured interviews

This questionnaire is meant to trigger ‘semi-structured’ discussions with community members and need not be systematically followed in every case. Answers to questions may divert from what was expected, may bring in concerns that the interviewers had not expected and may also prompt further questions different to what was planned. Interviewers should encourage this, as this will enrich the interchange and bring out new considerations. At the end of free-flowing discussions the interviewer should check back to see if they have got responses to the planned questions and pose them again if that is polite.

Explanation

Need to clarify the purpose of the discussion. That it is meant to address any problems there may or may not be between PT RAPP and the community. Explain we are not from the company and confirm again that Bahtera Alam, YMKL and FPP are independently-funded human rights and social justice organisations trying to make sure the company operates in line with international standards with which the company seeks to align.

Interviewers must check with the interviewees whether photos can be taken and whether these photos and anything they say can be used and quoted in any report. Explain that if during the interviews they realise that some things should not be attributed to persons, they can tell us and we won’t quote them but just use it as framing information.

Framing: general discussion:

History (how long has this community been here, where did most of the original people come from, any prior history of migration, dates if possible)

Ethnicity (how do people here identify themselves? is there a distinct language or local culture? are there a mix of identities here? what religion are most people?)

Land use traditions and livelihoods (before the company came here how did most people make a living? How has that changed since the company came in? what new opportunities have been created? What has been lost?)

Chronology of government and company interventions. (Is this Kawasan hutan negara? When did the community realise it was in a ‘forest’? Did the government consult before this was imposed? How did you learn the area was within a HTI? Explain the process by which the company came into the area).

Customary law:

1. Does your community still use customary law?
2. Who oversees the application of these customary laws?
3. In case of disputes over the application of customary law, who adjudicates such cases?
4. Do you think customary law is still relevant to your situation today?

Community authorities:

5. What authorities are there in this community (list them and describe their roles)
6. Are there any customary authorities still active here?
7. How do these authorities get chosen, appointed or elected?
8. Please describe how these customary authorities make decisions?
9. How do these customary authorities enforce decisions?
10. How do these customary authorities relate to the government administration in the village (Kades, Sekdes etc)?
11. What role do women play in community decision-making? Elaborate....

Land ownership traditions

12. Please describe the customary laws you have related to lands and forests.
13. How do community members acquire rights in land or to use resources?
14. Do they have exclusive rights? or are these lands or resources shared? Who with?
15. Can farmlands or exclusive areas (if any) be transferred to others? Within the village? Outside the community? Can they be bought and sold?
16. How is land inherited under customary law?
17. Are there differences in the way men and women inherit land?
18. Are there lands not owned by individuals or families but that are used or belong to the whole village? (wilayah?)

19. If an individual dies without heirs or relatives, or a family leaves the village permanently, who does that land then pass to?
20. Who oversees the transfer of rights if that is possible and/or the inheritance of land?
21. In the case of disagreements in the community about members' rights to lands and other resources, how are these differences resolved?

Mapping of land and resource rights:

22. Have you ever made maps of the community's customary lands?
23. Has the company worked with you to make such maps?
24. Has the government provided maps?
25. Can we please draw a sketch map of the community's lands (and / or territory)?

Statutory Land title: Sertipikat hukum positif

26. Does the community or anyone have land titles from the government here?
27. Was there any formal recognition of your rights before the company came in?
28. Did the company negotiate with you before it took over your lands for HTI?
29. How was this done?
30. What information was provided?
31. What could have been done better?

Impacts:

32. What have been the effects of the HTI for the community?
33. Describe any benefits that you think the HTI has brought?
34. What harms do you feel you have suffered as a result of the HTI?
35. Have you lost access to lands and resources as a result of the HTI?

36. How have your livelihoods been affected by the HTI? What has changed in the way you make a living from your lands and environment?
37. How extensive have these impacts been?
38. Using the sketch map can you show where these impacts have been?
39. Has there been any discussion with the company about how to address these harmful impacts?

Dispute resolution: grievance procedure

40. Are there any outstanding land disputes with the company? With others?
41. Grievance experience if any: have there been any grievances raised? How were they addressed? Did you agree to the redress procedure? Did the problem get resolved? If not why not?
42. Has the company held community meetings to discuss how to resolve land disputes with the community? If so, please describe what happened.
43. Did they ask you about your customary rights at all?
44. Did they ask for maps or sketch maps? Did they carry out participatory mapping?

Restitution of rights:

45. The company officials have pledged to make remedy for any social harms they may have caused (Explain FSC standards). This requires them to return any lands taken without consent or otherwise compensate you for any loss.
46. What do you think the company should do here to fulfil this pledge? Please provide as much detail as possible.

Closing and confirmation of consent:

47. Is there anything else you think we have forgotten to ask or you think we need to know?
48. Is there anything you have said that you now realise you don't want attributed to you?