The Journal of Peasant Studies

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/fjps20

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Christian Lund

To cite this article: Christian Lund (2022): An air of legality – legalization under conditions of rightlessness in Indonesia, The Journal of Peasant Studies, DOI: 10.1080/03066150.2022.2096448

To link to this article: https://doi.org/10.1080/03066150.2022.2096448

Published online: 27 Jul 2022.

THE JOURNAL OF PEASANT STUDIES
https://doi.org/10.1080/03066150.2022.2096448

Routledge
Taylor & Francis Group

An air of legality – legalization under conditions of rightlessness in Indonesia*

Christian Lund

ABSTRACT
Land rights are uneven in Indonesia as they favor government over citizens as rights subjects. Moreover, legal complexity and social inequality make legal knowledge about land rights rather inaccessible to small-scale farmers and the urban rank and file. Finally, the presumption of legality enables government institutions to acquire land and establish land control even if juridical settlements have been made against it. Despite these three forms of rightlessness, law and legalization are important for ordinary people who experiment and improvise to legalize their claims. And, crucially, such manufacture and persuasion of legality can have the effect of law.

KEYWORDS
legalization; rightlessness; presumption of legality; land conflict; representation of rights; Indonesia

'If men define situations as real, they are real in their consequences'. (Thomas and Thomas, *The Child in America*, 1928)

1. Introduction

For many people in Indonesia, rights remain a faint promise and justice a mere rumor. Land conflicts, evictions and expropriations are commonplace, and people have endured them for generations.[1] Land law has been an instrument largely wielded by the colonizer and the postcolonial state to classify nature and land, and to legally dispossess people by formally classifying them as inferior rights subjects. Moreover, land law in Indonesia is virtually impenetrable to citizens who are not legal specialists. In fact, even legal specialists can lose their way among contradictions, gaps and opacities. Finally, the presumption of the state's legality enables government institutions and colluding elites to set aside established rights and dispossess politically weak land holders. As a result, people often find themselves in situations of rightlessness, and many are effectively denied legal standing as individuals and communities. Yet despite law's frequent betrayal of its promise of justice, it is often considered a hard currency in a fundamental consensus

CONTACT Christian Lund clund@ifro.ku.dk University of Copenhagen, Rolighedsvej 23, 1958 F, Copenhagen, Denmark

*This article draws and builds on Lund (2020).

[1]Bakker and Reerink (2015), Colchester and Chao (2013), Colchester, Sirait, and Wijardjo (2003), Colchester et al. (2006), Gellert (2015a), Hellman (2018), Li (2014, 2017), Li and Semedi (2021), Lucas and Warren (2013), Peters (2013), Reerink (2011), Sirait (2009), Tiominar (2011), Winayanti (2010).

that legalized claims are law's bequests to all, and, just as importantly, that such rights may endure. This forms a paradox: even if experience tells small-scale farmers and the urban rank and file that the scales are systematically tipped against them and law courts are not their terrain, law is seen as important, and legalization as the path for securing rights. The present article explores this paradox.

To examine this, I first discuss three phenomena and how they conjoin: law's attraction, rightlessness, and different forms of improvised legalization. Indonesia's legal history is rich and specific. However, central patterns and paradoxes emerging from the country's history and experience have a general resonance with postcolonial law and the institutionalization of access to land. The conceptual examination of these phenomena reflects that.

I subsequently discuss law and rightlessness in Indonesia. The analogy between law and state interests has been the pith and marrow of legalization in Indonesia and has ensured a *presumed* legality of the state and of law. As a language, an institution, and a field of power invoking the state, law is coveted by people engaged in the struggle over land in Indonesia. Yet law has been deployed in ways to make it especially difficult for rural smallholders and urban residents in informal neighborhoods in Indonesia, to lodge effective claims to land. Finally, I therefore discuss how people who face different forms of rightlessness have experimented and improvised to create legal visibility and representations of legality. People aim to legitimate land claims through reference to law in creative ways to give their claims an *air of legality* in hopes that it will offer some form of durable protection. In their legalization strategies people use representations of government, state and law regardless of whether, in fact, a genuine correspondence between the claims and statutory law exists. Hence, instead of shying away from law, people resort to legalization to bolster their land claims. To illuminate the strategy of legalization under conditions of effective rightlessness, I bring in examples from Indonesia. They demonstrate how the affinity between statutory law and legalization is often presumed and asserted, but not necessarily juridically accurate. Yet *legitimation* of claims through reference to statutory law or to government agencies who are supposed to uphold and enforce it, plays a particular role, all the same. I argue that when people attribute the qualities of *law* and *legal* to decisions, settlements are understood to be legal and have that effect. Consequently, by imitating and emulating law as they imagine it to be, people effectively contribute to its construction and become law makers in the process. Yet, while there have been moments when opportunities have aligned and where interests of common folk have prevailed in this process, the presumption of state legality and the structural privilege it offers to government have meant that such outcomes are rare and frail.

2. Law's attraction, rightlessness and improvised legalization

2.1. Law's attraction

A rule's quality as law is not intrinsic to the rule itself, but something attributed to it in social and political interaction. In analytical terms, I take law to be the rules and regulations whose creation, protection or enforcement is attributed to the most powerful and credible political institutions in society.[2] This way, law and political institutions are

[2]Law has proved vexingly difficult to define as a timeless phenomenon. As a structure of rules or a process of rule making, definitions tend to be either over-restrictive and concern only laws passed through a proper legislature, or over-

inextricably connected in a relationship of mutual recognition. To phrase it in another way, inspired by Connolly (1991, 202), the modern state receives its highest legitimation when it presents a legal appearance, and law receives its highest contemporary idealization through the medium of the state. More specifically, as Schmitt points out, 'the legal holder of state power has the presumption of legality on his side' (2004[1932], 32). The operative word here is *presumption*. Power's legality is not a given, nor always enshrined in law, but sometimes simply a presumption. Further, this presumption works both ways. Claims with reference to statutory law refer to the powers of the state, and legalized claims enjoy the backing of its apparatus. Hence, legalization establishes a link between the claim as legal and the state as a set of institutions that define and defend it. Crucially, therefore, legalization evokes the hope and possibility – faint for some and more realistic for others – of backing by state power.

The backing by state power holds two attractions for weak and strong actors alike. First, law is both a *solidifier and a solvent*. Hence, legalization of a claim solidifies it as a right that forces competing claims to dissolve. Moreover, when a land claim becomes a right, in theory, the cost and responsibility of its protection and enforcement shifts from the landholder to the state and its institutions, effectively leaving competing claims to dissolve.

Secondly, law *promises* some enduring predictability. This is especially attractive in situations of regime change when incoming authorities threaten to upset and undo established structures, and maybe even usher in volatile and arbitrary politics. Consequently, the prospect of locking makeshift settlements into relatively tough and durable structures of recognition through legalization and reference to law incentivizes most landholders to legitimate and legalize possessions as property having the claim recognized as a right by a public authority. Whether people try to cash in on tenuous opportunities when they arise, or seek to confirm established rights anew, legalization is key. It promises to take land claims safely through times of changing political fortunes as *rights*.

Government institutions appear to be promising credible authorities to secure possession as property – even when the actions of these same government institutions are in violation of the law. Their statutory status helps to create the necessary presumption of legality and makes legalization with reference to law and state work *regardless* of the formal legal nature of the claim. Even illegal acts committed and successfully enforced by a violent government apparatus confirm its power of enforcement. It recursively constitutes the proof of state power. The very capacity of enforcement ultimately makes the claim backed by statutory institutions *appear* legal. This, in turn, structurally favors government institutions and those connected to them. The mechanisms to declare government actions illegal are too costly and remote for most people to access.

Hence, law's attraction relies on an often-perfunctory analogy between state interests and law, and a presumption of the legality of both (Agamben 2005, 32–40). While this presumption can turn out to be false upon inspection, it operates to undergird the idea of law's universality and permanency. More importantly, it allows government agencies to impose their designs as state interests and thereby claim their inherent legality. This, in

inclusive and look like any social rule of society. In either case, different societies have different concepts of law, and they change over time. See Benda-Beckmann (1993), Bourdieu (1987), Comaroff and Comaroff (2006), Guha (1996), Hart (1961), Holston (1991), Latour (2010), Moore (1978), Raz (1979, 2015) and Tamanaha (2016, 2021).

turn, produces the paradox of law's attraction. It is exactly because of the tight connection between law and powerful government agencies that people of all classes try to have their claims seen as legal. If interests are considered legal, they are likely to enjoy the protection of the state, even if it is embodied by capricious, self-seeking and essentially arbitrary institutions whose hegemony can erase established rights and snuff out ordinary people's hope for justice. And recall, this analogy works both ways: if interests enjoy the protection of the state, which is often the case of powerful interests, they are likely to be considered legal.

In Indonesia, the analogy between state and law has developed into a curious paradox of avoiding and emulating the state. Countless land occupations with attempts at self-government, on the one hand, are matched by relentless efforts to make land occupations, allocations and use come across as legal, on the other. I will get back to this below.

2.2. Rightlessness

Law has often been the handmaiden of power and instrumental in plunder. Colonial law has legalized the dispossession of land, and it has further legalized the eclipse of political power and legal rights. Rule of – or, indeed, *by* – law has often been a claim to legitimize the unjust; law has codified and racialized hierarchies of profit; and despite the propinquity of law and justice, we should not equate *legal* with *just*.[3] Hence, while in principle law offers protection of rights, in practice law has often stripped people of rights, legal standing, and effective legal representation. Rightlessness can be understood as a situation where basic rights are formally limited, too complex to be seized, or flouted outright.[4] Let us take the three forms in turn.

First, historically, virtually all societies have treated key groups of their members as legal minors with less than full rights, inferior status and reduced capacity to own land and participate in political life. Women, serfs, 'coloureds', children, immigrants and the poor are just the beginning of a long line of human beings for whom legal standing is a challenge. Attributes such as gender, race and caste, as well as class, creed and conviction, have given human beings different visibilities as rights subjects. In a colonial context, the imposition of graded status percolated through all forms of social life.[5] Colonization remains the most dramatic and violent rupture and reordering of property and political subjectivity in human history. Law was no afterthought; it was part and parcel of colonial

[3]For a particularly rich canon of the unjust use of law in colonial state formation, see Arendt (1973[1951]), Benton (2002), Cooper and Stoler (1997), Guha (1997), Heyman (1999), Hussain (2019), Lev (1985), Mamdani (1996), Mattei and Nader (2008), Mitchell (2002), Nuijten (2003), Peluso (1992), Sundar (2009) and Tamanaha (2004). The problematic relationship between legality and legitimacy is by no means exclusively 'colonial', however. See e.g. Agamben (2005), Cover (1986), Dworkin (1977), Habermas (1997), Herzog (2018), Rawls (1999[1971]), Schmitt (2004[1932]) and Weber (1968[1922]).

[4]Arendt conceptualizes rightlessness in her work on totalitarianism (1973[1951]). She focuses on the situation where stateless people have no political existence but appear in their bare humanity. States see and acknowledge their citizens but are blind to the political existence or relevance of aliens. Rights and rightlessness seem to suggest an either/or situation, and Arendt has inspired work on refugees and migrants (Benhabib 2004; Gündoğdu 2014; Somers 2008). However, if we apply a process perspective, we shall be compelled to see rightlessness in terms of degrees and different mechanisms that actively produce it as recommended by Berenschot and Dhiaulhaq (forthcoming).

[5]See Anderson (1991), Arendt (1973[1951]), Benton (2002), Bhandar (2018), Bruggen (2021); Chanock 1998, Cooper and Stoler (1997), Guha (1997), Hussain (2019), Mamdani (1996, 2020), Mattei and Nader (2008), Mitchell (1991, 2002), Nuijten (2003), Peluso (1992), Said (1978), Stoler (1985, 2016), Sundar (2009) and Tamanaha (2004).

domination and control. Everywhere, colonial law reworked societies' most fundamental building blocks: rights subjects and rights objects.

Colonialism imposed a fundamental reclassification of people and nature through law: of subjectivity, on the one hand, and materiality, on the other; of legal standing as well as regimes of property. Law has regulated people's status as well as material resources as part of the colonial enterprise since Roman law, and, later, the Norman conquest of England in 1066, with the enumeration and consolidation of rank and resources in the Domesday Book of 1086 (Clanchy 2013; Corrigan and Sayer 1985; Herzog 2018). The very status as a colonial subject, a peasant, or an indigene has impinged on people's rights and their ability to access resources legally. Difference has been institutionalized by the state with decisive effect. The state's deliberate blindness toward its subjects has deprived them not just of rights, but of the right to have any (Arendt 1973[1951], 290–302). Colonial legal categorization of people did not disappear without a trace at independence, and the categories of hierarchized subjectivity continue to reverberate through postcolonial societies.

The classification of rights subjects often articulates with the classification of rights objects, or nature. Biological and geophysical categories are not intrinsically political or legal, but classifications have been given political and legal connotations with great effect. Hence, colonial definitions of 'wilderness', 'wasteland', 'pristine nature', 'forests', and so on have been a way to create 'nature' out of the property of others.[6] Such classification has legitimated dispossession, eviction and criminalization of countless existing land-using communities. In conjunction, the colonial classifications of people and nature have produced a phenomenal appropriation and dispossession of resources, and a relegation of people into a state of formal rightlessness.

Secondly, in addition to injustice that people endure by formal declassification to inferior legal status, people can be put at an unfair disadvantage because of a gap in their collective knowledge about prevailing laws. Fricker (2009) calls this hermeneutic injustice and argues that if people do not master the rules, risks and opportunities of the system on which they depend, they are at a disadvantage in conceiving, framing and arguing their plight in an effective way.

Thirdly, insult is further added to injury when different conditions render void even the limited formal rights people may enjoy and claim. The legal infrastructure of postcolonial societies has often been captured by an autocratic elite in society (see Bedner 2016b; Heyman 1999; Moustafa and Ginsburg 2012; Nader 2009; Nonet and Selznick 2009 [1978]). Where the separation of powers exists on paper only, political control over legal institutions and rampant official discretion place the legal system outside the reach of the citizenry. When government and companies collude to ignore existing entitlements, improvise expedient self-seeking rules, twist provisions, delay public hearings and act *as if* proper procedures are followed, rights are eviscerated and their subjects dispossessed (Arendt 1973[1951]; Gündoğdu 2014). Ironically, law's attraction persists despite these uneven dynamics of rightlessness.

[6]Particularly instructive works include Brockington and Igoe (2006), Neumann (2001), Peluso and Vandergeest (2001), Rasmussen (2018), Vandergeest and Peluso (1995).

2.3. Improvised legalization

Finally, in the face of rightlessness, people try to establish legal visibility and legalize their claims by other means. The obscurity of law obliges the uninitiated to improvise and experiment, and, to understand this, it is worth engaging the huge contrast between the *idea* of a unitary state, on the one hand, and the multitude of its *actual* institutional incarnations and all other actors engaged in the problematic of land, on the other (Abrams 1988; Bedner 2016b; Mitchell 1991; Rose and Miller 1992; Tamanaha 2021). Despite the ostentatious legal power of the state, it is rare that any single institution has a monopoly on rule making and enforcement in society. In a context of legal and institutional pluralism, multiple legal and political systems coexist and intersect. Many groups and actors claim rights to the same land, and many institutions claim the authority to govern it. In the process of political struggles, the distinction between state and non-state forms of public authority remains continuously contingent.

Usually, the field of land struggle in postcolonial societies is honeycombed with localized subfields of struggle, claims, rules and institutions. Hence, institutions with the capacity to define and enforce collectively binding decisions concerning property and other rights are distributed throughout society in various ways. This governing capacity, I suggest, is what political institutions try to seize and concentrate – sometimes as hegemonic constellations. It is a constant struggle, and even for statutory institutions, struggling among themselves, it is an aspirational project rather than a constitutional given. Consequently, no single institutional actor unilaterally authorizes and establishes claims to property and rights. Indeed, in situations of deep societal rupture – experienced in Indonesia on repeated occasions – other actors such as peasant movements, indigenous peoples' movements, customary law institutions or even violent gangs may also claim jurisdiction by effectively defining property and rights subjects. Many non-statutory actors and institutions are, in fact, active in bringing about what become the *actual* rules and sanctions in society. In this sense they are all law makers. Statutory and other institutions engage with each other and operate with statutory and other norms to form what becomes law: the rules effectively sanctioned and justified by various authorities or communities. Companies and developers, army and police, and other government institutions encounter people organized into movements and gangs, in non-governmental organizations and political parties. All these actors are in the business of creating categorical distinctions between who is entitled and who is a thief, and what shall be 'property and what shall be crime' (Thompson 1975, 259). Such effective law and its embedded claims rarely correspond perfectly to actual statutory law. But *legitimation* of them through reference to law, in one way or another, plays a particular role in the broad repertoire of legitimation of claims. Sometimes, this can be explicit, sometimes more subtle where references to an institution (the tax office, the regional planning office, the municipality, and so on) become references to law thanks to the presumed legality of the different government offices and their policies. Successfully legitimizing claims by invoking law can thereby amount to their legalization whether, in fact, they conform to statutory texts or not. I use the term *legalization* broadly to encompass processes whereby particular rules, claims or administrative operations are legitimated through reference to law, regardless of whether a genuine correspondence between them and statutory law actually exists. The affinity between statutory law and legalization is often presumed and asserted, but

not necessarily juridically accurate, and rarely assessed in court.[7] In this, I part from a narrower doctrinal view that insists on key characteristics of rules and procedures, or legalization's perfect match with statutory law (see Abbott et al. 2000; Ubink 2009). The point of legalization, I argue instead, is to bestow upon a rule or claim an *air of legality*. Legalization of property is, therefore, the successful persuasion that a claim to land and other resources is legal. One may legalize illegal acts and claims and quash established rights, if the operation is sustained and justified with *reference* to the law; as long as it is done *in the name of law*.[8] Consequently, legalization is not merely a question of law categorizing acts; it is as much about acting on the perception of what is legal, fickle as that might be.

3. Law and rightlessness in Indonesia

Colonization of Indonesia produced injustice and rightlessness as it established, by law, a deep structure of state ownership of land. In Indonesia, government's land acquisition was established legally long before most of the dispossession was actualized. Statutory land laws in Indonesia date back to the Forestry Law of 1865 that established the basis for state-controlled scientific forestry.[9] The law declared three-quarters of the colony's territory forest and *state domain*, with draconian measures of exclusion directed at the population. The Agrarian Law of 1870 subsequently covered whatever land had not been categorized as 'forest' by the Forestry Law and declared that all lands not held under proven ownership would be considered the domain of the state (Dhiaulhaq and Berenschot 2020; Djalins 2012, 2015; Gautama and Hornick 1974; Gellert 2015b; Peluso 1992, 44–78).[10] Hence, by embedding the principles of state domain, the Forest and Agrarian laws legitimated the colonial acquisition of land and legalized the dispossession of practically the entire population. The sweeping legal declarations of the Forestry and Agrarian laws meant two things. First, the colonial Indonesian state established itself as the central *authority* and qualifier of land rights claims. Colonial authority simply established the state as the ultimate sovereign of virtually the whole archipelago,

[7]Thanks to Adriaan Bedner for this last observation.

[8]Whether the right is 'created' or simply 'made effective' in the process of legalization is a question for lawyers debating the claim. What matters for the argument of the present text is that the claim is made acceptably legal. For studies on the appearance of legality, see Campbell (2015), Das (2007), Lund (2008, 2020), Mattei and Nader (2008), Mitchell (1991, 2002), Moore (1986), Nader (2009), Rajkovic, Aalberts, and Gammeltoft-Hansen (2016) and Rose (1994).

[9]For some of the earlier legal regulations of trade, land use and labor control, see Breman (1983, 2015), Djalins (2015), Doorn and Hendrix (1983), Gaastra (2003), Gautama and Hornick (1974), Gordon (2010), Furnivall (1939), Hoadley (1994), Leue (1992), Lev (2000), Silean and Smark (2006), Svensson (1991), Wolters (1998).

[10]The scope of the domain doctrine remained contested between Dutch administrators, legal scholars and the local population and was never legally settled during the colonial period. The disagreement constituted the decades-long so-called Leiden–Utrecht controversy between two schools of legal thought (Benda-Beckmann and von Benda-Beckmann 2011; Benda-Beckmann 2019; Burns 2007). In practice, the Dutch assumed sovereignty, and thus the public rights over the colony. It left intact, at least officially, all private rights that resembled ownership and its derivatives. All land used for agriculture and housing by the indigenous population was recognized as being under local rights that should be respected, as were, indeed, some forest areas. Nonetheless, the colonial government also felt entitled, as the sovereign, to exercise its rights and hand out concessions and land titles at will. In practice, therefore, the protection of land rights under customary tenure varied considerably. The colonial government often infringed on the land that they officially recognized as traditionally owned, and land was often appropriated illegally according to colonial law. Later laws such as the Basic Agrarian Law in 1960 and the Forestry Law of 1967 further legally cemented the state's land control (thanks to Adriaan Bedner and Keebet von Benda-Beckmann for this more precise account). In a nutshell, the domain declaration was used by the colonial administration to claim legal control over most of the land on Java and later beyond. Hence, despite the imperfect establishment of state domain, the colonial and independent governments often acted *as if* the state had the ultimate land rights.

disenfranchising all existing institutions, communities and individuals, who became tenants beholden to the state for all secondary rights in terms of time-limited leases.

Second, and as a consequence, the state also established itself as a *rights subject* and tenant in the form of ministries, state companies and other institutions with property interests. Hence, the state established its government agencies as the primary rights subjects, and itself as the public authority that could decide in the matter. This double role has been a source of confusion and opportunity. It is easy, and often convenient, to confuse state with government, and 'state land' (the state's sovereign control of all land) with 'government assets' (specific pieces of land owned by government agencies as one economic operator among others).[11] Hence, government agencies have often been able to establish land control by invoking the state's sovereign power even if land was already used and rightfully in the hands of *other* tenants, such as individuals and communities. Even after independence, when Indonesians were no longer colonial subjects but had become citizens formally enjoying equal rights, property rights in what most of the population regarded as the most important resource – land – remained predominantly under the control of government institutions (Bedner 2016a; Peluso 1992). Government institutions did not necessarily physically take over land everywhere in Indonesia at the time of legislation in 1865 and 1870, but the usurpation was laundered in advance, if you like, and the actual appropriations would eventually look like simple technical operations of legal confirmation for each area in question. The two colonial laws ensured a veneer of general legality for exclusion and resource hoarding as the Indonesian colonial state insisted on its sovereign power to classify and control land. This did not change with independence.

The insistence on state sovereignty becomes all the more germane in light of the country's volatile political history. Regimes have changed many times over the past century. Different political regimes have followed one another after dramatic ruptures of colonization, war, independence and social revolution, 'guided democracy' under Sukarno, authoritarianism and New Order under Suharto, and, finally, democratization after 1998. Each rupture has constituted an open moment when opportunities and risks have multiplied, when the scope of outcomes widened, and when new structural scaffolding was erected (Lund 2020). At every turn, property in land has been at stake, and law has been an important instrument to determine access to it. The state's land control has persisted, all the same, as any new government soon acquired stakes in its continuation. The centuries-long struggles over land in Indonesia have thereby, effectively, also been struggles over the categories of property: over authority, rights, rights subjects and law.

In addition to formal rightlessness, hermeneutic injustice forms an obstacle for individual land users in Indonesia. Among ordinary people, few are knowledgeable about formal statutory legislation. Land law remains a thicket of permissions and restrictions, competing rights and overlapping jurisdictions, and many land rights seem equivocal. Fundamental ambiguities of ownership and entitlement, leases and exclusive use-rights, wrapped in a byzantine web of legal and administrative rules and exceptions, have often made it virtually impossible to disentangle competing claims via rational

[11] See e.g. interview from June 2021 with Dianto Bachriadi, researcher at the Agrarian Resource Centre, Bandung, on plantation companies' misrepresentations of so-called *grondkaarten*. *https://panturapost.com/ahli-agraria-dianto-bachriadi-grondkaart-yang-diklaim-pt-kai-jadi-hak-atas-tanah-tidak-punya-dasar-hukum/* (accessed 1 September 2021).

procedures (Berenschot et al. 2022; Fitzpatrick 2006; Hellman 2018). The social inequality in Indonesian society makes knowledge about statutory law, and access to formal institutions and trained lawyers, an exception for most. They have limited access to the law as it is imagined in statutory institutions and within the legal profession. People therefore face not merely formal rightlessness, but also problems of knowledge and access preventing them from realizing even limited rights enshrined – and equally shrouded – in law.

In combination, the injustice of inferior legal subjectivity, and alienation by legalistic complication, has been particularly challenging to ordinary people in rural and urban settings. However, it has been further aggravated by government agencies' opportunistic exploitation of the presumption of legality of government interests canceling out even the limited rights afforded to and understood by the citizens. Especially since the authoritarian New Order beginning in the mid-1960s, the Indonesian state has consolidated its power to allocate land at will and enforce its will as law. A range of pressures and tactics – limited public rights of consultation; highly selective application of the law with excessive bureaucratic discretion; threats and violence by army, police and hired gangs against landholders to make them accept low levels of compensation – have systematically favored government over citizens.[12] In their work on the plantation sector in Indonesia, Berenschot and Dhiaulhaq (forthcoming) demonstrate what they call deliberate lackadaisical enforcement of licensing rules. They point out that different audits have found that two-thirds of the plantations in the country operate outside the law with incomplete paperwork, yet still enjoy the blessing and protection of government agencies (see also Berenschot et al. 2022; Erbauch and Nurrochmat 2019). Plantation companies must go through a long process to obtain a lease. However, often, the plantation companies have not obtained all the necessary documents. Consequently, companies have often operated outside the law for most, or all, of the time. They have operated *as if* they had the right and all the papers. Thus, by acting *as if*, they made it an established fact for their purposes (Sirait 2009, 32–36; see also Colchester, Sirait, and Wijardjo 2003; and Colchester et al. 2006). When they have been met with protest, they have called on the police, assisted by gangs for hire, to stop the 'unruly farmers'. The companies would then argue that the land in question was within the leased area, and it would be quite difficult for people to prove the opposite.

Similarly, government classification of 'forest' has suffered from significant formal deficiencies. In particular, the delineation was incomplete. As a result, around the year 2000 as much as 90 percent of Indonesia's 'State Forest lands [had] uncertain legality' (Colchester, Sirait, and Wijardjo 2003, 141). Nonetheless, the Ministry of Forestry was strong enough to control state forest land with uncertain legality during Suharto's New Order, and only in 2011, more than a decade after the end of the New Order, did Constitutional Court rulings challenge the ministry's jurisdiction. Consequently, the area of Indonesia claimed by the ministry was reduced from almost '70 per cent to a mere 14 per cent of the country's land mass' (Bedner 2016a, 76–77). As Bedner explains, *designating* land as forest rather than going through the full process of *gazetting* it was ruled insufficient

[12]The literature on the workings of the Indonesian state is rich. It includes Aspinall and Berenschot (2019), Aspinall and Fealy (2010), Aspinall and van Klinken (2010), Ball (1982), Barber and Talbott (2003), Bakker and Reerink (2015), Bedner (2000, 2016b, 2018), Berenschot and Dhiaulhaq (forthcoming), Butt and Lindsey (2010), Cribb (2010), Fitzpatrick (2008), Hadiz (2010), Klinken and Barker (2009), Kouwagam (2020), Lev (1985), Li (2017), Lindsey (2001), Lund (2020), Mudhoffir (2021), Mudhoffir and A'yun (2021), Pichler (2015), Robison (1986), Robison and Hadiz (2004).

to bring it under legal control of the ministry. It is a remarkable example of how the uncontested presumption of legality of government policy had effectively created government property.

The inhabitants in urban areas have also been struggling with rightlessness in its different forms (Dick 2002; Lund 2020; Peters 2013; Reerink 2011; Winayanti 2010). Formal exclusion and the complicated mix of laws and opposing decrees, zoning and urban development plans, emergencies and land rights, as well as taxation, can easily frustrate the average resident. On top of this, the harassment by gangs rampaging through the neighborhood at the behest of the developers have often threatened to void whatever slim rights had been established. Circumvention of protections and restrictions, and the eclipse of others' rights by confident manipulation, carefully dressed up as law, is an effective instrument in the hands of government agencies. Their legalization through counterfeit and imitation was done from a position of strength based on their embodiment of the state. More affluent citizens, companies and government institutions have systematically been in privileged positions with interests protected by the state. Hence, legalization by making interests look like confirmed rights is not simply a strategy of the rightless but also a strategy of the powerful as they painlessly avail themselves of the symbols, paperwork and other representations that subsequently give their state-protected claims an air of legality, to be touched up later.

The nature of statutory law, asserting itself as the supreme form of legality, has combined very effectively with the idea that government is the main beneficiary of rights to state land. Governments even dismissed statutory law and regulatory protections on the basis of the state's ultimate right to control land. Violent enforcement of government *land interests* in the name of its *state land rights* has dominated much of Indonesia's modern history. Even in the decades after 1998, with democratization and a more open public sphere, government's transfer of land rights to plantation companies has been the dominant picture.

Consequently, successive governments in Indonesia have consistently, since colonization, operated *as if* all state land belonged to state institutions as property. They have felt confident enough to override any current uses, however time-honored or customary, and backed by whatever legal document, by invoking *state interests*. Even genuine government documents acknowledging people's rightful access and use have been brushed aside when stronger interests called for it. Thus, contrary to law's representation of itself as predictable, rule-bound and neutral, it has effectively proved pliable, context-bound and biased in favor of government institutions.

In sum, colonial law and its legacy dispossessed many ordinary people of property rights in land and landed them in a state of formal rightlessness with inferior rights and impaired legal standing. The inferior, and obscure, land rights were further weakened by the impunity of government agencies deliberately manipulating rules and regulations. Indeed, improvised legalization is not simply a weapon of the weak. Cutting corners, pretending to follow the rules, and being backed by the formidable coercive force of the state to ward off any protest has served the powerful.

Facing these odds, ordinary people have been forced both to improvise and to represent rights in inventive ways in order to create an air and effect of legality to suit them. Let us explore how they have sought to secure rights through legal visibility and representation.

4. Legal visibility and representation

Indonesia has a long history of land occupations in rural and urban areas, and – as Suharto's New Order regime fell apart and during the 1990s – they picked up pace again (Lund and Rachman 2016). During the initial enthusiasm of regime change, there were many renewed promises of land reform and agrarian justice. Yet, like so often before, the new government soon established interests in the continuation of the agrarian and urban property system they had denounced. Hence, formal legislation continued to favor state-sponsored companies and government institutions over villagers and city-dwellers seeking access to land in Indonesia, and, to this day, Indonesian laws, based on colonial legislation, legalize exclusion and the hoarding of resources. Armed with a lease, a plantation company enjoys the land rights that the smallholders have been denied.

Peasants and the urban rank and file who have occupied land in Indonesia have, nonetheless, used and emulated legal language, and they have relied on the presumption of legality of government agencies. Old government and court documents, such as residence permits and certificates of settlers' rights from the 1950s, annotating the past like flies caught in amber, have been dug out from family chests, and policies that mention land reform have been loudly rehearsed. People and their movements have allocated land in bureaucratic fashion, producing representations of legal rights – their own deeds – when they occupied land; they have resolved conflicts and have even tried to pay taxes to Indonesian government authorities, in solicitation of public recognition of their claims as rights (Aji 2005; Anugrah 2015, 2018; Lucas and Warren 2003; Lund 2020). Sometimes this has worked; sometimes they have been denied this fiscal visibility. But even if tax payment failed, individuals and communities have worked to establish other forms of visibility. To have an existence in the eyes of government, people have made sure that their names were in the census and to have ID cards registered their actual residence. For urban residents, it has been important to get an address – that is, to live in a house with a house number on a street with a name. Even if the city's planning office did not recognize it, the location may still be recognized by the mailman and Google Maps (Lund and Rachman 2018, Nurman and Lund 2016).

Occupations may have been illegal according to state law, but not clandestine, and people have not tried to evade the state. Authoritarian governments often make it dangerous for ordinary people without connections to the regime to be visible and lodge direct land claims. Yet total invisibility is not desirable either. Choices and strategies of visibility and obscurity depend on the context, on the authorities' ambitions and resources, and on people's available options. People in Indonesia have often aimed to strike a balance between not being governed and being dominated (Scott 2009), while still being legible to the state for its recognition (Scott 1998). This has not always been possible. Yet when peasant movements experienced sovereign moments of land occupation in the early days of democratization after 1998, these were spent in creating the rights and property that the movements believed Indonesian governments had pledged to uphold in law (Lund and Rachman 2016). While social movements may have entertained ideas about radical change, their projects seemed to rest on an ambition of achieving legality. No doubt, the fact that Indonesian statutory law offers a wide scope of interpretation has made this easier.

Communities have also often appealed to different government authorities as citizens in need of a school, or as a disadvantaged community in need of roads, sewage or other services. It would be a real achievement to get a public official to open or inaugurate the facility. That way, the inhabitants would manage to become visible, legitimate their presence, and thereby get a tighter hold on the space they inhabited and farmed. Pragmatic, piecemeal manoeuvres have characterized their intercourse with government. People's selective compliance with regulation and their official solicitation of acknowledgement as rights subjects indirectly voiced land claims. The conflicts over residence engaged the boundary between legal and illegal and reworked it in the process. This was like walking a knife's edge as state, company and gang violence remained vivid memories for most people and never seemed far away. Nonetheless, people have legalized their land holding through the indirect legal references of their presence in the area in competition with a company's or a government agency's land rights. Both rights claims rested on the presumption of legality of the support from one ministry or another. Both claimants wanted their rights to solidify and their adversary's to dissolve.

Legalizing a claim concerns both the legal visibility of the actor and the representation of the claim as a right. Let us take them in turn. Legal standing basically means you are entitled to claim your right in court. As mentioned above, many a society has treated most of its population as legal minors with limited or no legal rights. They have been partly or totally invisible to the law. Nonetheless, people search for alternative ways to solicit acknowledgement and recognition as rights subjects by representing themselves in ways that will make them visible in the eyes of the law, in the eyes of the administration, or in the eyes of politicians. In societies with legal and institutional pluralism, both claimants and authorities look for mutual visibility; actors shop for institutions to recognize their claims, and institutions of authority shop for controversies to settle and claims to grant (Benda-Beckmann 1981; see also Agrawal 2005). However, in practice, different government institutions see people differently, through their different institutional lenses. People may, therefore, be invisible as landowners to the land registry office, while being perfectly visible as taxpayers or parents of school children to other government institutions. Different representations as a taxpayer, a recognized land holder, a community, or a deserving citizen, all represent a particular institutional visibility. Payment of tax does not make anyone a landowner, just as a registration in a census says little about whether the settlement is legal. However, it does create an indirect visibility. It creates communication between people who say, 'We are *officially* here', and some government institution that responds, 'We know'. This communication institutes a relation between government and citizens or rights subjects, and it establishes the possibility for inferences of further, fuller, rights.

The second part of legalization concerns the rights themselves. Rights are immaterial; they are social, political and legal conventions. Consequently, they depend on representations to be seen. Conventionally, we would expect the 'fact' to exist first, and the '*re*-presentation', as evidence of the fact, to exist as a consequence. Yet the peculiar thing is that representations may exist *before* what they represent. Sometimes, the echo comes before the cry, and property and legality come into actuality *through* their representations. The public manifestations, the deed, the rental contract, the tax receipt, even the fine, may articulate what they purport to represent and thereby conjure up

legality and property. A receipt for payment of rent brings forth what it represents: tenants and landlords. A certificate of land rights *produces* what it represents: property.

Documents are, therefore, decisive reference points for state recognition and the representation – and, indeed, production – of a right.[13] Legalization, by producing documents that have the appearance of genuine permits, deeds, lease agreements and contracts, is pursued in varying forms by ordinary people who find proper legal and administrative avenues inaccessible. Such documents constitute a particular language of legal posturing, letting people enter the orbit of certain governing institutions and instituting mutual visibility. Lease contracts, tax receipts, residence permits, construction permits, receipts for payment of public utilities – authentic, doctored or outright fabricated – together with court rulings (sometimes in different matters altogether) can all be mobilized as suggestive inferences of rights. They establish a connection between a claim and an institution that benefits from the presumption of legality. They establish an improvised legality that can consolidate. But the repertoire of representations of recognition is wider still. Political announcements, road signs, inaugurations attended by public officials, census stickers on a house window, and even having street names of your informal settlement appear on Google Maps, all suggest visibility, institutional perception, recognition and, ultimately, legality.

The examples suggest, more generally, that people who believe they have rights, but who have no rightful means of proving them, improvise and mimic legal arrangements and seek endorsement from institutions that enjoy the presumption of legality. Most people learn about the law not by comprehensive study or through experts but through individual experiences of diagnostic events that reveal interests, arguments and settlements of conflicts (Krier 1994; Moore 1987). Often people refer to the law with a rather minimal knowledge of actual formal legislation. Instead, they – and this includes government representatives – may refer to doctrines and precedents as they imagine or recollect them, adapting them to the actual circumstance (Hellman 2018; Holston 1991; Kunz et al. 2016; Timmer 2010; Winayanti 2010). In societies where the state claims legal hegemony, as is indeed the case in Indonesia, we should, Benton points out, expect people to 'actively reference state law, however inaccurately or opportunistically' (2012, 29; see also Benton 2002; Peñalver and Katyal 2010). In the context of a violent and powerful state, people pursue a strategy of defining claims that somehow align with (one of the many competing) statutory legal principles and solicit (one of the many competing) government institutions for recognition.

Peasant and indigenous movements in Indonesia have tried to establish land registries and administrative procedures, they have made attempts to pay tax, and they have recruited important political figures to endorse their claims. Some have tried to fit into the 'tribal slot' and produce maps to document a timeless presence (Li 2000). People who live on occupied plantation land, in national parks, or on state land in urban slums act in the anticipation of a government gaze by organizing their settlement in conformity with their ideas of formal government norms (Lund 2020). Sometimes, actual conditions prohibit the observance of official norms and rules, and new practical norms

[13]For studies on the artifactual importance of paper, see Campbell (2015), Coutin (2000), Dalberto and Banégas (2021), Feldman (2008), Ferrier (2012), Graeber (2015), Hetherington (2011), Hull (2012), Latour (2010), Mathur (2015) and Sadiq (2009).

develop. Thus, parallel, practical and indirect contracts of recognition emerge where authority and rights are functional and effective despite being only faintly connected to official norms and law. Ordinary people improvise, not to act in illegality, but, on the contrary, to secure by legalization what they believe is theirs. In all its technical illegality, such counterfeit legalization does not undermine the ideas of the state, law or rights. It underpins them.

5. Conclusion

It seems counterintuitive that people who experience systematic rightlessness and marginalization from their government should place their hopes in law. Yet law pledges to consolidate achievements beyond the moment. It holds out the promise of taking claims safely through times of changing fortunes as recognized rights protected and enforced by the state. The promises of state enforcement, on the one hand, and long-term predictability, on the other, interlace in a curious way in Indonesia. The perfunctory analogy between state interests and law, and the very forceful exercise of power by statutory institutions, put a premium on rules, rights and authorities that are understood as representations of state institutions. The long series of regime changes experienced in Indonesia during the twentieth century, on the other hand, has fueled a general desire for rights that survive from one regime to another. As a result, the law represents the idea of the power and endurance of the *state*, while the many regimes, each seldom outlasting a generation, are a reminder of the more adulterated nature of *government*.

Construction of legality is not a simple spectator sport in Indonesia. Claims to rights and legal subjectivity, and the search for social contracts, have been the chosen forms of engagement, and law their terrain. All the claimants and adjudicators are law makers, even if they have not operated exclusively with legal means. Statutory law matters, propped up by the redoubtable powers of enforcement of the state, but non-statutory claims, rules and forms of access that can be made to appear legal may possibly enjoy the same status and enforcement. This illustrates the paradox of law and power. Law, as a language, an institution and a field of power, and even as a construction site for all of this, is not the exclusive monopoly of government and the powerful in society. The efforts to legalize are also fueled by popular imaginations of the law and the desire that a claim should be seen as legal rather than be dismissed by the strictures of professional legal dogma. Moreover, while the powerful may control political structures, write the laws, and control the means of force, they often compete among themselves and rarely coalesce into a monolith exercising a fully accomplished hegemony. The field of legalization is therefore not the preserve of a caste of professionals.[14] They may defend the boundaries of the field with their language, knowledge, procedure and enforcement, but people of all stripes tug at the hem.

Public representations of recognition seem without number. Census stickers on the window, a functional address, an ostentatious tax payment – all contribute to the visibility of the claim and facilitate its recognition. These efforts appeal to political authorities to

[14]For important studies of how law is also available to the weak in society, even under authoritarian conditions, see Baczko (2021), Bakker (2015), Cole (2001), Holston (2008), Moore (1998), O'Brien and Li (2006), Santos (1977), Scott (1985), Spector (2019) and Thompson (1975).

see people as rights subjects and confer recognition on their claims. Often, it has been difficult for ordinary people to obtain direct recognition of property claims as dynamics of rightlessness conspire against them. In fact, it is vanishingly rare that people achieve a clear legal and comprehensive right to land in Indonesia. Claims have been disqualified by default, because statutory law, or the way it has been interpreted by government, has left too little room. Instead, however, people have directed their energy and imagination toward forms of indirect recognition. Especially with democratization from 1998, new civic rights have opened new avenues of recognition. People have put forth demands as citizens in legitimate need of, say, an address, residence, public amenities and infrastructure, and they have complied with the statutory institutions' fields of intervention in selective and opportunistic fashion to pry open the law's emancipatory potential. Different expressions of citizenship legitimated residence and made eviction more difficult. By that route, direct claims to citizenship had indirect property effects. Actions of big and small alike show that legal posturing, through state and law effigies, can produce the effect of legality. This generalized legal posturing brings about one of the great ironies: people refer to the law as if it were fixed and they were somewhat well versed in it, but by doing so they effectively make (up) the law, fragment by fragment, constructing what they believe to be already there.

No fascination with common people's sustained success should cloud the fact of its relative exception, however. People's efforts at legalization have been made in a context of profound historical inequality and violence in Indonesia, and have, no doubt, often failed. While all actors have been law makers, some have had the basic advantage of being part of government structures, such as government-owned plantation companies, the armed forces or ministries. As institutional incarnations of the state, they benefit from the presumption of legality of state interests expressed as law and the legal doctrine of state control over land. Ironically, every once in a while, law has offered possibilities for smallholders and urban common folk to legalize claims and consolidate their access to land. Yet such occasional, often unprepossessing, victories further legitimate and undergird the general belief in law as the solidifier of rights. This generalized belief, in turn, no doubt enables stronger actors to use and manipulate the law to give their claims an air of legality. It is no small paradox that it is exactly the enduring legalized exclusion, and the fact that benefits of property rights are so firmly harnessed to the Indonesian state, that makes legalization with reference to the state through law a proposition to consider for common people seeking to secure their possessions.

Acknowledgements

I have incurred debts from several people who have commented on drafts, helped me develop my argument, and improved the text. Thanks to Adriaan Bedner, Bernardo Almeida, Dennis Rodgers, Elizabeth Rhoads, Hilary Faxon, Kasper Hoffmann, Keebet von Benda-Beckmann, Laurens Bakker, Mattias Borg Rasmussen, Nandini Sundar, Rune Bennike, Sergio Coronado and Ward Berenschot. Thanks to Mike Kirkwood for careful language editing. Finally, thanks are due to the journal's two anonymous reviewers and its editor, Jun Borras.

Disclosure statement

No potential conflict of interest was reported by the author.

Funding

This work was supported by the European Research Council: [Grant Number ADG-2014 – Proposal no. ERC 662770].

References

Abbott, K., R. Keohane, A. Moravcsik, A. Slaughter, and D. Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401–419.

Abrams, P. 1988. "Notes on the Difficulty of Studying the State." *Journal of Historical Sociology* 1 (1): 58–89.

Agamben, G. 2005. *State of Exception*. Chicago: University of Chicago Press.

Agrawal, A. 2005. *Environmentality: Technologies of Government and the Making of Subjects*. Durham, NC and London: Duke University Press.

Aji, G. B. 2005. *Tanah untik Penggarap: Pengalaman Serikat Petani Pasundan Menggarap Lahan-lahan Perkebunan dan Kehutanan [Land to the Tiller: SPP's Experience in Occupying and Cultivating Plantation and Forest Land]*. Bogor: Pustaka Latin.

Anderson, B. 1991. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. 2nd ed. London: Verso.

Anugrah, I. 2015. "Peasant Movements and State Elites in Post-New Order West Java: A Case Study of Sundanese Peasant Union." *Perspectives on Global Development and Technology* 14: 86–108.

Anugrah, I. 2018. "Elite-Peasant Relations in Post-Authoritarian Indonesia: Decentralization, Dispossession, and Countermovement." Ph.D. dissertation, DeKalb: Department of Political Science, Northern Illinois University.

Arendt, H. 1973[1951]. *The Origins of Totalitarianism*. New York: Harcourt, Brace, Jovanovich.

Aspinall, E., and W. Berenschot. 2019. *Democracy for Sale: Elections, Clientelism, and the State in Indonesia*. Ithaca: Cornell University Press.

Aspinall, E., and G. Fealy, eds. 2010. *Soeharto's New Order and its Legacy*. Canberra: Australian National University Press.

Aspinall, E., and G. van Klinken. 2010. "The State and Illegality in Indonesia." In *The State and Illegality in Indonesia*, edited by E. Aspinall, and G. van Klinken, 1–28. Leiden: KITLV Press.

Baczko, A. 2021. *La guerre par le droit: Les tribunaux Taliban en Afghanistan*. Paris: CNRS Éditions.

Bakker, L. 2015. "Illegality for the General Good? Vigilantism and Social Responsibility in Contemporary Indonesia." *Critique of Anthropology* 35 (1): 78–93.

Bakker, L., and G. Reerink. 2015. "Indonesia's Land Acquisition Law: Toward Effective Prevention of Land Grabbing?" In *Land Grabs in Asia: What Role for the Law?*, edited by C. Carter, and A. Harding, 83–99. London: Routledge.

Ball, J. 1982. *Indonesian Legal History, 1602–1848*. Sydney: Oughtershaw Press.

Barber, C. V., and K. Talbott. 2003. "The Chainsaw and the Gun: The Role of the Military in Deforesting Indonesia." *Journal of Sustainable Forestry* 16 (3-4): 131–160.

Bedner, A. W. 2000. "Administrative Courts in Indonesia: A Socio-Legal Study." PhD dissertation, University of Leiden.

Bedner, A. W. 2016a. "Indonesian Land Law: Integration at Last? And for Whom?" In *Land and Development in Indonesia: Searching for the People's Sovereignty*, edited by J. F. McCarthy, and K. Robinson, 63–88. Singapore: ISEAS.

Bedner, A. W. 2016b. "Autonomy of Law in Indonesia." *Recht der Werkelijkheid* 37 (3): 10–36.

Bedner, A. 2018. "The Promise of a Thick View." In *Handbook on the Rule of Law*, edited by C. May, and A. Winchester, 34–47. London: Elgar.

Benda-Beckmann, K. von. 1981. "Forum Shopping and Shopping Forums, Dispute Processing in a Minangkabau Village in West Sumatra." *Journal of Legal Pluralism* 19: 117–162.

Benda-Beckmann, F. von. 1993. "Le monopole d'État de la violence dans la perspective de l'anthropologie juridique." In *La violence et l'État: Formes et évolution d'un monopole*, edited by É Le Roy, and T. von Trotha, 35–57. Paris: l'Harmattan.

Benda-Beckmann, K. von. 2019. "Anachronism, Agency, and the Contextualisation of *Adat*: Van Vollenhoven's Analyses in Light of Struggles Over Resources." *The Asia Pacific Journal of Anthropology* 20 (5): 397–415.
Benda-Beckmann, F. von, and K. von Benda-Beckmann. 2011. "Myths and Stereotypes About Adat Law: A Reassessment of Von Vollenhoven in the Light of Current Struggles Over *Adat* Law in Indonesia." *Bijdragen to de Tal-, Land-en Volkenkunde* 167 (2/3): 167–195.
Benhabib, S. 2004. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.
Benton, L. 2002. *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900*. Cambridge: Cambridge University Press.
Benton, L. 2012. "Historical Perspectives on Legal Pluralism." In *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, edited by B. Tamanaha, C. Sage, and M. Woolcock, 21–33. Cambridge: Cambridge University Press.
Berenschot, W., and A. Dhiaulhaq. forthcoming. "The production of rightlessness. Dispossession, land conflict, and palm oil expansion in Indonesia."
Berenschot, W., A. Dhiaulhaq, O. Hospes, R. Adriana, and E. Poetry. 2022. "Anti-corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia." *Geoforum; Journal of Physical, Human, and Regional Geosciences* 131: 39–49.
Bhandar, B. 2018. *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. Durham: Duke.
Bourdieu, P. 1987. "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal* 38: 805–853.
Breman, J. 1983. *Control of Land and Labour in Colonial Java*. Leiden: Foris.
Breman, J. 2015. *Mobilizing Labour for the Global Coffee Market: Profits from an Unfree Work Regime in Colonial Java*. Amsterdam: Amsterdam University Press.
Brockington, D., and J. Igoe. 2006. "Eviction for Conservation: A Global Overview." *Conservation and Society* 4 (3): 424–470.
Bruggen, T. van. 2021. "Fluid and Fixed: Chinese Indonesian Identity at Work." PhD dissertation, Copenhagen: University of Copenhagen.
Burns, P. 2007. "Custom, That is Before All Law." In *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, edited by J. S. Davidson, and D. Henley, 68–86. London: Routledge.
Butt, S., and T. Lindsey. 2010. "Judicial Mafia: The Courts and State Illegality in Indonesia." In *The State and Illegality in Indonesia*, edited by E. Aspinall, and G. van Klinken, 189–213. Leiden: KITLV Press.
Campbell, J. 2015. *Conjuring Property: Speculation and Environmental Futures in the Brazilian Amazon*. Seattle and London: University of Washington Press.
Chanock, M. 1998. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Portsmouth: Heinemann.
Clanchy, M. T. 2013. *From Memory to Written Record: England 1066–1307* (3rd edn). Chichester and Oxford: Wiley-Blackwell.
Colchester, M., and S. Chao. 2013. *Conflict or Consent? The Oil Palm Sector at a Crossroads*. Bogor: Forest Peoples Programme and Sawit Watch.
Colchester, M., N. Jiwan, M. S. Andiko, A. Y. Firdaus, A. Surambo, and H. Pane. 2006. *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*. Jakarta: Forest Peoples Programme, Perkumpulan Sawit Watch, HuMA and the World Agroforestry Centre.
Colchester, M., M. Sirait, and B. Wijardjo. 2003. *Obstacles and Possibilities: The Application of FSC Principles 2 & 3 in Indonesia*. Jakarta: Walhi/AMAN.
Cole, D. H. 2001. "'An Unqualified Human Good': E.P. Thompson and the Rule of Law." *Journal of Law and Society* 28 (2): 177–203.
Comaroff, J., and J. Comaroff. 2006. "Law and Disorder in the Postcolony." In *Law and Disorder in the Postcolony*, edited by J. Comaroff, and J. Comaroff, 1–56. Chicago: Chicago University Press.

Connolly, W. E. 1991. *Identity | Difference: Democratic Negotiations of Political Paradox D*. Minneapolis: University of Minnesota Press.
Cooper, F., and L. A. Stoler, eds. 1997. *Tensions of Empire: Colonial Cultures in a Bourgeois World*. Berkeley: University of California Press.
Corrigan, P., and D. Sayer. 1985. *The Great Arch. English State Formation as Cultural Revolution*. Oxford: Blackwell.
Coutin, S. B. 2000. *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press.
Cover, R. 1986. "Violence and the Word." *Yale Law Journal* 95 (8): 1601–1630.
Cribb, R. 2010. "A System of Exemptions: Historicizing State Illegality in Indonesia." In *The State and Illegality in Indonesia*, edited by E. Aspinall and G. van Klinken, 31–44. Leiden: KITLV Press.
Dalberto, S. A., and R. Banégas, eds. 2021. *Identification and Citizenship in Africa: Biometrics, the Documentary State, and Bureaucratic Writings of the Self*. London: Routledge.
Das, V. 2007. *Life and Words: Violence and the Descent into the Ordinary*. Berkeley: University of California Press.
Dhiaulhaq, A., and W. Berenschot. 2020. "A 150-Year-Old Obstacle to Land Rights." *Inside Indonesia*. Accessed December 19, 2021.
Dick, H. W. 2002. *Surabaya: City of Work – A Socioeconomic History, 1900–2000*. Athens: Ohio University Press.
Djalins, U. 2012. "Subjects, Lawmaking and Land Rights: Agrarian Regime and State Formation in Late-Colonial Netherlands East Indies." PhD dissertation, Ithaca: Cornell University.
Djalins, U. 2015. "Becoming Indonesian Citizens: Subjects, Citizens, and Land Ownership in the Netherlands Indies, 1930–37." *Journal of South East Asian Studies* 46 (2): 227–225.
Doorn, J. van, and W. J. Hendrix. 1983. "The Emergence of a Dependent Economy: Consequences of the Opening Up of West Priangan, Java, to the Process of Modernization." CASP Paper no. 9. Rotterdam, University of Rotterdam.
Dworkin, R. 1977. *Taking Rights Seriously*. Cambridge: Harvard University Press.
Erbauch, J., and D. Nurrochmat. 2019. "Paradigm Shift and Business as Usual Through Policy Layering: Forest-Related Policy Change in Indonesia (1999–2016)." *Land Use Policy* 86: 136–146.
Feldman, I. 2008. *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917–1967*. Durham: Duke University Press.
Ferrier, M. 2012. "Securing Property in Informal Neighbourhoods in Damascus Through Tax Payments." In *Popular Housing and Urban Land Tenure in the Middle East: Case Studies from Egypt, Syria, Jordan, Lebanon and Turkey*, edited by M. Ababsa, B. Dupret, and E. Dennis, 67–91. Cairo: American University in Cairo Press.
Fitzpatrick, D. 2006. "Private Law and Public Power: Tangled Threads in Indonesian Land Regulation." In *Indonesian Transitions*, edited by H. Schulte Nordholt, and I. Hoogenboom, 75–113. Yogyakarta: Pustaka Pelajar.
Fitzpatrick, D. 2008. "Beyond Dualism: Land Acquisition and Law in Indonesia." In *Indonesia: Law and Society*, edited by T. Lindsey, 224–246. Annandale, NSW: The Federation Press.
Fricker, M. 2009. *Epistemic Injustice: Power and Ethics of Knowing*. Oxford: Oxford University Press.
Furnivall, S. 1939. *Netherlands India: A Study of Plural Economy*. Cambridge: Cambridge University Press.
Gaastra, F. 2003. *The Dutch East India Company: Expansion and Decline*. Zutphen: Walburg Press.
Gautama, S., and R. Hornick. 1974. *An Introduction to Indonesian Law: Unity in Diversity*. Bandung: Alumni Press.
Gellert, P. 2015a. "Palm oil Expansion in Indonesia: Land Grabbing as Accumulation by Dispossession." *Current Perspectives in Social Theory* 34: 65–99.
Gellert, P. K. 2015b. "The Quest for Legal Certainty and the Reorganisation of Power: Struggles Over Forest Law, Permits, and Rights in Indonesia." *Journal of Asian Studies* 74 (3): 639–666.
Gordon, A. 2010. "Netherlands East Indies: The Large Colonial Surplus of Indonesia, 1878–1939." *Journal of Contemporary Asia* 40 (3): 425–443.
Graeber, D. 2015. *The Utopia of Rules: On Technology, Stupidity and the Secret Joys of Bureaucracy*. Brooklyn: Melville House.

Guha, R. 1996. *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement*. Durham: Duke University Press.
Guha, R. 1997. *Dominance Without Hegemony: History and Power in Colonial India*. Cambridge: Harvard University Press.
Gündoğdu, A. 2014. *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants*. Oxford: Oxford University Press.
Habermas, J. 1997. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge: Polity Press.
Hadiz, V. R. 2010. *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective*. Stanford: Stanford University Press.
Hart, H. L. A. 1961. *The Concept of Law*. Oxford: Clarendon Press.
Hellman, J. 2018. "How to Prove You are Not a Squatter: Appropriating Space and Marking Presence in Jakarta." In *Cities in Asia by and for the People*, edited by Y. Cabannes, M. Douglass, and R. Padawangi, 41–68. Amsterdam: Amsterdam University Press.
Herzog, T. 2018. *A Short History of European Law: The Last Two and a Half Millenia*. Cambridge, MA: Harvard University Press.
Hetherington, K. 2011. *Guerrilla Auditors: The Politics of Transparency in Neoliberal Paraguay*. Durham: Duke University Press.
Heyman, J. M., ed. 1999. *States and Illegal Practices*. Oxford/New York: Berg.
Hoadley, M. 1994. *Selective Judicial Competence: The Cirebon-Priangan Legal Administration, 1680–1792*. Ithaca: Cornell Southeast Asia Program.
Holston, J. 1991. "The Misrule of Law: Land and Usurpation in Brazil." *Comparative Studies in Society and History* 33 (4): 695–725.
Holston, J. 2008. *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil*. Princeton: Princeton University Press.
Hull, M. S. 2012. *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan*. Berkeley: University of California Press.
Hussain, N. 2019. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press.
Klinken, G. van, and J. Barker, eds. 2009. *State of Authority: The State in Society in Indonesia*. Ithaca: Cornell University Press.
Kouwagam, S. U. 2020. "How Lawyers Win Land Conflicts for Corporations: Legal Strategy and its Influence on the Rule of Law in Indonesia." PhD dissertation, Leiden: Leiden University.
Krier, J. 1994. "Displacing Distinction: Political Processes in the Minankabau Backcountry." PhD dissertation, Cambridge: Harvard University.
Kunz, Y., J. Hein, R. Mardiana, and H. Faust. 2016. "Mimicry of the Legal: Translating *de jure* Land Formalization Processes Into de Facto Local Action in Jambi Province, Sumatra." *Austrian Journal of South-East Asian Studies* 9 (1): 127–146.
Latour, B. 2010. *The Making of Law: An Ethnography of the Conseil d'Etat*. Cambridge: Polity.
Leue, H.-J. 1992. "Legal Expansion in the age of the Companies: Aspects of the Administration of Justice in the English and Dutch Settlements of Maritime Asia, c. 1600–1750." In *European Expansion and Law*, edited by W. J. Mommsen, and J. A. de Moor, 129–158. Oxford/New York: Berg.
Lev, D. 1985. "Colonial Law and the Genesis of the Indonesian State." *Indonesia* 40: 57–74.
Lev, D. 2000. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. The Hague: Kluwer Law International (The London-Leiden Series on Law, Administration and Development).
Li, T. M. 2000. "Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot." *Comparative Studies in Society and History* 4 (1): 149–179.
Li, T. M. 2014. *Land's End: Capitalist Relations on an Indigenous Frontier*. Durham: Duke University Press.
Li, T. M. 2017. "After the Land Grab: Infrastructural Violence and the "Mafia System" in Indonesia's Oil Palm Plantation Zones." *Geoforum; Journal of Physical, Human, and Regional Geosciences* 96: 328–337.

Li, T. M., and P. Semedi. 2021. *Plantation Life: Corporate Occupation in Indonesia's Oil Palm Zone*. Durham: Duke University Press.
Lindsey, T. 2001. "The Criminal State: *Premanisme* and the New Indonesia." In *Indonesia Today: Challenges of History*, edited by G. Lloyd, and S. Smith, 283–297. Singapore: ISEAS.
Lucas, A, and C Warren. 2003. "The State, the People, and their Mediators: The Struggle Over Agrarian Law Reform in Post–New Order Indonesia." *Indonesia* 76: 87–126.
Lucas, A., and C. Warren, eds. 2013. *Land for the People: The State and Agrarian Conflict in Indonesia*. Columbus: Ohio University Press.
Lund, C. 2008. *Local Politics and the Dynamics of Property in Africa*. Cambridge: Cambridge University Press.
Lund, C. 2020. *Nine-Tenths of the Law: Enduring Dispossession in Indonesia*. New Haven: Yale University Press.
Lund, C., and N. F. Rachman. 2016. "Occupied! Property, Citizenship, and Land in Rural Java." *Development and Change* 47 (6): 1316–1337.
Lund, C., and N. F. Rachman. 2018. "Indirect Recognition: Frontiers and Territorialization Around Mount Halimun-Salak National Park, Indonesia." *World Development* 101: 417–428.
Mamdani, M. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of Colonialism*. Princeton: Princeton University Press.
Mamdani, M. 2020. *Neither Settler Nor Native: The Making and Unmaking of Permanent Minorities*. Cambridge: Belknap Press.
Mathur, N. 2015. *Paper Tiger: Law, Bureaucracy and the Developmental State in Himalayan India*. Cambridge: Cambridge University Press.
Mattei, U., and L. Nader. 2008. *Plunder: When the Rule of Law is Illegal*. London: Blackwell.
Mitchell, T. 1991. "The Limits of the State: Beyond Statist Approaches and Their Critics." *American Political Science Review* 85 (1): 77–96.
Mitchell, T. 2002. *Rule of Experts: Egypt, Techno-Politics, Modernity*. Berkeley: University of California Press.
Moore, S. F. 1978. *Law as Process*. London: Routledge & Kegan Paul.
Moore, S. F. 1986. *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro 1880–1980*. Cambridge: Cambridge University Press.
Moore, S. F. 1987. "Explaining the Present: Theoretical Dilemmas in Processual Ethnography." *American Ethnologist* 14 (4): 727–736.
Moore, S. F. 1998. "Systematic Judicial and Extra-Judicial Injustice: Preparations for Future Accountability." In *Memory and the Postcolony: African Anthropology and the Critique of Power*, edited by R. Werbner, 126–151. London: Zed Books.
Moustafa, T., and T. Ginsburg. 2012. "The Function of Courts in Authoritarian Politics." In *Rule by Law: The Politics of Courts in Authoritarian Regimes*, edited by T. Ginsburg, and T. Moustafa, 1–22. Cambridge: Cambridge University Press.
Mudhoffir, A. M. 2021. *State of Disorder: Privatised Violence and the State in Indonesia*. Singapore: Palgrave Macmillan.
Mudhoffir, A. M., and R. Q. A'yun. 2021. "Doing Business Under the Framework of Disorder: Illiberal Legalism in Indonesia." *Third World Quarterly* 42 (11): 2651–2668.
Nader, L. 2009. "Law and the Frontiers of Illegalities." In *The Power of Law in a Transnational World*, edited by F. von Benda-Beckmann, K. von Benda-Beckmann, and A. Griffiths, 54–73. New York: Berghahn Books.
Neumann, R. P. 2001. "Africa's 'Last Wilderness': Reordering Space for Political and Economic Control in Colonial Tanzania." *Africa* 71 (4): 641–665.
Nonet, P., and P. Selznick. 2009[1978]. *Law and Society in Transition: Toward Responsive Law*. New Brunswick: Transaction Publishers.
Nuijten, M. 2003. *Power, Community and the State: The Political Anthropology of Organisation in Mexico*. London: Pluto Press.
Nurman, A., and C. Lund. 2016. "On Track: Spontaneous Privatization of Public Urban Land in Bandung, Indonesia." *South East Asia Research* 24 (1): 41–60.
O'Brien, K., and L. Li. 2006. *Rightful Resistance in Rural China*. Cambridge: Cambridge University Press.

Peluso, N. 1992. *Rich Forests, Poor People: Resource Control and Resistance in Java*. Berkeley: University of California Press.
Peluso, N., and P. Vandergeest. 2001. "Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia, and Thailand." *Journal of Asian Studies* 60 (3): 761–812.
Peñalver, E. M., and S. K. Katyal. 2010. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. New Haven: Yale University Press.
Peters, R. 2013. *Surabaya, 1945–2010: Neighbourhood, State, and Economy in Indonesia's City of Struggle*. Singapore: National University of Singapore Press.
Pichler, M. 2015. "Legal Dispossession: State Strategies and Selectivities in the Expansion of Indonesian Oil Palm and Agro-Fuel Production." *Development and Change* 46 (3): 508–533.
Rajkovic, N. M., T. Aalberts, and T. Gammeltoft-Hansen. 2016. "Introduction: Legality, Interdisciplinarity and the Study of Practices." In *The Power of Legality: Practices of International Law and their Politics*, edited by N. M. Rajkovic, T. Aalberts, and T. Gammeltoft-Hansen, 1–25. Cambridge: Cambridge University Press.
Rasmussen, M. B. 2018. "Paper Works: Contested Resource Histories in Peru's Huascarán National Park." *World Development* 101: 429–440.
Rawls, J. 1999[1971]. *A Theory of Justice*. Cambridge: Harvard University Press.
Raz, J. 1979. *The Authority of Law: Essays on Law and Morality*. Oxford: Clarendon Press.
Raz, J. 2015. "Can There be a Theory of Law?" In *The Blackwell Guide to Philosophy of Law and Legal Theory*, edited by M. P. Golding, and W. A. Edmunson, 324–342. Oxford: Blackwell.
Reerink, G. 2011. *Tenure Security for Indonesia's Urban Poor: A Socio-Legal Study on Land, Decentralisation, and the Rule of Law in Bandung*. Leiden: Leiden University Press.
Robison, R. 1986. *Indonesia: The Rise of Capital*. Sydney: Allen and Unwin.
Robison, R., and V. Hadiz. 2004. *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*. London: Routledge.
Rose, C. 1994. *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership*. Boulder: Westview Press.
Rose, N., and P. Miller. 1992. "Political Power Beyond the State: Problematics of Government." *British Journal of Sociology* 43 (2): 173–205.
Sadiq, K. 2009. *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford: Oxford University Press.
Said, E. 1978. *Orientalism*. London: Penguin.
Santos, B. de S. 1977. "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada." *Law and Society Review* 12 (1): 5–126.
Schmitt, C. 2004[1932]. *Legality and Legitimacy*. Durham: Duke.
Scott, J. 1985. *Weapons of the Weak: Everyday Forms of Peasant Resistance*. New Haven: Yale University Press.
Scott, J. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.
Scott, J. 2009. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven: Yale University Press.
Silean, P., and C. J. Smark. 2006. "The 'Culture System' in Dutch Indonesia 1830–1870: How Rawls's Original Position Ethics Were Violated." *The Business Review* 6 (1): 1–8.
Sirait, M. 2009. *Indigenous Peoples and Oil Palm Plantation Expansion in West Kalimantan, Indonesia*. Amsterdam: Amsterdam University Law Faculty.
Somers, M. 2008. *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights*. Cambridge: Cambridge University Press.
Spector, R. 2019. "Property, Lawfare, and the Politics of Hope in Weak States." *Polity* 51 (1): 3–34.
Stoler, A. L. 1985. *Capitalism and Confrontation in Sumatra's Plantation Belt, 1870–1979*. New Haven: Yale University Press.
Stoler, A. L. 2016. *Duress: Imperial Durabilities in Our Time*. Durham: Duke.
Sundar, N. 2009. "Framing the Political Imagination: Custom, Democracy, and Citizenship." In *Legal Grounds: Natural Resources, Identity, and the Law in Jharkhand*, edited by N. Sundar, 189–216. New Delhi: Oxford University Press.

Svensson, T. 1991. *State Bureaucracy and Capitalism in Rural West Java. Local Gentry Versus Peasant Entrepreneurs in Priangan in the 19th and 20th Century*, Copenhagen NIAS Report No. 1, Nordic Institute of Asian Studies.
Tamanaha, B. 2004. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press.
Tamanaha, B. 2016. *What Is Law?* Washington University in St. Louis Legal Studies Research Paper No. 15-01-01.
Tamanaha, B. 2021. *Legal Pluralism Explained: History, Theory, Consequences*. Oxford: Oxford University Press.
Thompson, E. P. 1975. *Whigs and Hunters: The Origin of the Black Act*. New York: Pantheon.
Timmer, J. 2010. "Being Seen Like the State: Emulations of Legal Culture in Customary Labor and Land Tenure Arrangements in East Kalimantan, Indonesia." *American Ethnologist* 37 (4): 703–712.
Tiominar, B. 2011. *Plantations and Poverty: Notes from a Village Deep in Oil Palm Territory*. Colchester: Down-to-Earth.
Ubink, J. 2009. "Legalising Land Rights in Africa, Asia and Latin America." In *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*, edited by J. Ubink, A. Hoekema, and W. Assies, 7–31. Leiden: Leiden University Press.
Vandergeest, P., and N. Peluso. 1995. "Territorialization and State Power in Thailand." *Theory and Society* 24 (3): 385–426.
Weber, M. 1968[1922]. *Economy and Society*. Berkeley: University of California Press.
Winayanti, L. 2010. *Community Struggles for Land in Jakarta: A Case Study of Kampung Community Struggle to Obtain Security of Tenure*. Saarbrücken: Lambert Academic Publishing.
Wolters, W. G. 1998. "Land, Property, and Credit Contracts in Priangan, West Java, 1870s Through the 1920s: Legal Framework and Legal Ordering." In *Property in Economic Context*, Monographs in Economic Anthropology, edited by R. Hunt, and A. Gilman, 289–315. Lanham/New York/Oxford: University Press of America.

Christian Lund is a Professor in the Department of Food and Resource Economics, University of Copenhagen (clund@ifro.ku.dk). He is the author of *Law, Power, and Politics in Niger* (Lit Verlag/Transaction Publishers, 1998), *Local Politics and the Dynamics of Property in Africa* (Cambridge University Press, 2008) and *Nine-Tenths of the Law. Enduring Dispossession in Indonesia* (Yale University Press, 2020).