

Arthur R. Adams Fellowship in International Political Economy

“Indonesia’s Commodity-Heavy Economy and Its Implications on Marginalized Communities”

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Introduction

From having the largest nickel mine in the world to being the world's top palm oil producer, a significant portion of Indonesia's economy relies on the extraction of natural resources as a commodity. The origins of Indonesia's commodity-intensive economy can be traced back to the days of Dutch colonialism and more recently to the robust economic policies implemented by Indonesian dictator Suharto. However, much like many other dictatorships, Suharto's regime established an extremely corrupt political system. Years after, the culture of corruption persists, bleeding into the natural resource sector such as the agriculture and mining sectors. Those who continue to be most disadvantaged from this inherently corrupt system are people from various marginalized communities. In Kalimantan, the indigenous Dayak tribes are faced with a never-ending cycle of land disputes with the local government and palm oil corporations. In Sulawesi, the local villagers—most of whom come from a lower socio-economic status—pay the price of nickel extraction by multinational companies because their villages become polluted with industrial waste.

If Indonesia's political culture is so inherently corrupt, how can the government enforce effective legislation that will protect the rights of their marginalized communities and the environment while continuing to promote economic growth in those industries? In my research, I explore how regime changes and decentralization have influenced this culture of corruption and how it informs the ongoing conflict between state and corporation interests with the livelihoods of marginalized communities. Specifically, I examine prominent natural resource industries in Indonesia, particularly palm oil. Although Indonesia has shown its commitment to protecting its people, its pursuit of achieving its economic goals may often conflict with the interests of its most marginalized communities.

Overview: Indonesia's Economic Development

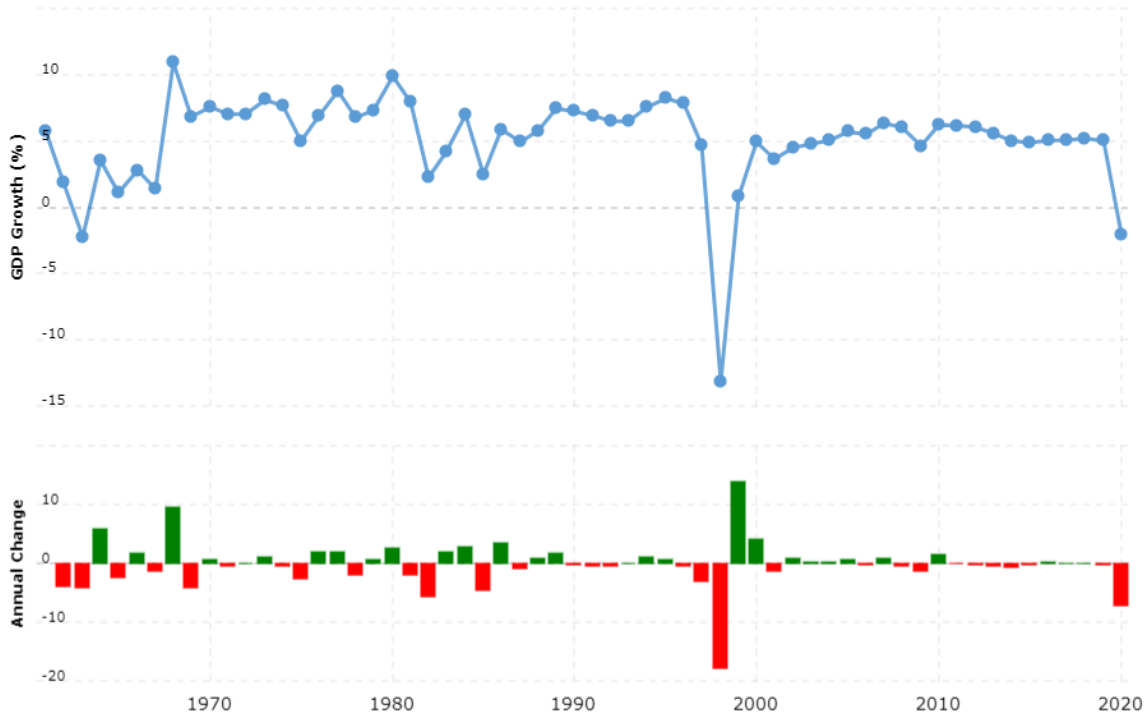


Figure 1. Indonesia's GDP Growth Rate (1961-2022)¹

As the largest economy in Southeast Asia today, Indonesia has seen significant economic development since overcoming the Asian financial crisis in 1997. This diverse archipelago of more than 300 ethnic groups is the fourth most populous nation in the world and the 10th largest economy based on purchasing power parity. The Indonesian government approaches its economic development according to its 20-year development plan from 2005 to 2025. This plan is divided into segments of 5-year medium-term development plans called the Rencana Pembangunan Jangka Menengah Nasional (RPJMN)— each of which possesses different development priorities.² The current and last medium-term development plan of the 20-year plan

¹ "Indonesia GDP Growth Rate 1961-2022," MacroTrends, accessed April 28, 2022, <https://www.macrotrends.net/countries/IDN/indonesia/gdp-growth-rate>.

² "THE NATIONAL MEDIUM-TERM DEVELOPMENT PLAN FOR 2020-2024," accessed April 28, 2022, <https://old.bappenas.go.id/files/rpjmn/Narasi-RPJMN-2020-2024-versi-Bahasa-Inggris.pdf>.

has a focus on strengthening Indonesia's economy through improvements in human capital and competitiveness in the global market.³ This plan serves as the basis for all ministries and government agencies when formulating their own respective strategic plans. Indonesia's emphasis on economic development through this plan has only increased in recent years due to the losses its GDP incurred during the pandemic, as seen from the data from the World Bank illustrated in figure 1. Specifically, in 2020, Indonesia's GDP growth decreased to -2.07% from 5.02% in 2019; this was the largest decrease in GDP growth since the last dip during the Asian Financial Crisis of 1997-1998.⁴ Consequently, the government's priority on continuing to expedite its economic growth negates its goal to improve Indonesia's regional disparities because the rights of marginalized communities become of less importance.

Jokowi's Economic Goals

In his first term, Indonesia's President Joko Widodo— universally known as Jokowi— made economic growth and reducing inequality his top priorities; in particular, Jokowi wanted to focus on infrastructure.⁵ Jokowi kept these same goals for his second term, stating that he dreamt of Indonesia as one of the world's top five economies by 2045.⁶ Jokowi's priority to transform Indonesia into an economic powerhouse was made clear through the goals he has set. Although Jokowi has promised and made a conscious effort to improve inequality as well as decrease the nation's dependence on natural resource extraction, the importance and urgency in achieving

³ "Medium-Term National Development Plan (RPJMN) 2015 – 2019: ESCAP Policy Documents Management," Medium-Term National Development Plan (RPJMN) 2015 – 2019 | ESCAP Policy Documents Management, accessed April 28, 2022, <https://policy.asiapacificenergy.org/node/3364>.

⁴ Ibid.

⁵ "Jokowi 2.0: Policy, Politics, and Prospects for Reform," Jokowi 2.0: Policy, Politics, and Prospects for Reform | Center for Strategic and International Studies, July 31, 2020, <https://www.csis.org/analysis/jokowi-20-policy-politics-and-prospects-reform>.

⁶ Koya Jibiki, "Jokowi Stumbles in Bid to Make Indonesia a Top-5 Global Economy," Nikkei Asia (Nikkei Asia, October 20, 2020), <https://asia.nikkei.com/Politics/Jokowi-stumbles-in-bid-to-make-Indonesia-a-top-5-global-economy>.

these short-term economic goals— especially as his presidency is approaching its end— may come at the expense of certain communities and the environment.

Indonesia’s Extractive Industries

In 2019, the World Bank reported that the total natural resources rent in Indonesia was 2.9 percent.⁷ Although the numbers indicate that this is not the largest sector, Indonesia’s extractive industries are still highly significant contributors to the nation’s economy. Even though Jokowi plans to reduce Indonesia’s reliance on natural resource exports, increasing demand for resources such as palm oil and nickel will continue to motivate government officials to support such activities.



⁷ “Indonesia - Total Natural Resources Rents (% of GDP)2022 Data 2023 Forecast 1970-2019 Historical,” Trading Economics, accessed May 2, 2022, [https://tradingeconomics.com/indonesia/total-natural-resources-rents-percent-of-gdp-wb-data.html#:~:text=Total%20natural%20resources%20rents%20\(%25%20of%20GDP\)%20in%20Indonesia%20was,co mpiled%20from%20officially%20recognized%20sources.](https://tradingeconomics.com/indonesia/total-natural-resources-rents-percent-of-gdp-wb-data.html#:~:text=Total%20natural%20resources%20rents%20(%25%20of%20GDP)%20in%20Indonesia%20was,co mpiled%20from%20officially%20recognized%20sources.)

*Figure 2. Jokowi speaks at COP26, says Indonesia is committed to tackling climate change*⁸

During COP26 in 2021, 100 world leaders agreed on a deal to end deforestation by 2030.⁹ Although President Joko Widodo signed the deal, Indonesia's Environment Minister Siti Bakar said that "forcing Indonesia to commit to zero deforestation by 2030 was 'clearly inappropriate and unfair'".¹⁰ She explained in her statement that many of the world's leading countries already had the chance to develop without being confined to a net-zero emissions deal. Now that Indonesia is aiming to reach its own maximum level of development, some may feel that the same countries that exploited resources from Indonesia for their own development are blaming Indonesia for deforestation.

Bakar argued that the Indonesian government has the constitutional right, as stated in article 33 of the 1945 constitution, to prioritize development by using Indonesia's natural resources to benefit its people.¹¹ The Indonesian government's focus is on national economic and social development by 2025, including a plan to become a global economic and diplomatic force, a competitive and innovative population, and a developed society.¹² However, Jokowi must simultaneously commit to matters such as environmental sustainability to maintain strategic

⁸ "COP26: President Jokowi Says Indonesia Is Committed to Tackling Climate Change," Cabinet Secretariat of the Republic of Indonesia, November 2, 2021, <https://setkab.go.id/en/cop26-president-jokowi-says-indonesia-is-committed-to-tackling-climate-change/>.

⁹ "COP26: Indonesia Criticises 'Unfair' Deal to End Deforestation," BBC News (BBC, November 4, 2021), <https://www.bbc.com/news/world-asia-59169547>.

¹⁰ Siti Bakar, 2021, "FoLU net carbon sink 2030 jangan diartikan sebagai zero deforestation," Facebook, November 3, 2021, https://m.facebook.com/story.php?story_fbid=423301585827257&id=100044422569982&m_entstream_source=timeline.

¹¹ "Folu Net Carbon Sink Tidak Sama Dengan Zero Deforestation," Siti Nurbaya Bakar, Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia, accessed December 1, 2021, <https://www.sitinurbaya.com/folu-net-carbon-sink-tidak-sama-dengan-zero-deforestation>.

¹² "Government Development Plans of Indonesia," Indonesia Investments, accessed December 1, 2021, <https://www.indonesia-investments.com/projects/government-development-plans/item305>.

relations with countries like the U.S.¹³ This is Indonesia's dilemma: develop the nation at the cost of the environment or prioritize the environment and its local communities but sacrifice the economy?¹⁴

Indonesia's Nickel Industry



Figure 3. A nickel mine in Southeast Sulawesi, Indonesia¹⁵

Jokowi famously approaches Indonesia's economic objectives by encouraging overseas investments.¹⁶ Recently, U.S. electric vehicle maker Tesla proposed to establish a battery

¹³ "Biden, Bolsonaro and Xi among Leaders Agreeing to End Deforestation," *The Guardian* (Guardian News and Media, November 1, 2021), <https://www.theguardian.com/environment/2021/nov/01/biden-bolsonaro-and-xi-among-leaders-agreeing-to-end-deforestation-aoe>.

¹⁴ James Guild, "Indonesia's COP26 Deforestation Pledge Kerfuffle, Explained," *The Diplomat*, November 10, 2021, <https://thediplomat.com/2021/11/indonesias-cop26-deforestation-pledge-kerfuffle-explained/>.

¹⁵ Hans Nicholas Jong, "Nickel Mining Resisted in Indonesia," *China Dialogue*, July 2, 2020, <https://chinadialogue.net/en/business/11727-nickel-mining-resisted-in-indonesia-2/>.

¹⁶ Arys Aditya and Grace Sihombing, "Jokowi Pushes Foreign Investment Drive With Cabinet Shift," *Bloomberg.com* (Bloomberg, April 28, 2021), <https://www.bloomberg.com/news/articles/2021-04-28/jokowi-pushes-foreign-investment-drive-amid-new-cabinet-shift>

production facility in Indonesia to collaborate on Jokowi's plans to create an electric vehicle (EV) battery supply chain.¹⁷ During a Tesla quarterly conference in 2020, Tesla CEO Elon Musk said, "any mining companies out there, please mine more nickel... Tesla will give you a giant contract for a long period of time if you mine nickel efficiently and in an environmentally sensitive way."¹⁸ The Mining Advocacy Network (JATAM) in Indonesia has since indicated increased interest in nickel with 328 nickel mining business permits in the exploration stage and 280 in the production stage.¹⁹ As the world's largest producer of nickel, Indonesia could annually profit up to \$66.7 billion from the EV industry if these plans materialize.²⁰ Although this would align with Jokowi's economic objectives, the nickel mining rush that would follow this plan poses significant environmental consequences.²¹

Indonesia's nickel mining industry has a history and reputation tainted by its detrimental effects on the environment and local communities.²² The amount of nickel waste in Sulawesi's seas is 20 times the quantity identified as the limit for sustaining marine life.²³ Local villagers

¹⁷ SHOTARO TANI, "Tesla Tells Nickel-Rich Indonesia It Wants to Join Battery Project," Nikkei Asia, February 5, 2021, <https://asia.nikkei.com/Business/Automobiles/Tesla-tells-nickel-rich-Indonesia-it-wants-to-join-battery-project>.

¹⁸ Jack Board, "Indonesia Is Poised for EV Riches as Tesla Circles, but a Nickel Rush Could Hurt the Environment," CNA, February 28, 2021, <https://www.channelnewsasia.com/climatechange/tesla-indonesia-electric-vehicles-nickel-mining-environment-1883076>.

¹⁹ "Indonesian Miners Eyeing EV Nickel Boom Seek to Dump Waste into the Sea," JATAM, May 6, 2021, <https://www.jatam.org/en/indonesian-miners-eyeing-ev-nickel-boom-seek-to-dump-waste-into-the-sea/>.

²⁰ Resty Woro Yuniar, "Indonesia: Widodo Steps up Bid to Woo Investment from Tesla's Elon Musk," South China Morning Post, December 15, 2020, <https://www.scmp.com/week-asia/economics/article/3114085/indonesia-widodo-steps-bid-woo-investment-teslas-elon-musk>. M. Garside, "Indonesia Nickel Mine Production 2020," Statista, September 17, 2021, <https://www.statista.com/statistics/260757/indonesian-mine-production-of-nickel-since-2006/#:~:text=Indonesia's%20production%20of%20nickel%20amounted,nickel%20producer%20in%20the%20world>.

²¹ Jack Board, "Indonesia Is Poised for EV Riches as Tesla Circles, but a Nickel Rush Could Hurt the Environment," CNA, February 28, 2021, <https://www.channelnewsasia.com/climatechange/tesla-indonesia-electric-vehicles-nickel-mining-environment-1883076>.

²² Ian Morse, "Mining Turned Indonesian Seas Red. the Drive for Greener Cars Could Herald a New Toxic Tide.," The Washington Post (WP Company, November 22, 2019), https://www.washingtonpost.com/world/asia-pacific/mining-turned-indonesian-seas-red-the-drive-for-greener-cars-could-herald-a-new-toxic-tide/2019/11/19/39c76a84-01ff-11ea-8341-cc3dce52e7de_story.html.

²³ Ahmad Zakir et al., "Tingkat Akumulasi Nikel pada Kerang Bulu (Anadara antiquata) di Perairan Pesisir Dawi-Dawi Kecamatan Pomalaa Kabupaten Kolaka [Accumulation Level of Nickel in Anadara antiquate in Dawi Dawi Coastal, Pomalaa District, Kolaka Regency]," February 2019, https://www.researchgate.net/publication/331062425_Tingkat_Akumulasi_Nikel_pada_Kerang_Bulu_Anadara_antiqu

and fishermen housed near the Brazilian-owned Vale mines bear the taxing costs of increased sea pollution as water quality deteriorates and sea-cucumber production diminishes.²⁴ The exhaust of nickel smelters and fossil fuels that power the machines used for mining have increased air pollution and caused respiratory problems in the members of the local community.²⁵ Arianto Sangadji, a researcher at York University, criticized Musk's call for "sustainable nickel" because he believes mining is inherently an unsustainable extraction process.²⁶ Expanding Indonesia's nickel mining industry to meet Tesla's demands will likely only worsen these environmental and societal consequences.

Palm Oil

ata_di_Perairan_Pesisir_Dawi-Dawi_Kecamatan_Pomalaa_Kabupaten_Kolaka_Accumulation_Level_of_Nickel_in_Anadara_antiquate_in_Dawi_Dawi_Coastal_Pomal

²⁴ Ian Morse, "Mining Turned Indonesian Seas Red. the Drive for Greener Cars Could Herald a New Toxic Tide.," The Washington Post (WP Company, November 22, 2019),

²⁵ Ibid.

²⁶ Jack Board, "Indonesia Is Poised for EV Riches as Tesla Circles, but a Nickel Rush Could Hurt the Environment ,," CNA, February 28, 2021, <https://www.channelnewsasia.com/climatechange/tesla-indonesia-electric-vehicles-nickel-mining-environment-1883076>.



Figure 3. Burned peatland and forest planted with oil palm seedlings in Central Kalimantan²⁷

In Indonesia, the livelihoods of the indigenous Dayak people of Borneo are threatened because the government often prioritizes the economic gains of palm oil production over their well-being. As the world's largest producer of palm oil, Indonesia's palm oil industry contributes to 1.5 - 2.5% of their GDP.²⁸ The popularity and profitability of the industry is useful to the government because its contribution towards Indonesia's GDP could help its efforts to improve levels of employment, wealth, and government tax income to develop the economy. The West Kalimantan palm oil industry, however, operates in the same forest areas that the indigenous Dayak tribes rely on for their livelihoods. While the Dayaks see the forest as a means of survival, palm oil corporations see it as a means of production and profit -- creating a conflict of interests.

²⁷ "Illegally Planted Palm Oil Already Growing on Burnt Land in Indonesia," The Guardian (Guardian News and Media, November 6, 2015), <https://www.theguardian.com/environment/2015/nov/06/illegally-planted-palm-oil-already-growing-on-burnt-land-in-indonesia>.

²⁸ Investments, Indonesia. "Palm Oil Industry In Indonesia - CPO Production & Export | Indonesia Investments". Indonesia-Investments.Com, 2020, <https://www.indonesia-investments.com/business/commodities/palm-oil/item166>

The Indonesian government finds itself caught in between these two actors: although the state is meant to protect its people, it shares the same economic interests with the corporations.

Palm oil companies operating in Indonesia often use pressure and misinformation as a means of taking forest user rights from the Dayak people, leaving them impoverished. For instance, a multimillion-dollar agribusiness called Wilmar International exerted pressure on Dayak communities from as early as 2008.²⁹ It was able to achieve this by aggressively persuading community members to sell off their land with a misleading promise of immediate profit and improved livelihoods. Dayaks are pressured by Wilmar International and other palm oil companies to lease their land for thirty years as a means of agricultural production, after which time the companies promise to return the land to them.³⁰ However, members of the Dayak community are often unaware that Indonesia's national land laws constitute that any land used for agricultural production for more than 25 years is immediately converted to state ownership. This asymmetry of information and unequal power dynamic makes it difficult for the Dayaks to get the sold land back as previously promised.³¹ Anja Lillegraven of the Rainforest Foundation Norway said that “the local communities are not consulted to give free, prior, and informed consent in negotiations. Companies do not give them all the information they need to understand the repercussions of their choices.”³² In reality, the benefits promised by these palm oil companies turned out to be false claims as the Dayaks are left without the user rights to their own land. In turn, many Dayaks are faced with impoverishment as they are forced to maintain their livelihoods through other jobs that pay less and have poor working conditions. The Sei Dusun Village Head Abdul Muin expressed his frustrations by saying that “we cannot plant, we cannot drink the water because it is polluted,

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

and there are no more fish.”³³ The pressure that these companies exerted against the indigenous communities sacrificed the livelihood of the Dayaks for the sake of the development of the palm oil industry.

MNCs are often able to take advantage of developing countries such as Indonesia that are more willing to relax or limit environmental regulations in exchange for its economic growth and development. For instance, a palm oil moratorium that the Indonesian government launched in 2018 ended only three years later in 2021 and was not extended.³⁴ A four percent decrease in regional employment and output in Indonesia’s palm oil industry was observed since the introduction of the moratorium, contributing to its unpopularity.³⁵ Furthermore, the “Job Creation” bill enacted in 2020 benefited MNCs such as Cargill by relaxing requirements for companies to conduct environmental studies while operating in Indonesia.³⁶ The nation continues to compromise its environmental regulations to attract more foreign investments from MNCs to contribute to Indonesia’s economic growth.

Indonesia relies on MNCs like Cargill for their significant economic contributions to the nation’s \$15.3 billion palm oil industry.³⁷ Cargill is the largest palm oil company in the market

³³ Ibid.

³⁴ “Indonesia to Use ‘Existing Laws’ as Palm Oil Moratorium Expires,” Reuters (Thomson Reuters, September 22, 2021), <https://www.reuters.com/business/environment/indonesia-use-existing-laws-palm-oil-moratorium-expires-2021-09-22/>.

³⁵ Arief A. Yusuf, Elizabeth L. Roos, and Jonathan M. Horridge, “Indonesia’s Moratorium on Palm Oil Expansion from Natural Forests: Economy-Wide Impacts and the Role of International Transfers,” *Asian Development Review* 35, no. 2 (January 2018): pp. 85-112, https://doi.org/10.1162/adev_a_00115.

³⁶ “Indonesia - ‘Omnibus Law’ on Job Creation Has Been Enacted: Investment Policy Monitor: UNCTAD Investment Policy Hub,” Indonesia - “Omnibus Law” on job creation has been enacted | Investment Policy Monitor | UNCTAD Investment Policy Hub, accessed December 1, 2021, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3567/indonesia-omnibus-law-on-job-creation-has-been-enacted>., Gayatri Suroyo and Ed Davies, “Indonesia Accused of Putting Profit Ahead of the Environment with New Bill,” Reuters (Thomson Reuters, February 13, 2020), <https://www.reuters.com/article/us-indonesia-economy-bill/indonesia-accused-of-putting-profit-ahead-of-the-environment-with-new-bill-idUSKBN2071DJ>.

³⁷ Pablo Robles et al., “The World’s Addiction to Palm Oil Is Only Getting Worse,” Bloomberg Green (Bloomberg, November 4, 2021), <https://www.bloomberg.com/graphics/2021-palm-oil-deforestation-climate-change/>.

and a major contributor to the worldwide production and trade of palm oil.³⁸ In 2008, Cargill was Indonesia's largest exporter of palm oil to the U.S. and the largest U.S. importer of crude palm oil.³⁹ U.S. import data reported that Cargill purchased and supplied 49 percent of the 939,601 metric tonnes of palm oil imported into the U.S. in 2009.⁴⁰

In 2020, Cargill reported that its direct investments in Indonesia totaled to \$800 million in the past five years.⁴¹ In 2021, Cargill announced that it would build a \$200 million palm oil refinery in Indonesia as a part of its partnership with Nestle.⁴² Furthermore, Cargill employs 20,000 people at 60 locations across Indonesia and contributed \$5 million to nonprofits in Indonesia focused on education, health, and community economic empowerment.⁴³

Cargill's contribution to the large-scale conversion of tropical forests to oil palm plantations devastated biodiversity in Indonesia.⁴⁴ These oil palm plantations only support approximately 23 percent of the original species inhabiting the forest.⁴⁵ The clearing of Indonesian forests has destroyed the habitats of endangered species such as the orangutans in Kalimantan, killing up to 5,000 of them each year.⁴⁶ Palm oil causes more global warming

³⁸ "CARGILL'S PROBLEMS WITH PALM OIL" (Rainforest Action Network , 2010).

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ "Cargill Invests US \$100 Million in Facility in Pandaan, Indonesia ," Cargill, accessed December 1, 2021, [https://www.cargill.com/2020/cargill-invests-us-\\$100-million-in-facility-lotus-final-eng](https://www.cargill.com/2020/cargill-invests-us-$100-million-in-facility-lotus-final-eng).

⁴² Cargill, "Cargill Breaks Ground on \$100m Expansion of Specialty Fats Plant in Malaysia," Food Manufacturing, November 9, 2021, <https://www.foodmanufacturing.com/capital-investment/news/21821201/cargill-breaks-ground-on-100m-expansion-of-specialty-fats-plant-in-malaysia#:~:text=The%20investment%20also%20aligns%20with,to%20support%20Indonesian%20cocoa%20farmers.>

⁴³ Ibid.

⁴⁴ "What Is Palm Oil? Facts about the Palm Oil Industry," WWF (World Wildlife Fund), accessed December 1, 2021, <https://www.worldwildlife.org/industries/palm-oil.>, "Cargill: The Worst Company in the World - Mighty Earth," accessed December 1, 2021, <https://stories.mightyearth.org/cargill-worst-company-in-the-world/>.

⁴⁵ Chelsea Petrenko, Julia Paltseva, and Stephanie Searle, "Ecological Impacts of Palm Oil Expansion in Indonesia" (The International Council On Clean Transportation, July 2016), https://theicct.org/sites/default/files/publications/Indonesia-palm-oil-expansion_ICCT_july2016.pdf.

⁴⁶ "What's Wrong with Palm Oil?," Official Orangutan Foundation International Site, July 7, 2021, <https://orangutan.org/palmoil/>.

emissions than any other commodity besides beef.⁴⁷ Furthermore, draining carbon-rich soils known as peatlands used for oil palm plantations releases 28 times more carbon than the amount found above the soil.⁴⁸ Additionally, clearing forests by burning is a major source of greenhouse gas emissions.⁴⁹ Despite the damage, Cargill maintains its place in Indonesia's palm oil industry.

The significance of Cargill's contributions to Indonesia's economy leads to the prioritization of natural resource extraction by MNCs over the environment, leading to widescale forest degradation in developing countries like Indonesia.⁵⁰ Since palm oil is used in 50% of packaged products, high demand from U.S. corporations drives Cargill to expand its scope of production, even at the cost of biodiversity.⁵¹ Greenpeace reported that palm oil suppliers were responsible for clearing more than 500 square miles of forests in Southeast Asia since the end of 2015.⁵² In the same report, it was revealed that the world's largest brands, including L'Oréal, Mondelez, and Unilever, source from 20 palm oil companies that are mostly responsible for actively clearing forests in Indonesia and Malaysia.⁵³ In Indonesia, large-scale oil palm and timber plantations backed by MNCs caused more than two-fifths of nationwide deforestation from 2001 to 2016.⁵⁴ This reveals the extent to which the Indonesian government has been willing to sacrifice its own biodiversity and the rights of local communities for economic gains.

⁴⁷ "What's Driving Deforestation?," Union of Concerned Scientists, February 8, 2016, <https://www.ucsusa.org/resources/whats-driving-deforestation>.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ "Global Ngos: Dirty Dozen Companies Driving Deforestation Must Act Now to Stop the Burning of the World's Forests," Amazon Watch, December 12, 2019, <https://amazonwatch.org/news/2019/0830-dirty-dozen-companies-driving-deforestation-must-act-now-to-stop-the-burning>.

⁵¹ "8 Things to Know about Palm Oil," WWF, accessed December 1, 2021, <https://www.wwf.org.uk/updates/8-things-know-about-palm-oil>.

⁵² Greenpeace International, "Final Countdown," Issuu, September 19, 2018, https://issuu.com/greenpeaceinternational/docs/final_countdown_pages_lr_greenpeace.

⁵³ Greenpeace International, "World's Biggest Brands Still Linked to Rainforest Destruction in Indonesia," Greenpeace International, November 5, 2018, <https://www.greenpeace.org/international/press-release/18485/greenpeace-investigation-wilmar-brands-palm-oil-deforestation-indonesia/>.

⁵⁴ "What Causes Deforestation in Indonesia? - Iopscience," accessed December 1, 2021, <https://iopscience.iop.org/article/10.1088/1748-9326/aaf6db>.



Figure 4. Protestors calling for land reform in Jakarta (September 2019)

Amongst all these issues, land user rights for indigenous and local communities have been the most contested one. Although the Indonesian government has promised to make efforts in improving this problem, many communities like the Dayaks are still left with the same challenges. The government has been able to continue doing so with little repercussions because of the nation's laws that were created many years before Indonesia was an independent country.

A History of Indonesian Economy and Law



Figure 4. The VOC's trade network in the 18th century⁵⁵

The Dutch East India Company, otherwise known as the VOC, played an enormous role in establishing Indonesia's presence and involvement in world trade. Indonesia's trade potential was of interest to many European powers, which incentivized the VOC to monopolize the market for its own profit. As seen in Figure 1 above, the VOC extracted a variety of valuable natural resources from Indonesia, from spices such as nutmeg and mace to metal commodities like silver.⁵⁶ The Dutch saw Indonesia as a means of profitable resource extraction, so they needed to rationalize why it was the only one with the right to control this market. They achieved this by meticulously tailoring Indonesia's laws.

⁵⁵ "Dutch East India Company, Trade Network, 18th Century: The Geography of Transport Systems," The Geography of Transport Systems | The spatial organization of transportation and mobility, January 21, 2022, <https://transportgeography.org/contents/chapter1/emergence-of-mechanized-transportation-systems/dutch-east-india-company-trade-network/>.

⁵⁶ Ibid.

Dutch Legacy on Indonesian Laws

The Dutch established separate legal regimes to distinguish and separate economic roles for different population groups in Indonesia.⁵⁷ Europeans were subjected to two procedural codes, one for civil and criminal matters. These codes abided by the provisions of the codes in the Netherlands, such as the guarantee of personal rights. Indonesians, however, were only subjected to one code for both civil and criminal matters. The Dutch elaborately established a less complex and detailed procedural code for Indonesians as they believed it was necessary to accommodate Indonesian's "simpler" needs and standards.⁵⁸

Consequently, this meant that Indonesians received significantly less protection against government authority.⁵⁹ For instance, it was much easier to arrest, detain, and convict an Indonesian than a Dutch subject. Being subjected to the same law as the Dutch would imply that there was equal opportunity for Indonesians to engage in commerce of any kind.⁶⁰ Therefore, subjecting Indonesians to a separate law, known as adat law, solidified the Dutch monopoly.

Adat Laws

Indonesia's adat laws are fundamentally a Dutch creation. The term "adat" was adopted from Dutch and translates to native and customary laws.⁶¹ While adat rules themselves are rooted in Indonesian traditions and culture, the understanding of adat and the relationship between adat

⁵⁷ Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia* 40 (1985): p. 57, <https://doi.org/10.2307/3350875>.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Max Gluckman, "Adat Law in Indonesia," *Journal of Comparative Legislation and International Law* 31, no. 3/4 (1949): 60–65, <http://www.jstor.org/stable/754246>.

and state authorities are a product of Dutch influence.⁶² Author Daniel Lev wrote about this in his article that was published in 1985 titled “Colonial Law and the Genesis of the Indonesian State.” He explained that “the treatment of local customary (adat) law is one of the most perplexing and ambiguous themes in Indonesia's colonial history and deserves serious reconsideration.”⁶³ This would, in turn, affect the laws on land ownership in Indonesia.



Figure 5. Indonesian women farming under the Dutch forced cultivation system⁶⁴

Dutch economic policies in Indonesia changed in the early 1870s from a system of forced cultivation to a plantation economy.⁶⁵ Although this eradicated a classic system of colonial exploitation, the Dutch introduced a new legal problem in Indonesia. Under the Domain Declarations legislation, the Dutch were able to rule that land which is not held in ownership or

⁶² Daniel S. Lev, “Colonial Law and the Genesis of the Indonesian State,” *Indonesia* 40 (1985): p. 64, <https://doi.org/10.2307/3350875>.

⁶³ Daniel S. Lev, “Colonial Law and the Genesis of the Indonesian State,” *Indonesia* 40 (1985): p. 63, <https://doi.org/10.2307/3350875>.

⁶⁴ Elise van Nederveen Meerkerk, Lecture on women’s work in the Dutch Empire, February 2, 2018, <https://www.elisenederveen.com/news/lecture-on-womens-work-in-the-dutch-empire/>.

⁶⁵ *Ibid.*

under ownership-like rights was to be seen legally as a domain of the state.⁶⁶ Through this domain declaration, the Dutch claimed ownership of most of the land in Java before later extending it to other Indonesian islands.⁶⁷ The Dutch rulers abused their legislative power to weaken Indonesia's control of their land. As a result, western plantations and mining companies were able to acquire rights to the land without having to purchase it from local Indonesians.⁶⁸ This highly contested issue would later evolve into a controversial debate amongst different scholars in the Netherlands, particularly between those from the Leiden Law School and Utrecht University School of Law. While the Leiden Law School believed that customary rights should be observed because indigenous people are governed by a set of cultural practices, scholars from the Utrecht University School of Law felt – at the time– indifferent about customary rights because they were focused on the colony’s main purpose of benefiting the Netherlands.⁶⁹ Aside from these past disagreements, one thing is clear: the Domains Declaration Legislation would become one of the most consequential laws in Indonesian history as it set the foundation and precedent for future Indonesian government administrations to abuse the laws to pursue their economic and political agenda.

The 1945 Constitution

Years after Dutch colonial rule ended in 1945, the consequences of the domain declarations legislation live on. The principles instilled by the domain declarations, namely that state interests hold a greater priority than the land rights of Indonesians, still influence land

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia,” *Bijdragen Tot De Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 167, no. 2-3 (2011): pp. 167-195, <https://doi.org/10.1163/22134379-90003588>.

tenure in most of Indonesia. The government has maintained state control over land and natural resources mainly through two articles in the 1945 constitution:

*Article 33*⁷⁰

Article 33 of the 1945 constitution states that “the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.” This article provided and maintained the legal basis that justifies state control over land and natural resources.⁷¹ Whether this authority has been used to the greatest benefit of the Indonesian people is debatable and will be discussed later in this paper.

*Article 18B*⁷²

Article 18B of the 1945 constitution is divided into two parts which state the following:

- (1) “The State recognizes and respects units of regional authorities that are special and distinct, which shall be regulated by law.”
- (2) “The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

⁷⁰ F Arsil and Q Ayuni, “Understanding Natural Resources Clause in Indonesia Constitution,” IOP Conference Series: Earth and Environmental Science 940, no. 1 (January 2021): p. 012040, <https://doi.org/10.1088/1755-1315/940/1/012040>.

⁷¹ “A 150-Year Old Obstacle to Land Rights ,” Inside Indonesia: The peoples and cultures of Indonesia, accessed April 28, 2022, <https://www.insideindonesia.org/a-150-year-old-obstacle-to-land-rights>.

⁷² “The 1945 Constitution of the Republic of Indonesia ,” accessed April 28, 2022, <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf>.

Of these two parts, this essay will focus on the second clause in Article 18B. This article is known for being controversial because of the ambiguity in the term “traditional customary rights”. The ability to manipulate the definitions of “traditional” has caused land disputes.

Indonesian Laws in Post-Colonial Administrations

Suharto’s New Order

Indonesia came close to abolishing the domain declarations in 1960 through the Basic Agrarian Law, a law that would have addressed the injustices created by Dutch colonial laws and recognized customary land rights. However, Suharto’s new order regime (1965-1998) pivoted from this plan and strengthened state control over land instead. Under his dictatorship, Suharto’s administration prioritized state control over the customary land rights of indigenous and rural communities. He did so by reinforcing the principle which claims that the state should have the power to use its land “for the welfare of the nation”.

President Suharto orchestrated the mass exploitation of Indonesian forests from the 1970s to the 1990s by licensing forest lands to state-owned and private logging corporations as well as industrial plantation companies.⁷³ Suharto’s regime adopted a new forestry law in 1967 that reintroduced the domain declarations principle. Under this new law, Suharto designated 143 million hectares— approximately 75 percent of Indonesian territory— as state-owned forest land. Suharto ruled that this land would be controlled solely by the Ministry of Forestry, which meant that Indonesian citizens could not legally own the land. From this state-owned land, 30 percent — much of which originally belonged to Indigenous people— was licensed to private companies over the next 50 years; this led to issues concerning land-grabbing, displacement, and tenure

⁷³ “Indonesia,” Tenure Facility, July 30, 2020, <https://thetenurefacility.org/timeline/indonesia/>.

conflicts. By the 1990s, Indonesia's forest bureaucracy granted concessions on indigenous people's customary territories to companies in the timber plantation industry. The Ministry of Forestry did so with the hope that over-logged areas would be reforested, but many companies were granted licenses for natural forests that were still intact. Suharto's economic policies caused displacement, poverty, and social injustice that would transcend his time in office.

Next Steps

Given this evidence and information, it can be understood that Indonesia's extractive industries are able to continue harming marginalized groups because the government, backed by the articles in the 1945 constitution, often finds itself prioritizing its economic gains first and foremost. However, the Indonesian government has made conscious efforts to resolve these issues. In addition to the government's current plans, this paper offers suggestions for the issue of customary land rights.

The decentralization that occurred after Suharto reopened the question of customary rights that he had shut down, but this has still not been very favorable to indigenous people. To bring about change, the Indonesian government should consider improving or increasing the clarity at the highest possible levels as to what is considered customary rights. In today's post-Suharto Indonesia, things are looking more hopeful because many indigenous groups have been able to unify and mobilize through their own political organizations. However, the government must do more to ensure that customary rights are recognized instead of granted.

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