

COMMISSIE KOLONIALE COLLECTIES
BIJLAGE 4

Rapport van dr. T.P. Moeliono

Legal analysis of Dubois's paleontological excavation in the Netherlands Indies

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- 1) The legal questions to be discussed concern, first, the arrangements between Dubois and the Netherlands Indies government concerning the paleontological research in Sumatra and Java, with specific reference to the excavations in Trinil-Ngawi Residency (East Java); secondly, the issue of autonomy of the Netherlands Indies; thirdly, the structure of governance in the Netherlands Indies; fourthly, the co-existence of European law and *adat* law; and finally, the issue of rights to land in Trinil-Ngawi Regency.
- 2) Analysis on the legality of the palaeontological expedition conducted by Dubois', ownership of the findings, and all related issues shall be done by looking at existing legal documents and other supporting materials. The analysis performed here will be limited to questions of legality only and shall not discuss the (social-political) legitimacy of the Dutch colonial government or how the subjugation of the native-indigenous population to the colonial powers determines or challenges in one way or the other the legitimacy of governance of the Netherlands Indies.

I. Contractual Arrangements between Dubois and the Netherlands Indies government

- 3) The following facts have been established about the government decisions pertaining to Dubois's paleontological expeditions:

On 6 March 1889, the Netherlands Indies Government takes the decision (no. 6) to support Dubois' research, under the responsibility of the *Directeur van Onderwijs, Eeredienst en Nijverheid*, to carry out paleontological work on Sumatra and possibly Java (*Koloniaal Verslag 1889, 1890*, p. 124), with the stipulation that the fossils will be made available to the government (Brongersma, 1941; de Jongh, 1931, 1932). To him are assigned two officers of the engineering corps (Franke and Van den Nesse) and 50 forced labourers to help him with the excavation work on Sumatra (Theunissen, 1989, p. 39). According to this *Besluit Nederlands-Indische regering (no. 6)*, the permit to perform scientific paleontological research was granted with the condition that Dubois dutifully report his progress to the director and that the findings be surrendered to the government. The government decree stipulated that:

*'Den officier van gezondheid der 2de klasse à la suite M.E.F.T. Dubois [...] te stellen der beschikking van den Directeur van Onderwijs, Eeredienst en Nijverheid, teneinde belast te worden met palaeontologische onderzoeken in grotten in het gouvernement Sumatra's Westkust en eventueel op Java; met opdracht te zijner tijd omtrent de uitkomsten zijner onderzoeken te rapporteeren aan den Directeur voornoemd en de verkregen fossielen ter beschikking van de Regering te stellen [...].'*¹

¹ 'The officer of health of the 2nd class à la suite M.E.F.T. Dubois [...] to be placed at the disposal of the Director of Education, Religious Affairs and Industry, in order to be charged with palaeontological research in caves in the province of West Coast of Sumatra and possibly on Java; with instructions to report in due course on the results of his research to the aforementioned Director and to make the fossils obtained available to the Government [...].'

In June 1890, Dubois begins his fieldwork on Java. He was, as with the previous expedition, once again provided with two corporals (Kriele and De Winter) of the engineering corps, who oversee the work and report to him regularly about the activities.

Brongersma reported that (p.100)²:

*'Zijn [Dubois'] opdracht werd bij Gouvernementsbesluit van 14 April 1890, No. 28 uitgebreid tot het onderzoeken van de tertiaire en diluviale zoogdier-fauna van Java, dus ook tot een onderzoek buiten de grotten.'*³

This second decree extended Dubois's scientific work area. He was thus also authorized to conduct his excavations in the open field. The excavations were done by: [...] *een aantal dwangarbeiders, die onder toezicht van de korporaals der genie, Kriele en De Winter, werkten.*⁴ Meanwhile, as reported, most of the time Dubois himself stayed at Tulung Agung. Beside Trinil, other excavation sites reported were: a) *marmergroeven bij Tjermee* (Cerme, district Wajak); b) *Kendeng-gebergte*; c) *Kedung Brubus* (at the Kendeng river bed); and d) *Pati Ayam* at Jepara. All sites were within the Madiun Residency [East Java], falling outside the authority of the *vorstenlanden*, situated in central Java.

4) Dubois (as reported by Brongersma) periodically submitted reports to the Director of Education, Religion and Industry:⁵

*'De verslagen, die hij over de werkzaamheden samenstelde en die door hem aan den Directeur van Onderwijs, Eeredienst en Nijverheid werden uitgebracht, werden gepubliceerd in de verslagen, die het Mijnwezen elk kwartaal uitgaf.'*⁶

The procedure indicates the existence of an official "scientific-work relationship" between the Colonial government and Dubois as the scientist-worker. Consequently, Dubois, as an army officer, and bound by a contractual arrangement, does his scientific work, under the auspices of the Netherlands Indies government – or specifically the government department in charge – and must report back to the government regarding the progress of his work. While Dubois did regularly send reports to the Director of Education. The fossils and other excavated findings had

² Brongersma, L.D. 1941: De verzameling van *Indische fossielen* (Collectie-Dubois). *De Indische Gids*, March 1941: 97-116. Cf. Albers. Paul C.H. & John de Vos, (2010), *Through Eugène Dubois' eyes; Stills of a turbulent life*, Leiden-Boston. Cf. *Herkomstonderzoek collectie Dubois: femur 1, schedelkapje en kies*, June 2023

³ 'His [Dubois's] assignment was extended by Government Decree of 14 April 1890, No. 28 to include the survey of the tertiary and diluvial mammalian fauna of Java, i.e. also a survey outside the caves.'

⁴ The use of convicts to work outside prison in various government projects was a usual penal policy of that time. See: van Rossum M. *The Carceral Colony: Colonial Exploitation, Coercion, and Control in the Dutch East Indies, 1810s–1940s*. *International Review of Social History*. 2018;63(S26):65-88. doi:10.1017/S0020859018000226. He reported that: "Throughout the seventeenth and eighteenth centuries, slaves had been an important part of the workforce in the same places in which convicts were later employed. Convicts were sent to replace slaves, but also to replace other labourers in mines (Banka; Padang), on urban *public works* (Batavia; Semarang), and on plantations (Banda; Java)." In short, the above policy (acceptable at that time) allowed Dubois and his team to obtain cheap labour to perform the hard work.

⁵ Brongersma, op. cit. p. 102.

⁶ 'The reports, which he compiled on the work and which he submitted to the Director of Education, Religious Affairs and Industry, were published in the quarterly reports issued by the Mining Department.'

to be handed over to the government, but instead were shipped to the Netherlands to facilitate Dubois's description and analysis.⁷

II. The autonomy of the Netherlands Indies vis-à-vis the mother country

Below will be discussed, by looking at the legal materials available and other sources, the legal position of the Dutch colonial government vis-à-vis the mother country [state and government]. The brief excursion into the *Grondwet* and *Regeringsreglementen* provides for background information on how the Netherlands Indies government functioned, and the legality of the decisions, including the permits granted to Dubois to conduct scientific research. The argument here is that the Netherlands Indies government basically was an extension of the Dutch state. Policies and decisions made by the *Governor General* as the highest authority was performed on behalf of the mother country. The permit granted to Dubois perceived thus had been in the final analysis granted by the Crown. The exact legal status of the colonies, however, has never been clear. This legal unclarity was part and parcel of the colonial constellation. In the past, legal discussions have erupted about the autonomy and legal personality of the Netherlands Indies. This discussion has resulted in 1864 and in particular in 1912 in the formal affirmation of the Netherlands Indies as possessing legal personality. It can be discussed to what extent this created a new situation, or whether it confirmed pre-existing assumptions and practice.

a. Constitutional position of the Netherlands Indies vis-à-vis the Mother Country

- 5) Being a colony of the Netherlands, the Netherlands Indies government never enjoyed full sovereignty and autonomy. The highest authority in the Netherlands Indies, the Governor-General (assisted by the *Raad van Indië*) could be likened to a chief executive officer tasked with managing the whole area placed under the suzerainty of the Dutch state (through a combination of military conquest, treaties, declaration) on behalf of the mother country.
- 6) The constitutional foundation of the Dutch colonial state is laid down firstly in the successive versions of the Dutch *Grondwet* (of the Netherlands proper)⁸ and, secondly, in the laws or rules regulating the colonial state-government (successive *regeringsreglementen* (RR)). Applicable during the period of the Dubois expeditions was RR 1854 and its amendments.⁹ The RR was lastly replaced in 1926 by the *Indische Staatsregeling*, which over the years was also amended 7 times.¹⁰

⁷ See the 'Research Report on the Dubois Collection' by the NIOD Institute for War, Holocaust and Genocide Studies.

⁸ <https://www.rijksoverheid.nl/onderwerpen/grondwet-en-statuut/175-jaar-grondwet>. The relevant GW here is the 1848 version. Available at https://www.dbnl.org/tekst/wilh001quee01_01/wilh001quee01_01_0009.php. For complete text of the Grondwet 1848 see: https://www.denederlandsegrondwet.nl/id/vi7aaw43p5mk/grondwet_van_1848_ministeriele

⁹ There were six *Regeringsreglementen* promulgated. See: *Zes Regeringsreglementen van Nederlandsch Indië van 1815, 1818, 1827, 1830, 1836 and 1854.*'s Gravenhage, H.C. Susan, C.Hzoon, 1883 Available at https://books.google.co.id/books?id=AtsqQGfOyCcc&pg=PA1&hl=id&source=gbv_selected_pages&cad=1#v=onepage&q&f=false.

¹⁰ *Wet op de Staatsinrichting van Nederlands-Indië (IS; Stbld 1925-415 jo 577; Indische Staatsregeling 1926; wet van 2 sept. 1854, Ned- S. 1854-2, S-1855-2 jo.1).*

- 7) Under the constitutions of 1814 and 1815, the King was the highest authority in colonial matters.¹¹ Later, in 1848, ministerial responsibility was introduced.¹² The new constitution of 1848 (art. 59) changed the position of the Crown towards the colonies. It is stated that:¹³

‘Met het eindigen van de zelfstandige staatsrechtelijke rol van de Koning in 1848, eindigt zijn staatsrechtelijke verantwoordelijkheid voor het regeren over Nederlands-Indië. Vanaf 1848 berust die verantwoordelijkheid bij ministers. Wat het Koningshuis betreft: dat heeft ook vanaf 1848 geen staatsrechtelijke bevoegdheid en geen staatsrechtelijke verantwoordelijkheid.’¹⁴

- 8) After the promulgation of the 1848 Constitution, the responsibility to manage the colonies, including the Netherlands Indies, lies with the Dutch government, in particular the ministry of the colonies. Part of its authority was to appoint the Governor General, who was entrusted and authorized to manage the colony on behalf of the mother country. Hence, the highest authority in the Netherlands Indies, (according to the RR), is the Governor-General, with attributable powers and authorities as described in the RR. Under the same constitution, the Governor-General became directly accountable to the ministry of the colonies.
- 9) The granting and recognition of legal personality in the Comptabiliteitswet of 1864 should be interpreted primarily in the context of the need to separate the budget of the colony from that of the mother country, not in terms of granting the Netherlands Indies sovereignty as understood in the context of public international law. This policy was more in the interest of financial risk management in a time of changing economic colonial policies.
- 10) The *Grondwet* 1848, under Article 59, recognized the king as the supreme authority over the colonies. It also stipulated that a colonial constitution had to be established by law, and that the chambers of the Dutch Parliament were to have specific rights of legislation over colonial currency and finance and such other matters as might be necessary. Consequently, a *Regeringsreglement* (constitutional regulation) was passed in 1854, coming into effect in 1855.¹⁵ This RR made one significant change in the colonial government by entrusting the chief power in the Netherlands Indies to the governor-general *and* council. This abolished the system introduced in 1836, whereby the council had been reduced to the position of a mere advisory body.¹⁶

¹¹ As of 1848, in accordance with the 1848 Constitution (art. 59) the same situation persisted. The King (or crown) is the highest authority of the Netherlands colonies and possessions outside the Kingdom. How those colonies should be governed shall be stipulated by law: *‘De Koning heeft het opperbestuur der koloniën en bezittingen van het Rijk in andere werelddeelen. De reglementen op het beleid der regering aldaar worden door de wet vastgesteld. Het muntstelsel wordt door de wet geregeld. Andere onderwerpen, deze koloniën en, bezittingen betreffende, worden door de wet geregeld; zoodra de behoefte daaraan blijkt te bestaan.’* Cf. Artikel 60 GW 1815 stipulated that the Crown (King) possess exclusive power to rule over the overseas territories (*opperbestuur over Nederlands-Indië*).

¹² The Queen looks at the future. Important statements of H.M. Queen Wilhelmina on War and Peace Aims (New York 1943) Appendix I The Constitutional Relationship between The Netherlands and the Netherlands East Indies from 1814 to date, p. 26

¹³ Nick Efthymiou, *De Koning en Nederlands-Indië, 1816-1848*, 10 Augustus 2023. Available at <https://www.nederlandrechtsstaat.nl/de-koning-en-nederlands-indie-1816-1848/>.

¹⁴ With the end of the King's independent constitutional role in 1848, his constitutional responsibility for ruling the Dutch East Indies stops. From 1848 onwards, that responsibility rests with ministers. As for the Royal House, it also has no political power and no political responsibility from 1848 onwards.

¹⁵ *Wet van den 2den September 1854, houdende vaststelling van het Reglement op het beleid der regering van Nederlandsch-Indië [S 1955-1 jo. 2; promulgated in January 1, 1854, entered into force 1855].*

¹⁶ Hall, D.G.E. (1981). *The Dutch Forward Movement in Indonesia*. In: *A History of South-East Asia*. Macmillan Asian Histories Series. Palgrave, London. https://doi.org/10.1007/978-1-349-16521-6_34.

- 11) This legal situation did not fundamentally change with the promulgation of the *Indische Comptabiliteitswet, Regeling van de wijze van beheer en verantwoording der geldmiddelen in Indië* of 1864.¹⁷ The *Comptabiliteitswet* (in article 1), however, did stipulate that the Netherlands Indies¹⁸ was a legal subject (*rechtspersoon*) represented either by the governor-general or by the minister of the colonies (*die hetzij door den Gouverneur-Generaal, hetzij door den Minister van Koloniën wordt vertegenwoordigd*).
- 12) In short, from a public international law perspective, the Netherlands Indies was not established to be an independent and sovereign state, separate from the mother country. However, at the same time, the mother country, established and put in place a semi-independent government system to manage the colony. This Netherlands Indies government did enjoy 'autonomy' within the limits of the Dutch constitution and RR and did possess legal authority to govern the colony.

b. Constitutional Regulation of 1854: the Netherlands Indies system of governance and legal pluralism

- 13) Regarding executive power, the RR of 1854 put in place a government system to manage the colony. The most important institution was that of the *governor-general* as the head of the colonial government; answerable to the ministry of the colonies and the crown. The RR also established a government system that was structured to directly govern the European population and indirectly (with the assistance of the local elite) most of the indigenous population. The latter remained subjected to their own laws (*adat* or customary law), with the exception of Dutch criminal law, which was declared applicable to all inhabitants and the entire territory.¹⁹
- 14) Despite continuing amendments to the RR over the years,²⁰ the colonial government maintained forms of indirect rule, to the extent that they did not run counter with the colonial government's

¹⁷ *Wet van 23 april 1864, Ind. S. 106, waarvan de gewijzigde tekst opnieuw is bekendgemaakt in S: 2-448. See also: version 1915, p. 270: Wetten en verordeningen betreffende Nederlandsch-Indië, Suriname en Curaçao » » 1915 - Pag. 1 | Delpher available at.*

<https://www.delpher.nl/nl/boeken/view?coll=boeken&identifier=MMUBL07:000001575:00312>

¹⁸ As compiled by Engelbrecht, (1989), *de wetboeken, wetten en verordeningen benevens de grondwet van de Republiek Indonesie*, van Hoeve: Jakarta.

¹⁹ *Wetboek van Strafrecht voor Nederlands Indië*, or the Criminal Code of the Netherlands Indies, promulgated by Staatblad No. 732 in 1915 and entered into force: January 1, 1918

²⁰ RR, wet van den 2den September 1854 (*Nederlandsch Staatsblad* No. 129). The 1854 Government Code (*Regeringsreglement*) while did not change administrative relationship between the Crown and the Viceroy, necessitate the revision of the briefing of the Governor-General which dated from 1836. These new instructions which were ready a year later in 1855, reopened expressly the issue of the position of the native rulers. According to Article 43 of the instructions the right to self-government of several native rulers did not exclude the obligation of promoting welfare of their people. Princes had to rule justly and to protect agriculture, crafts, trade and shipping. The Governor-General had to supervise this and, if necessary, intervene decisively. However, if the existing agreements were scrupulously adhered to, Dutch authority could not be extended. See Vincent J.H. Houben, "Dutch intervention in the Principalities after 1830" In Kraton and Kumpeni (1994), Brill-KITLV. Cf. Sutherland, Heather. "Notes on Java's Regent Families: Part I." *Indonesia*, no. 16, 1973, pp. 113–47. *JSTOR*, <https://doi.org/10.2307/3350649>. Accessed 15 Apr. 2024. For commentary on the indirect rule (of indigenous communities-traditional villages at Java), see also Wim van den Doel, Snouck Hurgronje and the Colonial Administration of the Netherlands Indies [chapter VII] in [Scholarship in Action: Essays on the Life and Work of Christiaan Snouck Hurgronje \(1857-1936\)](#), the history of oriental studies 12, Brill, 2022.

interests. The constitutional basis for this policy can be found in Art. 67 of the RR of 1854, which reads:²¹

‘Vierde hoofdstuk [van de gewestelijke en plaatselijke besturen]:

zoveel de omstandheden het toelaten, wordt de inlandsche bevolking gelaten onder de onmiddellijke leiding van hare eigene van regeringswege aangestelde or erkende hoofden, onderworpen aan zoodanig hooger toezigt als bij algemeene of bijzondere voorschriften door den Gouverneur Generaal is of zal worden bepaald.’²²

- 15) Various forms of indirect rule existed, ranging from a mere recognition of Dutch suzerainty by local rulers, to the dual governance system of Javanese officials operating next to Dutch colonial officials on Java. Part of government policy (enshrined in the RR) was to recognize *adat* or native (customary-unwritten-uncodified) law and the application of different legal systems for different groups (European, Foreign Orientals (Chinese, Arab), and the Native or indigenous population). The RR of 1854 made a clear distinction between population groups, each falling under different administrative arrangements and laws.²³ The RR of 1854 referred to the *Algemeene bepalingen van wetgeving voor Nederlandsch-Indië* (A.B.) enacted by Royal Decree of May 16, 1847 [S. 23: 1847]. The A.B. contained three essential articles about the Netherlands Indies legal system. In art. 6, the A.B. ruled that residents of the Netherlands Indies were to be distinguished into Europeans and Natives (including people equated to them, such as Arabs, Moors, Chinese and others). Each group to be subjected to different legal systems. Later the group of Foreign Orientals (*Vreemde Oosterlingen*) was distinguished as a separate legal population category.
- 16) The above situation of legal pluralism prevailed in Java at the time of Dubois’s expedition. The indigenous (‘Native’) population was ruled by local officials appointed by the colonial government. The population was expected in non-criminal legal matters to apply their own customary legal system to rule their daily live – under the condition that it did not run counter to the interests of the colonial government.²⁴
- 17) The official policy of maintaining a pluralistic legal system applies also to land management. In areas directly governed, including urban areas, cash-crop plantations, industrial zones, European law (the Burgerlijke Wetboek, Wetboek van Koophandel, etc) applied. Natives and Foreign Orientals residing permanently in those areas were considered to voluntarily accept and subject themselves (either partially or wholly) to the European laws and regulations. In contrast, in areas managed by indirect rule, populated by indigenous communities, local laws and customs, including those pertaining to land ownership and management, were considered applicable. The

²¹ *Het reglement of het beleid der regering van Nederlansch-Indië, vastgesteld bij de wet van den 2den September 1854* (Staatsblaad no. 129)

²² ‘Fourth chapter [of the regional and local governments]: As far as circumstances permit, the native population is left under the immediate leadership of their own government-appointed or recognised heads, subject to such higher supervision as is or will be determined by general or special regulations by the Governor General.’

²³ See further: Verheijen. Bart, Staatsburgerschap en Nederlanderschap in Nederlands-Indië in de negentiende eeuw, *Tijdschrift voor Geschiedenis*, Volume 134, Issue 3, Dec 2021, p. 448 – 472.

²⁴ But see also: Wim van den Doel, “Snouck Hurgronje and the Colonial Administration of the Dutch East Indies”, In: Léon Buskens and Jan Just Witkam with Annemarie van Sandwijk (ed). (2021), *Scholarship in Action: Essays on the Life and Work of Christiaan Snouck Hurgronje (1857-1936)*, Brill: Leiden-Boston. He noted that: ‘Characteristically, although in 1859 the stipulation had been dropped that the indigenous regents were to be seen as the “younger brothers” of the resident, in the meantime assistant-residents began calling themselves the older brothers of the regent, a misconception which was to persist in history (...) In this way, by the end of the nineteenth century the colonial administration on Java had developed into a system in which the Dutch colonial civil servants dominated and wished to govern as much as possible “directly”.’ (p.5). Cf. Francien van Rooij, op.cit

exception to the rule being the Netherlands Indies Wetboek van Strafrecht, which was considered applicable to the entire Netherlands Indies territory.

- 18) Dubois and his assistants, as Europeans and having the status of Dutch colonial civil servants, were obviously subjected to European law. They enjoyed the support of the European central and local government to conduct the paleontological research. However, when dealing with the local indigenous population, they had to deal and negotiate with the local indigenous officials. To what extent they had to deal with indigenous or *adat* (customary) law will be discussed below. To be taken into special consideration here is how the Ngawi Regency in East Java, where the most important excavation sites were located, related to the regulations on land use.

c. Ngawi Regency under direct rule

- 19) Dutch colonial government officials, legal scholars and others have analysed the *adat* law (customary-local customs). One of the results was the publication of *Pandecten van het Adatrecht* by the KITLV (Koninklijk Instituut voor Taal-Land-en Volkenkunde)²⁵ and academic articles by students of the Rechtshogeschool, established 28 Oktober 1924 or Leiden University.²⁶
- 20) However, there is a silence about *adat* law and especially land law in Ngawi regency. This does not mean that there were no customs or *adat* laws in place. The existence of wet rice fields suggests that local rules and regulations pertaining to land ownership and management were needed and did apply. As there is no information available as to their contents, there is also no possibility to describe how these regulations pertained to management of arable land and the banks of the Solo river.
- 21) Ngawi was initially established as *onder-regency* and later upgraded to *regency*. It was the part of the region which by the Sepreh Agreement (concluded on 3-4 July 1830 at Sepreh Village, Ngawi) was taken out of the control of the *Vorstenlanden* in Central Java and put under colonial government control.²⁷ Thus, the Ngawi regency and neighbouring regencies in East Java, at the time of Dubois' excavation had already been placed under direct central government rule. In that sense, the regent and vice regent (local native leaders) were under the obligation to follow orders given by the central government and fully assist Dubois' (having secured the necessary permits from the central government) in his scientific endeavours. To be taken into

²⁵ Or any other sources. See: Blagden, C. O. "Indonesia - 1. Adatrechtbundels. Bezorgd Door de Commissie Voor Het Adatrecht En Uitgegeven Door Het Koninklijk Instituut Voor de Taal-, Land- En Volkenkunde van Nederlandsch-Indië. 10 x 6½. Xxxi: Selebes, Pp. Vii + 444; Xxxii: Zuid-Sumatra, Pp. Vii + 468, Pl. 1, Map 1; Xxxiii: Gemengd, Pp. Ix + 482, Map 1. 's-Gravenhage: Martinus Nijhoff, 1929, 1930, 1930. G. 5.50 per Deel. - 2. *Pandecten van Het Adatrecht*. Koninklijk Koloniaal Instituut Te Amsterdam, Mededeeling No. IV, Afdeling Volkenkunde No. 2. IX.

²⁶ Dissertations on Netherlands Indies Law. 1850-1945, <https://library.xmu.edu.cn/contentfiles/daxingtecang/5DISSERTATIONS-ON.pdf>, provides a list of dissertations made by Indonesian (at that time 'Natives' of the Netherlands Indies) studying in Leiden.

²⁷ The Sepreh agreement was signed at 3 Juli 1830, by 23 Regents (Bupati from Kediri and Madiun) witnessed by M.R. Pieter Marcus [Raad van Indie; Ridder van de Orde van de Nederlandsch Leuw, Commissaris ter Regelling de Vorstenlanden] and Van Lawick Van Pabst dan J.B. de Solis (Resident of Rembang) Cf. anonim, *Magetan Dari Masa Ke Masa* (5), 8 oktober 2021, available at <https://arpus.magetan.go.id/2021/10/07/bupati-magetan-dari-masa-ke-masa-5/>. Cf. Aunur Rofiq, 3-4 Juli 1830: Perjanjian Sepreh dan Awal Mula Pembubaran Kabupaten Srengat; <https://jatimtimes.com/baca/315538/20240703/085400/3-4-juli-1830-perjanjian-sepreh-dan-awal-mula-pembubaran-kabupaten-srengat>;

consideration here was the fact that those local officials, including those in Ngawi regency, for quite a long time had happily endorsed the cultivation system and took advantage of their position against the local population.²⁸

- 22) How the cultivation system, in force since 1830 and only gradually dismantled after 1870, impacted upon *adat* law and customs on land, lies beyond the purview of this report.²⁹ What, however, can be discerned is that those agrarian societies would doubtlessly regulate land ownership, management and utilization and manage access to land for housing or wet-rice fields, on the basis of their own custom or *adat* law.
- 23) Considering their legal position and their past behaviour, specifically under the cultivation system (circa 1830-1870), it is doubtful the indigenous leaders will openly take sides with the local inhabitants against the colonial authorities. It is very well possible, but not documented that the allocation of certain areas (including Trinil) as excavation sites by the government involved the dispossessing of the indigenous population.
- 24) Moreover, there are some indications of the way the local population perceived paleontological findings. It is recognized that:³⁰

'Both Dubois and Von Koenigswald could only do their work thanks to the efforts of forced labourers but also of the local population and of earlier scholars with an interest in Javanese fossils. One of these earlier scholars was the famous Javanese painter and autodidact Raden Saleh (1807–1880), who received his art education in the Netherlands and had scientific and scholarly interests [...] Like Raden Saleh, Dubois, and later Von Koenigswald, could not have done their work without the directions of the local population.'

The same report also stated that:

'The local population in Central Java was well aware of large and odd-shaped bones found in their paddies and surroundings. As they told European scholars around 1900, they called them balung buto or tulang raksasa (giants' bones) and considered them to be the bones of giants that once battled against each other.'

This indicates how the local population, at least around Trinil, valued archaeological findings, as evidence of the existence of mythological creatures, or as treasures having economic values to be traded to Chinese merchants or European scientists.

- 25) There is no information about the legal process by which the excavation site, especially at Trinil (Ngawi Regency), was taken from local agriculturalists or how the local owners were dispossessed. It should be noted here that the Dubois expedition, as far as available sources go, conducted the research on sites already started by previous excavators, such as Raden Saleh.³¹ To this question of possible dispossession of indigenous land we will turn below.

²⁸ Ravensbergen, S. (2018, February 27). Courtrooms of conflict. Criminal law, local elites and legal pluralities in colonial Java. Retrieved from <https://hdl.handle.net/1887/61039>.

²⁹ Silaen, Parulian and Smark, Ciorstan J.: The "Culture System" in Dutch Indonesia 1830–1870: How Rawls's Original Position Ethics were Violated 2006. <https://ro.uow.edu.au/commpapers/135>

³⁰ Op cit.

³¹ See Sander L. Hilgen et al, Revised age and stratigraphy of the classic Homo erectus-bearing succession at Trinil (Java, Indonesia), Quaternary Science Review 301 (2023) 107908, available at <https://museum.kemdikbud.go.id/storage/assets/images/museums/239/kajian/EUscH47qQZ2Jn7cOu1dUewRTx.pdf>. Cf.: Caroline Driehuisen & Fenneke Sysling, Java Man and the Politics of Natural History: an object

III. Dispossession and compensation for the indigenous population

26) As indicated above we can safely assume that indigenous inhabitants living nearby the excavation site at Trinil (Ngawi) were dispossessed and that under the prevailing law during that period, based on the RR of 1854, the colonial government did recognize their land ownership claim based on adat law,³² and guarantee their right to demand compensation. Art 63 (173) of the RR of 1854 stipulated that:

*'Over gronden, door inlanders voor eigen gebruik ontgonnen, of als gemeene weide of uit eenigen andere hoofde tot de dorpen behoorende, wordt door den Gouverneur Generaal niet beschikt dan ten algemeenen nutte, op den voet van Art. 77 en ten behoeve van de op hoog gezag ingevoerde cultures volgens de daarop betrekkelijke verordeningen, tegen behoorlijke schadeloosstelling.'*³³

27) Indication that the excavation site borders encroached upon wet rice fields cultivated by local Javanese farmers may be observed from two pictures taken (1894):³⁴

biography, *Bijdragen tot de Taal-, Land- en Volkenkunde* 177 (2021) 290–311; See also: Alink, Gerrit. Wil Roebroeks, and Truman Simanjuntak, THE HOMO ERECTUS SITE OF TRINIL: PAST, PRESENT AND FUTURE OF A HISTORIC PLACE, *AMERTA, Jurnal Penelitian dan Pengembangan Arkeologi* Vol. 34 No. 2, Desember 2016: 81-152.

³² In regard to recognition of adat law, especially their claim of land ownership, see further: <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/law-colonial-systems-dutch-empire>. It is written that: Traditional scholarship has empathized the importance of customary law (*adat recht*) as applying to the indigenous population. Based upon the work of Dutch legal scholar Cornelis van Vollenhoven (1874–1933) and his disciples at Leiden University, who were greatly influenced by the *Historische Rechtsschule* (Historical School of Law) of German jurist Friedrich Karl von Savigny (1779–1861), the Indonesian archipelago was divided into some seventeen so-called "law circles," each assumed to reflect the customary law of that region. Thus, to the two nonindigenous law systems—Dutch, plus after 1918 that of the Foreign Orientals (Sino-Indonesians)—came these mutually exclusive sets of oral laws. Under the circumstances, "forum shopping" and the "conflict of laws"—a determination of which set of laws were valid in cases between individuals from different ethnic or legal groups—almost overshadowed the law itself. But see also: Benda Beckmann. Franz von & 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* Vol. 167, no. 2-3 (2011), pp. 167-195 URL: <http://www.kitlv-journals.nl/index.php/btlv> URN: NBN:NL:UI:10-1-101386

³³ 'Land, cultivated by the natives for their own use, or as common pasture or for any other reason belonging to the villages, cannot be disposed of by the Governor General except for common use, on the basis of Article 77 and for the benefit of the cultures introduced on the government's authority following the relevant regulations, against proper compensation.'

³⁴ Borrowed from: Albers. Paul C.H. & John de Vos, (2010), *Through Eugène Dubois' eyes; Stills of a turbulent life*, Leiden-Boston.



DUBO0690 Plate 8. The Trinil site along the Solo-river on Sept 5th 1894. View from near the monument.



DUBO1494 Plate 9. Overview of the Trinil site along the Solo-river. Photograph made by a photographer arranged by Kriele on Dubois' request at 19-11-1900. Again made from near the monument. This perspective is the same as of the photograph used for the cover (DUBO1402).

28) Unfortunately, no better or clearer pictures of the site from the time of the excavations are available. The picture above indicates that the excavation site borders or even encroaches on wet rice fields, which most probably was owned and managed by communities living nearby under native title. It is difficult to see to what extent the excavation at the river bed damaged or encroached on the arable fields and to what extent the owners suffered any damage. No information is yet available about possible objections or protests made by the indigenous population against the excavation performed at Trinil (Ngawi) as well as at Sumatera, earlier. But the absence of this information cannot be read as confirmation that those indigenous-native populations at that time managing adjacent wet-rice fields did not feel wronged or did not attempt to voice their objections to the Regent of Ngawi or other authorities.

IV. Concluding Remarks

29) The question about the status of Dubois' expedition and the ownership of his findings hinges on 1) the relationship between Dubois and the government; 2) the relationship between the Netherlands Indies and the Netherlands vis-à-vis the possession of the fossils excavated by

Dubois (in other words: were the Netherlands Indies legal owners of the fossils? Or could the Dutch government legally claim the fossils to stay in the Netherlands after they were sent there?); and lastly 3) the local rules about land use and the rights of the Netherlands Indies government – in the person of Dubois and his team – to dig into the soil at Trinil (Ngawi Regency).

30) It is a well-established fact that Dubois' as an active duty army officer of the colonial army had obtained formal approval granted by the colonial government to conduct scientific research, including excavation at allocated sites. Part of the terms and conditions of the approval was that he should periodically report back and that research findings would be handed to the government issuing the permit or approval.

Whether the Netherlands Indies government could be considered the legal owner of the fossils and other items excavated by Dubois, relates to the issues of sovereignty and legal personality. From a public international law perspective, the Netherlands Indies was not established to be an independent and sovereign state, separate from the mother country. However, at the same time, the mother country, established and put in place a semi-independent government system to manage the colony. This Netherlands Indies government did enjoy 'autonomy' within the limits of the Dutch constitution and RR and did possess legal authority to govern the colony.

31) The legal personality was formally acknowledged by the *Wet op de rechtstoestand van Nederlands-Indië* in 1912.

32) Unfortunately, there is not much information available on how the local population and local officials viewed or perceived the scientific research conducted by Dubois. The scant information available indicates among other things that the fossils unearthed by Dubois and others were considered to be of long-extinct giants (mentioned in myths or local folklore). There are also indications that inhabitants had an economic interest in fossils. It illustrates that there were other perceptions around than the 'scientific' approach of the palaeontological excavators.

33) While the colonial government, by virtue of the *Regerings Reglement*, did accord formal recognition of local rulers and *adat* law, specifically regarding land law, it was given under the condition that it did not run counter with the colonial government interest. There is no indication that compensation had been paid to the villagers. There are no data available on how the native population and in particular the owners of the rice field above and adjacent to the excavation site were dispossessed and whether they had access to the colonial justice system to defend their right to compensation.

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Appendix I The Constitutional Relationship between The Netherlands and the Netherlands East Indies from 1814 to date.

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