



SLAPPs as a form of exclusion in resource governance: The case of an anti-gold mine campaign in Loei province, Thailand

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Abstract

The article demonstrates the anti-gold mine movement in Thailand's northeastern province of Loei as a form of resource governance and the corporate's SLAPPs as a tool to exclude the community from such process. The study applied concepts in resource governance, SLAPPs, and exclusion in a qualitative analysis of interviews, participant observations, and documentary research. The findings show that neoliberal resource governance has led to conflicting access to resources among the state, capitalists, and communities. This conflict is based on different forms of legitimacy in accessing resources. That is, the state and capitalists use the market to drive the management of mine-related resources claiming the development discourse. But this management has affected the ecological system, food, and health of the local communities. The communities thus used laws to legitimize their role in resource governance through the anti-gold mine movement, which obstructed the mine company's access to the resources by means of regulation, force, and legitimation. The company, on the other hand, exploited the chilling effect resulting from SLAPP cases. These cases later became a commodity with which negotiation over access to the resources was possible as well as a tool for the exclusion of community members from accessing the resource governance.

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Introduction

The current neoliberal context of resource governance has allowed the market to manage resources in a way that leads to conflicts. In other words, the state favors capitalists' access to natural resources while excluding local villagers from accessing them. As a result, conflict and violence have occurred, as seen in many contexts in Southeast Asia (Nevins & Peluso, 2008). This article's

focus was on local villagers' anti-gold mine movement in Loei province, Thailand.

In the 1980s the Thai government's policy allowed private companies to explore and develop gold mines through bidding on areas with potential for a development of a large mining project. Private companies competed in the bidding to survey the land and mine for gold. Two companies won the bid and started mining in Pichit, Petchabun, and Loei provinces. The mining has created undesirable impacts on the environment and villagers' way of life in surrounding communities. This in turn led to a formation of villagers' movement against mining, and a large number of SLAPP cases ensued.

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Based on the concepts of resource governance, SLAPP, and exclusion, the article aims to show how SLAPP cases have been used as a tool to exclude local villagers from access to resource governance in the context where the state and capitalists claim legitimacy driven by the neoliberal market in accessing these resources.

Literature Review

Resource Governance

According to Ganjanapan (2000), resource governance is a form of resource management which is based on power relations. Conflicts and inequality in access to resources excludes certain groups but gives opportunity to others. This leads to not only struggles to take control of resources but also to the deterioration of the natural environment. Such power relations are classified into 3 types: relations between economic-political dimensions of power use, relations based on conflicts over power and rights to access the resources, and relations based on power dynamics as seen in social movements regarding constructing and defining actions and negotiating legitimacy in accessing resources (Ganjanapan 2000, pp. 5–24).

Thailand's 1997 Constitution guaranteed citizens the right to engage with the state to manage and utilize natural resources. The 2007 Constitution clearly specified community rights and recognized rights related to good management of natural resources including freedom of expression, right to information and protest, and right to assembly and gathering. These rights formed the basics of participatory resource governance.

Strategic Lawsuits Against Public Participation –SLAPP

The term SLAPP was coined by Pring and Canan who examined lawsuits hindering the exercise of American people's constitutional rights. The lawsuits discouraged future political participation. Both authors regard SLAPP as a process forcing political "litigation" to move between political and judicial spaces as citizens communicate their stance to political decision makers through political activities protected by protest laws (Pring & Canan, 1996).

The impact of SLAPPs is related to the notion of *chilling effect*. Schauer (1978) observed that the feeling of a chilling effect mostly results from people's fear of being subject to court cases or punishment by law and the uncertainty of a legal process involved (Schauer, 1978).

In short, SLAPPs are a legal threat creating fear among citizens that bars them from participating in the exchange of opinions in the interests of the general public. The fear of lawsuits cannot be measured by the goal, intention, or motivation of the accuser. Rather, it can be measured by the damage it inflicts on the citizens' will to participate in public discourses regardless of whether or not the accuser does so in good faith (Pinchuk, 2013).

Exclusion from Access to Natural Resources

Hall, Hirsch and Li (2011) defined "exclusion" as a process of barring "people" from benefiting from "things". This definition is in contrast with the notion of "access" discussed by Jesse Ribot and Nancy Peluso as "the ability to benefit from things". Hall et. al (2011) argue that "exclusion" is a broader term than "access", which distinguishes between the presence and absence of rights over property and thus focuses on the powers barring people from benefiting from land use. The focus is on the "the people" who are excluded and "the powers" that are used in the process of excluding those people. According to Hall et. al (2011), exclusion is more about the process. Exclusion is built upon power relations. Thus, to understand the exclusion of someone from land use, it is imperative to understand interrelations between the concepts of regulation, force, market, and legitimation. Regulation determines rules governing access to land. Force is defined by the exercise of violence or threatening by either state or private agencies in order to achieve the exclusion. Market here refers to the use of pricing mechanisms prioritizing individual's rights as landowners. The last concept, legitimation, forms a moral basis (the right vs. wrong moral dichotomy) as an excuse for exclusion or for prevention of regulation, market, and force. Legitimation is a social and political basis for an exclusion of land access (Hall et. al, pp. 4–8).

Methodology

The study used three qualitative methods. The first method was a series of in-depth interviews of 9 individuals charged with SLAPPs. Interview questions included causes of the lawsuits, their impacts, and the struggles of the Khon Rak Ban Koet movement in Wang Sa Phung district of Loei province. The second method was participant observation, which was conducted on various occasions including trips to the police stations, the prosecutor's office, and the court, as well as participation in meetings between villagers and meetings between villagers and their attorneys. The last method was

documentary research examining indictments, judgment, documents related to gold mining activities in order to understand the villagers' overall struggles in the court process.

Results and Discussion

The Thai Government and Permission for Private Gold Mining Companies

In the neoliberal context, which emphasizes the role of the market as a mechanism in resource governance, the state favors capitalists in various ways by claiming market-based legitimacy even though in reality such practice is permission for private companies to monopolize their access to resources in the form of concession. This article focused on Tungkhum Limited (TKL), which discovered gold in the Phu Thap Fa reserve, located in Khao Luang sub-district, Wan Sa Phung district, Loei province. The company was granted an operating permission on 6 plots totaling around 209 hectares and a metallurgical processing license in 2005. The company uncovered 4.49 tons of gold ore worth around US\$48 million (Ministry of Industry, Department of Mineral Resources, 2001).

One condition on accessing gold ore is that companies are required to conduct an environmental impact assessment (EIA) required by the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 in order to procure a metallurgical processing license. If the ore reserve is in a forested area or on land owned by the Agricultural Land Reform Office (ALRO), the companies must seek ALRO permission to use the land before accessing it. However, the Thai government has since provided incentives to private companies to develop gold mines in 5 different ways. This has included reducing royalty fees, providing tax cuts and exemptions to mining companies, relaxing laws to allow private companies to use protected forests for mining purposes, interpreting land laws in favor of industrial mining, and by allowing companies to offer special benefits to the state unrelated to taxes or royalties.

The contract signed by TKL and its parent company Tongkah Harbour Co. Ltd., in 1988 benefitted the state in 2 ways. First, the state was to receive a cash bonus of around US\$375,000. Second, the state was entitled to obtain two forms of yields: the committed par-value sale of between 5 and 10 percent of the company's shares and "gold ore", pure gold, or financial compensation at a rate of 1.5 percent of the yield after a royalty fee is paid.

In addition to the incentives outlined above, local government agencies collaborated with the private company to persuade villagers to give their consent to the mine operation. Before the company began operation, its representatives and the government representatives joined a community meeting and announced that gold mining would bring prosperity. The company would build a hospital, a healthcare center, and a fully integrated industrial complex. The company representative assured the community that if impacts occurred, the company would temporarily halt operations until the problems were resolved. For this reason, the villagers at the meeting agreed to host the gold mine in their community

The Gold Mine and Surrounding Communities

The private company's concession to mine gold based on the policy claiming market-oriented development discourse led to negative impact on the environment and villagers' way of life. They thus banded together to oppose mining activities. In doing this they used the constitution in legitimizing their approach to resource governance. This section describes the condition of the communities affected by the mining process. Phu Thap Fa Gold Mine is located in Khao Luang sub-district, Wang Sa Phung district, Loei province. It is in fact a cluster of two different locations situated 500–1000 meters away from the communities up Phu Thap Fa and Phu Sam Pa Bon. Both of these locations sit higher than 320 meters above sea level while the 6 communities surrounding them sit between 260–289 meters above sea level, much lower than the mine.

The communities around the mine are nestled in forests, agricultural land, and water sources for public use. A stream called Lam Nam Huai is the main waterway for all 6 communities. Smaller creeks around the mine include Huai Lek. At the middle of its length sits a tailing storage facility. The dike is nicknamed "Cyanide Dam" by the villagers. To the north of a creek called Rong Na Din Dam stands a metallurgic processing plant and a wastewater treatment facility. Three additional creeks run along the northern side of the mine, and are water and food sources as well as cultivating plains for the 6 surrounding communities. The combined population is around 1,000 households

At the end of 2006 when the mine began operating, the sound of the first explosion forewarned the villagers of negative consequences. The impacts became more visible with dust filling the air, rampant mining trucks, and continually sounds of mining explosives. By the end of 2007, public health workers found dangerous chemicals

in the blood of residents of the communities around the mine. In 2008 the villagers started experiencing health problems including irritated eyes and tightness in their chests. Some villagers became so stressed by the sounds of explosives that they were not able to sleep and had to rely on antidepressants. Some suffered from chronic blisters and wounds from using water from the water sources and rice farming. Since 2008, government agencies, university academics, and NGO workers have found dangerous levels of heavy metal in water sources around the mine. Early in 2009 the Loei Provincial Public Health Office officially warned the residents in areas around the mine against using water from water sources in Khao Luang for consumption because it was contaminated with heavy metals. A year later, the Office barred people from consuming pond snails caught from Lam Huai Lek creek. In 2012, the tailing storage, or what the villagers called ‘Cyanide Dam’ collapsed and caused great concern among the villagers. They feared that cyanide and other dangerous heavy metals in the wastewater would leak into natural water sources, which would seriously confound existing problems (Saetang, 2015).

The impacts discussed above brought villagers together to address the problems and to form a movement called Khon Rak Ban Koet Group (KRBKG). The group calls for government agencies to solve their problems and also opposes the gold mining.

The Movement against the Gold Mine

The villagers’ anti-mine movement drew upon regulation, force, and legitimacy in order to oppose the capitalist’s access to the resources. The capitalist struck back with legal lawsuits and market mechanism to exclude the villagers and delegitimize the villagers’ movement and their efforts in resource governance. The lawsuits were related to the villagers’ activities, which can be divided chronologically into 3 time periods from 2007 to 2016 as follows:

The first period: 2007–2013

Initially the lawsuits were aimed to hinder the villagers’ access to knowledge needed in protesting against the gold mine. Since 2007, after the formation of the Group, the villagers have had opportunities to share information and knowledge with the civil society sector. They also shared experiences with other groups of villagers affected by various development projects. The Group submitted complaint letters asking relevant government agencies to solve the problems caused by

mining. Problems resulting from heavy metal pollution in the surroundings, water, foods, and its impacts on villagers’ health have not been solved, however. In addition, the company tried to proceed with its plan to expand the mine amidst protests by the villagers. During this time, the company filed charges against a total of 17 individuals including villagers, youth, and university students for trespassing on the company’s property, but in 2011 the provincial prosecutor decided not to bring the case to court (Saetang, 2015).

The second period: 2013–2014

Movements about the conflict during this time period revealed methods with which both parties were using in order to obstruct each other’s access to the natural resources and governance. While the villagers cited the constitution to endorse their rights, to create community regulations, and to use force in building the barricade obstructing the company’s access to the gold mine, the company used SLAPP cases to exclude the villagers from resource governance. Between late 2013 and late 2014, 11 lawsuits were filed against the Group. The Group and the villagers of the 6 communities agreed to enforce a community order to bar trucks carrying hazardous chemicals through the communities. This included a ban on vehicles over 15 tons in weight to use in-community roads. They also resolved to construct barricades at the intersection connecting the village and the entrance to the mine where TKL was located. The barricades were later dismantled by a group of unidentified men with their faces covered. The villagers rebuilt the barricades three times after they were destroyed; the last reconstruction was also destroyed. These incidents led to the company’s filing of 6 lawsuits against the villagers on charges of trespassing, violation and demand for compensation. In addition, the company together with the Sub-district Administrative Organization as a joint-accuser filed a criminal complaint with the police against one villager with 7 charges accusing the villager of creating an obstruction on a highway, and conspiring to trespass on property.

The move to force the company out of its access to the resources by constructing the barricade led to violence against the villagers themselves. When the villagers attempted to characterize the violence as a result of the village-company conflict, which was a form of delegitimizing the company’s future access to the resources, the company then responded with defamation charges. In the third incident, in May 2014 when the barricade was once again destroyed, nearly 200 armed men stormed into the village in the middle of the night

and attacked the villagers and detained the guards on duty at various points. They also transported ore from the mine. News reporters later came and reported the incident. This news report later cost the villagers two more cases, both of which were curiously filed in Phuket province nearly 1,000 kilometers away from the scene. The villagers believe these cases were SLAPPs.

In addition to using lawsuits to exclude the villagers from resource governance, the state and capitalists also used commoditization to turn lawsuits into a means of negotiating for access to the resources. At the end of 2014, state representatives consisting of officers from the Office of Loei Provincial Governor, soldiers, police, prosecutors, and provincial government agencies responsible for mining proposed a mediation between the villagers and the company. Boi said that the agreement was reached on the condition that the company would withdraw 8 lawsuits against the villagers in exchange for the villagers' removal of the road barricades and agreeing to let the company transport ore from the mine. However, the villagers observed that "the ore" to be transported was obtained under Prathanabat (a document of rights granted for mining within a designed area) illegally obtained, and thus was illegal. They then filed a complaint with the governor. The complaint letter later was circulated on Facebook. For this reason, the company filed a defamation charge and violation of a computer crime act. The two cases were filed in Mae Sot district, Tak province on July 14, 2015. In other words, when the villagers were calling for the use of regulation to restrict the company's access to resources, the company struck back with lawsuits to stop the villagers' attempt at investigation.

Besides the activities discussed earlier, the villagers filed 2 cases with the Administrative Court. In the first case, they accused the Minister of Industry and the Director-General of the Department of Primary Industries and Mines, and TKL. on the grounds that these government agencies and officials broke the law and failed to perform their assigned duties prescribed by law. The goal of this case was to revoke the company's five Prathanabat and metallurgical processing permits. At the end of 2016, the Central Administrative Court dismissed the case. In the second case, the villagers accused the Department of Primary Industries and Mines, the Provincial Industrial Office of Loei, and the Khao Luang subdistrict head on the grounds that these government agencies or government officials broke the law and failed to perform their assigned duties prescribed by law because they unlawfully produced a report for the company's application renewal of the Prathanabat for TKL.

The Third Period: Lawsuits and Campaign Activities Since the Beginning of 2015

In March 2015, the KRBKG launched a campaign to close the mine and rehabilitate the natural surroundings, the villagers' health and their community. They created banners, using the color green to promote the campaign. Campaign signs and green flags were erected along the roads throughout these 6 villages. The company charged that these protest activities damaged it and thus filed 2 lawsuits against campaign leaders. One of these two was a civil lawsuit targeting 6 villagers on charges of violation. The company demanded US\$1.6 million in damages. In the second case, the company attacked the village head and the chairperson of the Subdistrict Administrative Organization (SAO) Council for allowing the construction of a protest sign at the entrance to the village.

The villagers later erected a large card saying "Close the mine; Rehabilitate" near the mouth of the mine. While the activity was ongoing, company representatives approached them and said the protesters were trespassing on company property. The protesters responded by claiming that the company's permit to use the land had already expired in 2012. When photos of the event circulated in online media, the company sued the village protesters for trespassing.

The villagers hosted campaign activities in collaboration with NGO workers. One of the activities was a youth camp aimed at educating local youth on the natural surroundings of their community in August 2015. As part of the camp, Thai PBS hosted a workshop to train youth participants on news reporting. One of the youths, a 16 year old girl, reported, "Lam Nam Huai creek has been affected by industrial gold mining. Its water is contaminated with chemical pollutants and is not drinkable". The reporting upset the company, so it asked permission from the Loei Juvenile Observation and Correction Center to file a lawsuit against the girl (Loei Juvenile Observation and Correction Center [MJ], December 8, 2015). Another case against the youth was filed in Bangkok for defamation by advertising.

In August 2015 the villagers launched a protest against the company's attempt to renew its permits to use protected forests and ALRO land, which was filed at the Khao Luang SAO. Note that the permits had expired in 2012 and 2013, respectively. Protest activities on this matter also brought about 4 lawsuits against the villagers. In the first two cases, the chairperson of the council was sued over violating his government duties. The other two cases were filed by 16 SAO members against the villagers. In one case the SAO members accused the villagers of obstructing officers in execution of duty, coercing and

creating fear or shock by threatening. The other case had two charges. In the first charge, the protest organizers were accused of holding a public gathering without informing authorities. The second case charged that five more individuals charged in the case coerced others either into refraining from performing an action or into submitting under their power.

The mine-closure and rehabilitation campaign and the protests against the company's renewal of permits were used to share the villagers' views with those inside and outside of their communities. These activities certainly affected the decisions by government officers who were in charge of the renewal. In addition, the use of protected forests must comply with The Ministry of Forestry regulations, The Ministry of Forestry Order regarding permission to use or reside in national forests B.E. 2548 (2005), Article 8(5), one of which states that the users must not be in dispute with villagers in the areas or neighboring areas and whose application must be approved by the SAO Council where the target forests are located. The villagers' protest activities thus affected the dynamics of resource governance.

The villagers' different moves included campaigning, publicizing in the media the impacts of the mine, and showing strong opposition to the renewal of the permit. These moves showed the company's illegitimate access to the resources. This not only resulted in the company's counter-attack with lawsuits but also later, in this time frame, local government agencies and the police began using legal cases unrelated to the conflict as a tool to disrupt the villagers' movement towards their legitimate participation resource governance. This shows that in the neoliberal system, the state and capitalists have used violence in obstructing the villagers' access to resources similarly to findings of Nevins and Peluson (2008).

SLAPPs Exclude People from Resource Governance

These SLAPPs have created a chilling effect through fear, hardship, and a loss of property, time, and income on the villagers' part. Moreover, the exploitation of the SLAPPs is a tool to negotiate with these disadvantaged villagers in their anti-mine movement. It was found that villagers who led protests were charged with between 3 and 12 cases. Twenty-six villagers who joined the activities were charged with 1–2 cases on average. This created fear among the villagers. The company used the villagers' relatives who worked in the mine to persuade non-leader villagers who were sued to leave the movement and stop supporting it in exchange for the retraction of the lawsuits.

Fear has continued to operate. A village head who supported the mine often communicated through the village speaker towers to discourage the villagers' participation in the group's activity announcing that he would not help them if they were sued. Campaign activities by the Group were thus painted as activities with a risk of being hit by a lawsuit. It can be said that the SLAPPs' impacts were not confined to the court but expanded to the village space as well. They were used to exclude the villagers from resource governance of their own properties as well as that of natural resources affecting their lives. It was observed that after the SLAPPs were filed, the number of villagers joining the protests dropped dramatically. In the past, activities usually garnered more than 700 people and sometimes 1000 people. Later the number dropped to no more than 300 people. Besides, these many cases bound the accused villagers to the cases making it hard for them to join anti-mine activities at the local and national level. This eventually has weakened the villagers' movement.

Conclusion

Resource governance nowadays is practiced by the state and capitalists relying on the market as a reason. They cite the need for development as an explanation to local communities. But this practice has resulted in damage to the ecological system, food, and health of community members, who thus formed a movement to take part in resource governance claiming constitutional legitimacy. The villagers' movement, on one hand, was to protect their home village, and on the other hand, was to exclude the state and company's access to the resources by means of regulation, force, and legitimation in different shapes and forms. Their movement was consistent with observations by Hall et al. (2011). The state and capitalists resorted to lawsuits to exclude the villagers with accusations based on different laws on defamation, computer crime, public assembly, for example. This was done to create a chilling effect and exclude the villagers from resource governance both in and outside the court. They also commodified the lawsuits by turning such into a subject of negotiation for access to the resources and a hindrance to the villagers' participation in opposition efforts against the gold mine. Besides this, these lawsuits moved "the debate" back and forth between the political and judicial arenas resulting in the conflict being subject to a legal solution rather than a political one. In other words, the lawsuits reflected a clash between the neoliberal legitimacy as claimed by the state and capitalists and the villagers' legal legitimacy in their

involvement in resource governance. In this conflict, the state and capitalists decided to use different forms of violence.

Conflict of Interest

There is no conflict of interest.

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