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The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia

Yance Arizona *, Muki Trenggono Wicaksono and Jacqueline Vel

A main assumption of indigeneity NGOs in Indonesia is that state recognition will strengthen indigenous peoples' rights to their land and forests against ongoing or future dispossession. In Indonesia, legal recognition has become central to the approaches of indigeneity NGO campaigns, while the local realities and problems among indigenous communities seem to receive less attention. Has legal recognition of indigenous communities turned into a national NGO project that does not solve the communities' land and forest-related problems? In this article, we compare two locations where communities have succeeded in obtaining state recognition. By focusing our analysis on the steps in the recognition process, from articulating community problems to eventually solving them, we show how indigeneity NGOs have had a dominant role, but achieved limited success. Instead of resulting in community autonomy and tenure security, the legal recognition process reproduces state territorialisation over customary forests and communities.

Keywords: Indigeneity; NGOs; Customary Forest; Legal Recognition; Indonesia

Introduction

The new approach to adat studies announced in the Introduction of this special issue focuses research attention on the analysis of indigeneity programs as a series of

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interlinked ‘adat projects’ conducted by a variety of actors who all have their agendas and interests, and create strategic adat narratives (van der Muur et al., this issue). This article investigates the role that NGOs have played in invoking adat as a strategy for increasing local communities’ land tenure security and access to the forests.

In the past few decades, a global movement of NGOs has promoted indigeneity as a countervailing argument against the land dispossession of rural communities (Moniaga 2007). NGOs have mobilised the international discourse about ‘indigeneness’ and sought to transform it into a new global political identity (Niezen 2003, 3). In doing so, they have successfully supported the legal framework for indigeneity through the International Labour Organization (ILO) and the United Nations (Anaya 2004; Thornberry 2013). Indigenous self-identification is a fundamental criterion for determining the groups to which this international legal framework applies.¹

Alongside these global trends, national indigeneity NGOs have effectively lobbied governments to recognise the legal status and rights of indigenous peoples in Latin America, Africa and Asia (McDermott 2000; Uprimny 2010; African Commission on Human and Peoples’ Rights 2006). In Indonesia, as the indigenous rights movement gained momentum in the 1990s as a form of protest amidst the final decade of President Soeharto’s authoritarian regime, activists convened around the term *adat*, with the key distinguishing features of *adat* community and *adat* territory (Moniaga 2007). The Indonesian term *adat* means custom or tradition. Dutch legal scholars in the late-colonial period used *adat* when distinguishing local, native norms and rules from the Dutch colonial legal system (van Vollenhoven 1987; Holleman 1981).² More recently national NGOs have translated the term *adat* to mean *indigeneity* in line with the international discourse of indigenous peoples (Davidson and Henley 2007; Tsing 2009; Hauser-Schäublin 2013). Linking up with that global discourse opened access to international funding for indigenous peoples’ programs (Tsing 2009).

The main issue in Indonesian indigeneity NGO advocacy has been legal reform to enable state recognition of indigeneity (Bedner and van Huis 2008; Arizona 2014). More than 13 laws have been created since 1998 accommodating rights of *adat* communities (Arizona 2014). Additionally, the Indonesian Constitutional Court Ruling number 35/PUU-X/2012 granted *adat* communities legal access to the forest close to their settlements by attributing them with the status of ‘*adat* forest’ or ‘customary forest’. This ruling emphasised the urgency of legal state recognition of *adat* communities (Arizona et al. 2015; Safitri 2015–16; Rachman and Masalam 2017). However, as a general ruling, at the national level it required more legal action to operationalise recognition of the legal status of *adat* communities and their rights (Arizona, Malik, and Ishimora 2017).

While these achievements in the legal advocacy field are significant, this article questions whether legal recognition has contributed to solving land-related problems among the indigenous communities concerned. More critically, we ask whether the regulatory approach of recognition has resulted in an undue focus on achieving legal outcomes, or rather, a national NGO ‘project’ without resulting in solutions for the land-related problems of the involved *adat* community members.

This question engages with critical literature about the changing roles of NGOs in development, which argues that due to dependency on foreign-aid agencies, NGOs are moving away from the people they claim to represent (Wallace, Porter, and Ralph-Bowman 2013; Banks, Hulme, and Edwards 2015; van der Muur 2018). Specifically, for Indonesian indigeneity NGOs, this critique was recently explained by Rini Astuti and Andrew McGregor (2017, 447), who argue that indigenous land claims could be regarded as ‘green grabbing’, which marginalises forest users and excludes other communities that fit less comfortably within idealised visions of green indigeneity.

This article will employ an analytical framework for analysing the role of the various actors in the legal recognition process. By following the steps in this process from the initial land problems that community members experience up to the implementation of legal recognition, we can distinguish the activities of several types of NGOs and assess the extent to which certain NGO approaches to legal recognition have assisted solve community members’ problems. The third section considers the different services offered by NGOs to assist adat communities in solving their land problems. The fourth section presents what happened during each step in the legal recognition process in two cases: the Marena community in Sigi District (Central Sulawesi) and the Kasepuhan Karang community in Lebak District (Banten). Both of these communities obtained legal recognition with intensive NGO support. Section five presents our analysis of the case studies regarding NGO intervention. Finally, the conclusion discusses the changing role of NGOs in adat programs.

Analytical Framework: The Legal Recognition Process

To investigate the role of actors and differentiate their perspectives and interests, we use a framework to analyse the process of legal recognition of adat communities. This framework builds on methods for empirically analysing the process of seeking access to justice (Bedner and Vel 2010). We have adapted the original scheme into the ‘Legal Recognition Process Scheme’ as shown in [Figure 1](#).

The first step in this analysis explores the land tenure problems of a particular rural community, the internal land tenure arrangements, and the social formation on which land access and ownership are based. Problem perception may differ between elites, common members and vulnerable groups within a rural community. Furthermore, we analyse land tenure conflicts between rural communities and outsiders, especially with state forestry agencies. Understanding the characteristics of the land problem that generates injustice as perceived by rural communities is essential for explaining the success and impact of specific legal strategies.

The second step in the analysis concentrates on the preparations for entering the legal process. For land conflicts with forestry agencies, disagreements stem from Indonesia’s Forestry Law (Number 41/1999), which limits the access of rural communities to land because most forest areas have been designated as state land, free from private rights. Meanwhile communities may have developed land tenure arrangements in the

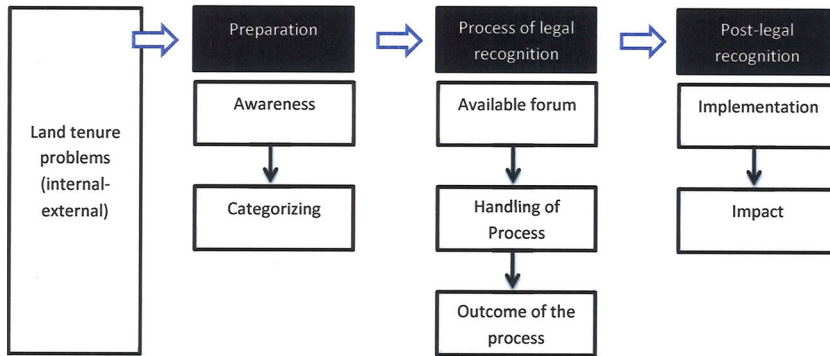


Figure 1 Analytical framework for the legal recognition of adat communities. This scheme has been formulated by Yance Arizona and Jacqueline Vel ©.

forest dating back to periods before state enclosure. NGOs enter the scene as these opposing viewpoints come to a head, often providing rural communities with a new perspective on legal interpretations of land control. They translate community problems into grievances concerning violations of laws and rights (Bedner and Vel 2010). NGOs typically assist rural communities to strengthen their adat claims through revitalising adat institutions, rules and ceremonies; and participatory mapping. These activities adjust adat for the purpose of categorising and defining the land problems, as required for legal recognition.

The third step of the analysis concentrates on the actual legal recognition procedure. Here rural communities need specialist legal assistance to find the most promising strategy in each case. There are four options for obtaining state legal recognition and each option concentrates on a different central concept: customary forest, adat village, communal land rights, or adat law community (Arizona, Malik, and Ishimora 2017). After choosing a strategy, the next activity involves drafting a proposal for state legal recognition. Recognition at district level requires scientific research conducted by academic researchers. Local parliaments hire academic researchers, in some cases NGO staff, to produce the required academic report (*naskah akademik*). Considering the report's findings, the local parliament decides whether the proposal for the legal recognition of adat communities and customary land rights will be admitted for further legal processing. Next, the political negotiations between parliament members and the local government take place to ascertain the content of the draft district regulation. The full parliament finally decides on enacting the district regulation, or the district head issues a decree. Either of these district recognitions is required to be able to apply for national-level recognition by a decree from the Ministry of Environment and Forestry (MOEF).

The fourth step in the analysis concentrates on the post-legal recognition phase. How do government institutions implement a district regulation and ministerial decree? How has legal recognition affected life in the adat communities and which members have benefited most? Assessing whether recognition has solved the initial problems of the communities is the final part of our analysis.

Variety in Indigeneity NGOs

The description of the steps in the legal recognition scheme mentions various types of NGO activities. These activities correspond with a variety of organisations that are generally referred to as NGOs, without paying sufficient attention to the heterogeneity that exists among them. Nicola Banks, David Hulme and Michael Edwards point out the differences between membership-based organisations (MBOs) and NGOs. The MBOs are

formed and gain strength from their grass root membership, and are accountable to their members in terms of their strategies, programs and activities, all of which serve the fundamental purpose of leveraging improved terms of recognition for group members and advancing their interests. (2015, 709)

The NGOs are civil society organisations too, but they have staff instead of members and are primarily accountable to the donor organisations that finance their activities. These differences are very relevant for understanding the role of the organisations working with adat communities in Indonesia, and how they have changed over time.

The first category of organisations involved in the legal recognition process consists of local or regional NGOs with programs for empowering local people, capacity building and material projects like building village facilities. Since the 1980s these types of NGOs have expanded and increased, receiving financial support from private organisations, foreign development funding organisations and churches (Antlöv, Ibrahim, and van Tuijl 2006). Due to long-term relations with local communities, local NGOs have acted as natural advocates for common interests among villagers. However, in general, this category of development NGO has also been criticised because of its apolitical attitude that ignores the root causes of poverty and land dispossession (Ferguson 1994; Hickey 2009; Li 2007, 238). When freedom of speech and political liberty increased after the end of the Soeharto regime, many of these local NGOs gradually changed their focus to include advocacy.³ They typically discuss problems with villagers and then translate these problems into grievances that can be addressed either through NGO development intervention, government programs or access to justice. In general, the aim of these NGOs is to increase local prosperity.

The second category of NGO important to the legal recognition process comprises the national advocacy NGOs that emerged in the early 1990s. At that time the legal aid organisation Yayasan Lembaga Bantuan Hukum Indonesia (Indonesian Legal Aid Foundation, YLBHI)⁴ and the environmental advocacy NGO Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment, WALHI)⁵ started using the term 'adat communities', as an alternative to the class-based concept of peasants, in their advocacy campaigns against land dispossession (Moniaga 2007; Afiff and Lowe 2007). In 1993, NGO activists, academics, and adat leaders held a meeting in South Sulawesi and founded the Network of Defenders of the Rights of Adat Communities (Jaringan Pembela Hak-Hak Masyarakat Adat/JAPHAMA). Subsequently, a loose network of individuals and organisations, Aliansi Masyarakat Adat Nusantara

(AMAN), was established in 1999. It has since been transformed into an umbrella organisation for adat communities across Indonesia. AMAN's organisational structure has been further institutionalised through decentralised regional branch offices that pursue their own advocacy and implement projects. According to its website information, in 2018 AMAN expanded its constituency to cover 2,332 member communities. AMAN's main objective is to put an end to state territorialisation inherited from the colonial and New Order periods, especially in the forestry sector.⁶ As a means to both reaching that objective and as an end in itself AMAN promotes the legal recognition of adat community rights (Li 2001; Moniaga 2007; Rachman and Masalam 2017). AMAN was originally designed as an MBO representing adat communities from Indonesia at global indigenous peoples' forums (Rachman and Siscawati 2016, 233). However, currently AMAN's management resembles an NGO, for example, by receiving funding from, and being accountable to, international donors. It also uses a project- and supply-based approach to its community members as the target beneficiaries, and is accommodating instead of oppositional in terms of its relation to the state.⁷ Since the third national congress of AMAN in 2007, AMAN has opened the way for collaboration with the state.

The third category of NGO involved in legal recognition processes is situated between the large national NGOs and the smaller local development NGOs. These organisations consist of professionals and specialist volunteers responding to the increasingly complicated requirements of donor-funded development work (Banks, Hulme, and Edwards 2015) and the need to speak the same 'language' as government policy makers (Peluso 2005). For example, with donor funding from the Rainforest Foundation Norway (RFN) and the Ford Foundation, the specialist organisations HuMa and Epistema Institute were both providing legal empowerment activities for adat communities and legal advice to district government agencies. Other organisations in this category specialise in technical activities that provide important input in the recognition processes, such as participatory mapping of community territories and informal land administration.

Together these organisations comprise a network for cooperation, representation and the distribution of donor funds. National NGOs have successfully influenced policy reform in the forestry sector, resulting in several schemes for improving access to land for local and adat communities in forestry areas such as customary forests and other social forestry schemes (Safitri 2010). They have also convinced the government to allocate 12.7 million hectares of forest areas for local and adat communities in the National Development Plan 2015–19 (Siscawati 2017). However, these achievements require links with grassroots organisations to implement national policies and create a constituency for national advocacy.

Increasingly, the three categories of NGOs described above have cooperated to promote legal recognition of adat communities and their land rights as a model for securing community members' land tenure and access. For local NGOs, stopping land dispossession remains a prime objective that often converges with the national NGO struggle against long-standing state territorialisation in the forestry sector in

favour of community-based forest management. The following case studies clarify the variety of NGO roles.

Two Case Studies

The following case studies present the results of field research conducted by two of the authors, Arizona and Muki Wicaksono, in the period 2010–18 through interviews with villagers, adat elders, NGO activists, donors and government officials at the national, district and local levels. They gathered additional information while engaging in legal empowerment activities in the Lebak and Sigi districts. Four reports by NGO activists about the two case studies in this article have provided secondary data (Wiratraman 2010; Sutrisno 2015; Vitasari and Ramdhaniaty 2015; Nurhawan and Ramdhaniaty 2015). Arizona and Vel developed the analytical framework described above and analysed the case data accordingly.

Land Problems

Following the analytical framework we begin with a description of the factors that led to land tenure problems.

The Marena community in Central Sulawesi

Land conflicts concerning forest areas are very common in Central Sulawesi. Nearly 70 per cent of the total provincial area is categorised as state forests (Sangadji 2007), with many communities residing in those areas. The area now called Marena was first inhabited by members of the Kulawi tribe from Bolapapu in the 1930s. Gradually a few other migrants followed from various districts and provinces in Sulawesi as well as from Java. They created livelihoods as farmers cultivating cacao, rice and vegetables. Despite this diversity, Marena's population gradually became a community with its own internal local rules.

The first land conflict with state agencies began in the 1970s when the Provincial Forestry Bureau initiated a program for the rehabilitation of degraded land. In practice, this program dispossessed villagers from their land without proper procedure and was aimed at establishing a clove plantation (Sutrisno 2015). However, when the clove price dropped, the land was transferred to a local government enterprise, PD Sulteng. This local enterprise continued clove and cinnamon cultivation, but the plantation was not well maintained, and finally it was abandoned in 1986. The land involved kept its status of 'state land'. The second land conflict arose when the government established the Lore Lindu National Park in 1982. The west part of Marena's territory was claimed as national park without proper consultation. The third conflict concerned the east side of Marena territory where the government declared a protected forest area. As a result, Marena community members were squeezed by these state territorialisations and had insufficient land for expanding settlement areas or agricultural activities.

Based on participatory mapping conducted by villagers and NGOs in 2004–06, the Marena traditional territory initially covered 1,970.72 hectares, but after the three waves of dispossession, only 24 per cent remained under community authority (Sutrisno 2015). The Marena villagers sought to retain their access to the national park area so that they could continue their customary forest practices and preserve agricultural land for future generations.

The Kasepuhan Karang in Banten

The Kasepuhan Karang community is one of the many Kasepuhan communities in Lebak District. According to oral history, this community settled in the Karang area during the colonial era. The majority of community members are farmers cultivating vegetables, rice and fruits such as banana, durian and mangosteen. Fruit production has become a main cash-earning activity, with constant demand from the nearby urban markets of Jakarta and Bogor. Membership of Kasepuhan communities is determined by kinship, respect for the elders, and obedience to customary laws. Currently, the Kasepuhan Karang settlement is part of the administrative village of Jagaraksa where three other Kasepuhan communities reside.

Land conflicts in Kasepuhan Karang began during Dutch colonial rule, which determined that the Halimun Mountains should be preserved as forest areas in 1924–36. The colonial government considered forest land as unoccupied land and thus state property. Using the forest area without government permission was not allowed. This rule continued during the transition to state independence, when, in 1963, the Forestry Agency changed the status of the Halimun forest area into ‘nature reserve’. In 1975, the Forestry Agency again changed the status to ‘forest production area’ under the control of Perhutani, a state-owned forestry enterprise. Perhutani collaborated with villagers to perform land maintenance while levying ‘informal taxes’ for the utilisation of the forest area, which became common practice in the Halimun Mountains (Cahyono 2016, 168–69). In 1992, a part of the Perhutani area that was also claimed by the Kasepuhan Karang was incorporated into the Gunung Halimun Salak National Park. Additionally, in 2003 the Ministry of Forestry expanded the national park area at the cost of the Kasepuhan Karang area. In practice, this did not change the villagers’ access to the forest, but the status of national park included restrictions on the kind of trees that villagers could cultivate. There was a prohibition on fruit trees. After the sequence of land dispossession, only 29 per cent of land remained under community authority (Ramdhaniaty 2018).

Due to these state enclosures and their precarious legal position, the community started to protest. They demanded legitimate access to the forest for their agricultural activities and for the collection of non-timber forest products. They also demanded an end to extortion by forestry officials and the lifting of restrictions on fruit tree cultivation.

Framing and Claiming Adat Identity

After the communities had experienced these collective land problems, they contacted NGOs who could assist them to find a solution. Who established contact with NGOs and what were the NGOs activities in the two cases? What did they do to prepare for legal recognition of their land rights?

Marena

According to the head of the Marena Village,⁸ some community members had tried to file a complaint with the district government in the 1990s, but there had been no response. New momentum emerged after the fall of the Soeharto regime. In 2000, the villagers made contact with Lembaga Pencinta Alam Awam Green (LPAAG). LPAAG is a provincial NGO established in 1995 by students based in the provincial capital Palu. LPAAG was inspired by the 'peasant activists' (individual NGO activists who deploy peasant movement in their rhetoric against land dispossession) and the Central Sulawesi NGO, Yayasan Tanah Merdeka, that had successfully assisted the Lindu people against land dispossession for a proposed mega-dam project (Sangadji 2007, 327), and had prevented displacement of the Katu people from a national park area (Andrea 2013; Rachman and Masalam 2017). In those cases, using adat as the basis for (re-)claiming land from state authorities was a new strategy that emerged after these rural communities had been in contact with urban activists (Li 2000; Sangadji 2007).

NGOs offered a new way of framing the land struggle in terms of adat and indigeneity. Assisted by LPAAG, in 2001 the Marena community reclaimed 125 hectares of former PD Sulteng plantation land. The community members used the land to establish public facilities and a hamlet. They distributed the reclaimed area in plots of 225 square metres for each family involved in the reclaiming process. Furthermore, the regional NGO, Bantaya, provided support for the promotion of adat in the Marena community.

After successful land claims over the PD Sulteng area, the Marena community continued their struggle to obtain better access to the national park. Adat became a basis for the Marena community in negotiations with forestry officials. The Marena community, with the support of NGOs, held meetings in 2003 to revitalise adat institutions and articulate adat social relationships and rules for natural resource management. They organised participatory mapping in 2004 and conducted documentation of customary law in 2005 (Wiratraman 2010, 118–19). In doing so, local NGOs worked with educated youth from the rural communities who could act as representatives of adat communities with the ability to transfer the NGO's agenda to respective community members (Sangadji 2007, 330). These NGO activities created supporting arguments for adat land claims and made it possible for the community to comply with the requirements for legal recognition.

NGOs had organised meetings with national park officers in 2006 to solve the problem of overlapping areas through dialogue, but that strategy did not bring a

satisfactory outcome for the villagers. Adopting an alternative strategy in 2007, Marena elders held an adat tribunal to adjudicate the misbehaviour of a ranger who had entered the Marena territory without permission and fired his gun into the air for no reason. Instead of judging the ranger, the elders accused the institution—the national park—as perpetrator. The head of the national park at that time accepted the adat tribunal’s decision and, furthermore, agreed with the Marena’s proposal to establish co-management responsibilities for the overlapping areas between Marena and the national park. This was the first legal recognition from a state institution obtained by the Marena community. Unfortunately it was never implemented because the national park’s head was replaced and his successor refuted the previous agreement.

Kasepuhan Karang

When villagers discussed land issues with NGOs, their land problems were, from the outset, framed as the consequence of state territorialisation in frontier areas. Adat claims would be argued within the ambit of state territorialisation. Kasepuhan Karang villagers had long been involved in land conflicts with forestry officers, but it was only in 2011 that they began to partner with the Bogor-based NGO Rimbawan Muda Indonesia (RMI). Founded in 1992, RMI had been working throughout Kasepuhan communities since 2001, and had become a strategic regional partner of the national legal advocacy NGO HuMa (Vitasari and Ramdhaniaty 2015, 23).

The head of Jagaraksa Village was the main actor who initiated collaboration with the NGOs and he represented the adat community’s interests in contact with outsiders. A Kasepuhan community member, he had good connections in the district political arena due to his collaboration with the district head in his former private enterprises. In 2001, the Lebak District Parliament enacted the first district regulation for the recognition of adat community rights in Indonesia, for the Baduy community – a renowned, exclusive traditional community that rejects any modern influences, including electricity, formal education and formal religion. Inspired by that recognition, the Kasepuhan communities pursued a similar trajectory. However, the district government did not acknowledge the Kasepuhan’s adat claims, arguing that they did not fulfil the required criteria. The majority of Kasepuhan villagers had converted to Islam, received formal education, and had not maintained adat practices to the same extent as the Baduy—these factors weakened their claims of being a distinctly adat community.

Thereafter, the NGOs supported the revitalisation of adat in Kasepuhan, promoting the revitalisation of traditional ceremonies, training the villagers to revitalise customary rules and institutions, and conducting participatory mapping (Nurhawan and Ramdhaniaty 2015). Customary elders supported these activities that, in turn, strengthened their traditional roles. The NGOs worked with youth groups of the Kasepuhan and engaged them in the adat cause while training them in new skills to conduct participatory mapping and conflict documentation. Since 2005, RMI has also been engaged in promoting district regulations for the legal recognition of the Kasepuhan

as adat communities to enable them to claim rights to their customary land. However, when this effort to pass regulations did not succeed (Vitasari and Ramdhaniaty 2015, 27–28), RMI expanded the number of communities in its constituency to increase its democratic leverage, and subsequently started working with the Kasepuhan Karang.

Obtaining Legal Recognition

After the regional NGOs that supported the two adat communities were unable to solve land conflicts with the officers of the national parks, they began to seek assistance from national indigeneity NGOs. What became of the role of these national NGOs in the two cases?

Marena

An opportunity to receive assistance from national NGOs emerged when the Constitutional Court granted AMAN's petition regarding the legal recognition of customary forest. In response, the NGO Bantaya proposed to the national NGO HuMa to select Marena as a location for a pilot project for the implementation of the Court ruling in Central Sulawesi. With the financial support of RFN, Bantaya's local researchers and HuMa staff conducted a research project that resulted in the identification of the profiles of 13 customary forests to be proposed to local and national agencies for the granting of legal recognition, including Marena and Kasepuhan Karang.

The legal work turned out to be complicated. Anticipating trouble in getting a district regulation through parliament, Bantaya, HuMa, former NGO activists and some Marena community members negotiated with the Sigi District Government in favour of a district head decree concerning the recognition of Marena. In 2015, the Head of Sigi District issued the desired decree drafted by Bantaya staff with substantial input from Marena villagers. In the same year, the AMAN branch office in Central Sulawesi, with support of the Epistema Institute, pressured the Sigi District Head to issue recognition decrees for the To Kulawi and To Kaili communities. The district head was supportive of the adat campaign, because he saw the opportunity to barter political support from local NGOs and adat communities for his wife who was running as a candidate in the coming district head elections.

On the basis of the district head's decree, HuMa and Bantaya proposed that the Marena territory would receive legal recognition as customary forest by the Ministry of Environment and Forestry (MOEF). The NGO specialists assessed their chances of success as favourable because their colleagues, who had been invited by the Ministry to join a team for accelerating the legal recognition of customary forests, could support their case. However, the verification and validation of customary forests at the ground level generated problems. It turned out that the Marena villagers objected to one area that would be recognised when they found out that MOEF officials had not included the national park's area overlapping Marena territory. Their objection caused delay.⁹ Finally in 2017, while attending the AMAN congress in North Sumatra, the minister announced that the government would grant legal recognition of Marena customary

forest. However, that too did not resolve the forest tenure conflict between the Marena community and the Lore Lindu National Park because the recognition granted excluded the national park area.

Kasepuhan Karang

The Indonesian Constitutional Court ruling Number 35/2012 propelled the legal recognition process in Lebak District. Another Kasepuhan community, the Cisitu, also petitioned the Constitutional Court, making the ruling even more symbolically relevant for all Kasepuhan communities. Advocates used the court ruling to convince the Lebak District Government that every Kasepuhan community should be recognised as an adat community. In early 2014, RMI and the national NGOs organised a meeting with the Lebak District Parliament that resulted in the latter agreeing to prepare a district regulation for legal recognition of the Kasepuhan case. The leaders of SABAKI,¹⁰ a membership-based organisation of Kasepuhan communities, requested the district parliament to involve specialist NGOs in producing an academic report (*naskah akademik*) and a draft regulation. The district parliament agreed, and asked the Epistema Institute and RMI staff to do the job, for which the NGOs received financial support from the Toyota Foundation.

Moreover, with the support of Prorep–USAID, an American donor agency, the Epistema Institute organised a knowledge exchange program for parliament members from various districts in relation to the law-making process for legal recognition of adat communities and their customary rights (Vitasari and Ramdhaniaty 2015, 37). Another national institution, Kemitraan, a semi NGO-donor agency, provided financial support to local NGOs for explaining and discussing the draft district regulation at the village level (Vitasari and Ramdhaniaty 2015, 38).

Meanwhile in Lebak, the political situation changed in favour of Kasepuhan communities. As in Marena, a political deal between the incumbent district head and the Kasepuhan communities worked out well. In return for votes for his daughter in the district head elections in 2013, he issued a decree that recognised 17 Kasepuhan communities and, additionally, pledged to create a district regulation accommodating more Kasepuhan communities. This strategy led to an election victory for his daughter with another Kasepuhan member elected as deputy district head. Furthermore, the local parliament elections in 2014 resulted in an increase in local parliament members of Kasepuhan background. The chairman of the Lebak District Parliament, also a Kasepuhan community member, actively promoted the legal recognition of Kasepuhan communities.

Next, the Kasepuhan Karang community was selected as one of the case studies for the ‘National Inquiry on the Rights of Indigenous Peoples on Their Territories in the Forest Zone’ (Cahyono 2016) by the National Commission on Human Rights of the Republic of Indonesia. Some members of this commission had worked as activist researchers in the Kasepuhan area and were familiar with the situation and well connected with regional NGOs. The National Inquiry, too, recommended that the local and national governments recognise adat communities and their customary forest

rights. Finally, in November 2015, the Lebak Parliament passed a district regulation that recognised 522 Kasepuhan groups and designated 116,789 hectares of land, equal to one-third of the total area of Lebak District, as Kasepuhan territories. However, implementation did not occur because settlement depended on further actions by the MOEF. During the verification and validation process, MOEF officials were hesitant because the area overlapping Halimun Salak National Park had been occupied by thousands of local land users for agricultural activities. The process was delayed for nearly one year because a high-level official at the ministry obstructed the designation of customary forests. Then, national political realities forced the ministry to grant recognition because it was part of President Joko Widodo's election campaign – promises that were later included in the national development program. The ceremony for delivering the document of legal recognition of customary forest was conducted at the Presidential Palace in December 2016, as the final fulfilment of the president's pledge to adat communities.

Different Results of the Legal Recognition

Did obtaining legal recognition for customary forests solve the main problems initially faced by the two communities? How did the district agencies implement legal recognition? How did legal recognition affect life in the adat communities, and, furthermore, which members benefited most?

Marena

The legal recognition of the Marena community did not result in their desired access to the national park area, because their customary forest practices remained illegal. As an alternative to the community's land claims, the ministry shifted the officially recognised customary forest to an area of 405 hectares of protected forest outside the national park. Additionally, the ministry also designated 756 hectares of non-forest area in Marena as customary forest. This meant that Marena land was restored in size to around three-quarters of what was claimed but, in quality, the result of recognition was less satisfying because it did not include land in the national park. Moreover, the ministerial decree regarding their customary forest, prohibits land transactions and restricts land use to what is allowed in protected forests in general. This is a severe restriction of the community's autonomy.

Unlike the successful reclamation of the PD. Sulteng area in 2001, the 2017 agreement recognised that customary forest was not distributed to community members, but remained under the control of the adat council. For example, Marena villagers need the permission of the adat council to enter the customary forest to log trees for the construction of houses and public facilities. The designation of Marena customary forest has caused tension between present day Marena village inhabitants and direct descendants of the Bolapapu ancestors who claim exclusive rights based on prior occupancy.¹¹

The intensive contacts with NGO activists generated new differentiation within the adat community. Youth trained by the NGOs developed their skills and capacities as representatives after attending national meetings. They obtained significant influence in directing the revitalisation of adat. Some of them challenged the older adat leaders, competed in village head elections and used their skills to access village development programs.

Kasepuhan Karang

Similar to the Marena case, the ministry designated 486 ha of non-forest area as Kasepuhan Karang customary forest. But in this case, 462 hectares of national park area were converted to customary forest as well. After legal recognition was granted, villagers in the Kasepuhan Karang area stated that they now felt safe from extortion by national park officers,¹² and that feeling safe was crucial for their commercial fruit cultivation and income generation from non-timber forest products. The new legal status has strengthened the position of villagers in dealing with park rangers and providing land tenure security. However, in this case as well, the community is not completely autonomous due to MOEF's prohibition of land alienation and horticultural restrictions. Whether and how these prohibitions will work in practice will become clear in the near future.

One sign that there will be a land market despite the land alienation prohibition is that Jagaraksa Village's head initiated an informal land registration system to record all land users in the customary forest and their 1,630 plots. Although he explained that this land registration did not involve redistribution, it had the effect of strengthening the feeling of tenure security among people who had been using the land for years. The new informal landowners include not only members of Kasepuhan Karang, but also other Kasepuhan community members and even non-Kasepuhan villagers. In another example, the NGO RMI supported women villagers to establish a credit cooperative where land registration documents can be used as collateral, which is a credit system that assumes a land market.

Together with the village head, some youth established a tourist facility in the customary forest for social and cultural activities. The youth committee, supported by NGOs and the local and national governments, organised a customary forest festival there in 2017 (see Widiyanto, this issue).

The Role of NGOs in the Two Cases

These two case studies show how NGO intervention has been a necessary factor for obtaining legal recognition for land issues. Villagers in the two areas experienced problems related to land that varied from extortion by forest rangers, feeling unsafe when they collected products from the forest, concern about losing cash income from their fruits trees in the forest, to plain land dispossession. Local NGOs translated and sorted these problems into grievances that fitted the legal recognition process, which is a common role for legal aid workers in providing access to justice (Bedner and Vel 2010, 15–16). In both cases adat was important in the communities, but there was

no self-identification as an indigenous community before the NGOs started their interventions. Regional NGOs supported the revival of customs that would make the communities eligible for legal recognition. The national NGOs have been involved in drafting regulations and legislation that set the criteria and procedures for recognition of land claims (Safitri 2015–16). The NGO network now promotes a rigid format to which local communities should adapt if they want to qualify for legal recognition.

The two cases also show that legal recognition cannot be arranged locally by agreement between direct stakeholders. Instead, a district head's decree or a district regulation is required and that, in turn, needs a Ministry of Forestry's recognition decree before implementation can start. In both cases the last phase of the process (obtaining Ministry of Forestry recognition) caused considerable delay, either by forestry officials' reluctance to release forest land from the national park or, in the Marena case, by community members who did not agree with the ministry's move to replace the claimed national park area with other forest land. Clearly, state institutions are the actors who make the vital decisions in the legal recognition process, with specialist NGOs accommodating communities' claims in accordance with the demands and criteria of the state.

Both case studies indicate how obtaining legal recognition has become politicised at district and national levels. The cooperation of regional NGOs with national NGOs enables funding for the activities of the former, strengthening and providing them leverage in local politics. Both cases include the bartering of votes in district head elections in exchange for the district recognition of adat communities. AMAN made a similar deal at the national level, bartering support for the recognition of adat communities and forests with support in the presidential elections. Development NGOs that were formerly criticised because of their apolitical approach (Banks, Hulme, and Edwards 2015) are now totally involved in local politics, negotiating deals with district governments. The schematic distinction between MBOs engaged in political advocacy on behalf of their members and NGOs providing technical services in an apolitical way has become blurred.

Conclusion

More than two decades after the creation of the adat movement in Indonesia the roles of the various actors in that movement have changed considerably. Connecting Indonesian adat communities with the international indigenous peoples' movement strengthened AMAN as an organisation that was oppositional to the state. It also resulted in ample financial support from donor organisations who gradually favoured incorporating indigenous peoples into forestry management and biodiversity conservation projects, and more recently into global programs that address climate change.¹³ Implementation of these programs requires an institutional apparatus that connects the adat communities in Indonesian forests to global programs. The network of indigeneity NGOs has developed itself in response to this demand, linking network members in 'strategic partnerships' and coalitions. Legal recognition of adat

communities and customary forests has become the prime network goal, while AMAN staff and regional offices increasingly function as NGOs. As a consequence of donor funding, thinking in terms of projects with a budget and specific short-term objectives has become common (Li 2015).

The two case studies in our study provide examples, for Indonesia, of adaptation to the global indigeneity discourse. Local development NGOs translated the land problems of the community into grievances that could be solved by legal recognition of adat communities and customary forests. They also started to engage in district politics, bartering the votes of their constituency with political support for legal recognition. Together, specialist and local NGOs trained community members to present their grievances to policy makers in accordance with the criteria for recognition, for example, by participatory mapping, and reviving expressions of traditional culture. After decentralisation moved recognition authority to the district level, specialised NGOs used their legal expertise to draft district regulations that recognised specific adat communities and they also worked as consultants for various parties involved in negotiations about customary land and forests. The consequence of the narrow focus on legal recognition is that recognition itself has become the end result of the projects, and addressing community problems that do not fit the recognition strategy receive less NGO attention. Giving assurance that members of rural communities can continue their agricultural and forest livelihoods without conflict or threat still remains the big challenge for indigeneity and development NGOs.

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Notes

- [1] International Labour Convention Number 169 Year 1989 concerning Indigenous and Tribal Peoples in Independent Countries.
- [2] See Willem van der Muur et al. (this issue) and Keebet von Benda-Beckmann (this issue) for more detailed discussions about the term adat and its origins.
- [3] Arizona, interview with RMI staff (Nia Ramdhaniaty and Mardatilla), December 2018, and a senior NGO activist, Jhonny Nelson Sumanjuntak, in January 2019.
- [4] The YLBHI was founded in 1969 by lawyers and human rights activists. See <https://ylbhi.or.id/> (accessed 3 March 2019).

- [5] WALHI was founded in 1980. WALHI is the largest and oldest environmental advocacy NGO in Indonesia. See ‘WALHI’. *Friends of the Earth Indonesia* (Wahana Lingkungan Hidup Indonesia). <https://www.foei.org/member-groups/asia-pacific/indonesia> (accessed 3 March 2019).
- [6] Aliansi Masyarakat Adat Nusantara (AMAN), <http://www.aman.or.id/> (accessed 3 March 2019).
- [7] For more specific information about the difference between MBOs and NGOs, see Banks, Hulme, and Edwards (2015).
- [8] Arizona, interview with Head of Marena Village, November 2016.
- [9] Arizona, interview with Executive Director of HuMa, June 2018.
- [10] Satuan Adat Banten Kidul (SABAKI) is an adat organisation that consists of 66 Kasepuhan communities from Lebak, Bogor and Sukabumi districts. This organisation was established in 1968 and has since become a regional branch of AMAN in Banten Province (Mahmud et al. 2015).
- [11] Arizona, interview with Prasetyo Nugroho, a MOEF official, December 2018.
- [12] Arizona, interview with 18 villagers, December 2018.
- [13] The World Bank has been supporting indigenous peoples as part of its forest conservation and climate change policies. See <http://www.worldbank.org/en/news/press-release/2017/03/16/world-bank-grant-to-help-indigenous-and-local-communities-secure-land-rights-better-manage-forests-and-land-in-indonesia> (accessed 28 February 2019).

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