Land rights and the forces of adat in democratizing Indonesia : continuous conflict between plantations, farmers, and forests in South Sulawesi

Muur, W.E. van der

Land Rights and the Forces of Adat in Democratizing Indonesia

Continuous conflict between plantations, farmers, and forests in South Sulawesi

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op woensdag 9 januari 2019
klokke 13.45 uur

door

Willem Egbert van der Muur

geboren te Utrecht

in 1987

Promotoren:	Prof. dr. A.W. Bedner Prof. dr. J.M. Otto
Promotiecommissie:	Prof. dr. J.M. Ubink Prof. dr. J.B. Gewald Prof. dr. D.E.F. Henley Prof. dr. K. von Benda-Beckmann (Max Planck Institute, Halle, Duitsland) Dr. J.F. McCarthy (Australian National University, Canberra, Australië) Dr. W. Berenschot (KITLV) Dr. J.A.C. Vel

Cover-design: Camiel Voorn (Studio Wonder), Deventer

ACKNOWLEDGEMENTS

Achieving the result of this exciting journey - the book in front of you - would not have been possible without the enormous amount of hospitality and helpfulness that I have encountered while doing field research in Indonesia. I am more than grateful to all the people in South Sulawesi that shared their stories and experiences so openly with me. I owe much to my host family in Bulukumba and Makassar, particularly ibu Misbawati Andi Wawo and Faiz Fadillah. The way they adopted me into the family is truly admirable. I am also indebted to Jumarlin and his family for welcoming me at any given moment in their beautiful Kajang house. Thanks to Andi Mandasini Saleh for hosting me while staying in Sinjai Utara.

I am grateful to the people who assisted me with conducting fieldwork and collecting data: Wahyu Mustamin, Andis Syarifuddin and Burhanuddin for their guidance in Sinjai. To Andra Andi Rahmat and Gufrani Rusani, your tireless help during the first fieldwork period in Bulukumba was essential. I would also like to thank those who helped me during orientation visits elsewhere: Oki Hajiyansyah Wahab and pak Tisnanta in Lampung; Romi Adra, Deri Mayandra and Rezhy in Kerinci.

Much gratitude to all who helped facilitating the realization of this study. Pujo Semedi at UGM provided support as my Indonesian research sponsor. Novrizal Bahar and Andi Yani helped me find research assistance. I wish to thank Sardy Razak (AMAN Sulsel), Ardi and Adam (Balang), and Rudi Njet and Budi Rebel (AGRA) for the network support in South Sulawesi. I am thankful to KNAW for funding this research and the adatrechtstichting for additional financial support. Many thanks to Urban El-Fatih Adam and Junaid Judda for designing the research locations map included in this book.

After the fieldwork adventure I faced an entirely new challenge: writing the dissertation. I was lucky to be in an inspiring working environment, the Van Vollenhoven Institute. I owe much to my promotors Adriaan Bedner and Jan Michiel Otto. Both have taught me a lot about socio-legal studies, Indonesia's legal system and public administration in developing countries. I greatly benefited from discussions with all VVI colleagues: Jacqueline Vel, Laure D'Hondt, Bruno Braak, Arshad Muradin, Herlambang Wiratraman, Surya Tjandra, Fachrizal Affandi, Laura Lancee, Bernardo Ribeira de Almeida, Yance Arizona, Annelien Bouland, Hoko Horii, Carolien Jacobs, Rogier Cremers, Mies Grijns, Loes van Rooijen, Daniel Blocq, Maartje van der Woude, Erik Herber, Nick Huls, Suliman Ibrahim, Roxane de Massol de Rebetz, Maryla Klajn and Neske Baerwaldt. All along Dennis Janssen, Kari van Weeren and Kora Bentvelsen provided excellent support in all practical matters. Santy Kouwagam deserves special mention; she always ensured that I had a home in Jakarta. In addition, I would like to thank fellow researchers Micah Fisher and Rebecca Meckelburg for all the fruitful discussions on our shared topics, Mei Mei van Dorth for motivating me while in the field, and Ghislaine Gill for getting me acquainted with newspaper archives.

If the VVI was my first academic home, the KITLV certainly was my second. As one of the PhD researchers of the 'C2C' project I got to join a very talented team. The input I

received during our periodic chapter reading sessions helped me reconceptualize and restructure my dissertation at crucial moments of the writing process. I therefore wish to thank Gerry van Klinken, Ward Berenschot, Henk Schulte Nordholt, Prio Sambodho, Retna Hanani, Sita Hidayah, Vita Febriany, Muahamad Zamzam Fauzanafi and Chris Chaplin.

I am thankful to all of my friends and family that visited me in Indonesia, above all my parents. Finally, I wish to express my greatest gratitude to my girlfriend Binh who stood by me through the whole process. She always had a listening ear and never expressed a complaint about my long periods abroad. I can't thank you enough for your support.

GLOSSARY

adatrechtbundel	adat law compilation volume
adatrechtpolitiek	adat law policy
beschikkingsrecht	the right of avail
dwifungsi	dual function of the army in national security and politics
erfpacht	long term lease under Dutch colonial law
Gerakan Aksi Sepihak	land claiming movement in rural areas during the 1960s
hadat	council of noble rulers in South Sulawesi
hak menguasai	the state's right to control land, water and air
hak komunal	communal right to land
kampung	village settlement
kalompoang	sacred objects in South Sulawesi
Karaeng	the highest (Makassarese) noble title in South Sulawesi
masyarakat adat	adat community
masyarakat hukum adat	adat law community
pasang	customary rules of the Ammatoa Kajang community
penggarap	cultivator
preman	local thug/gangster
penggugat	claimant
rakyat	the people
Regent	indigenous head of *afdeling*, an administrative unit under the colonial administration (today district)
rembang seppang	inner-territory of Ammatoa Kajang community
rembang luara	outer-territory of Ammatoa Kajang community
Reformasi	period of political and legal reform after the fall of the Suharto regime in 1998
Tomanurung	belief-system in South Sulawesi based on an ancient myth
ulayat	form of communal customary control over land
wilayah adat	customary territory

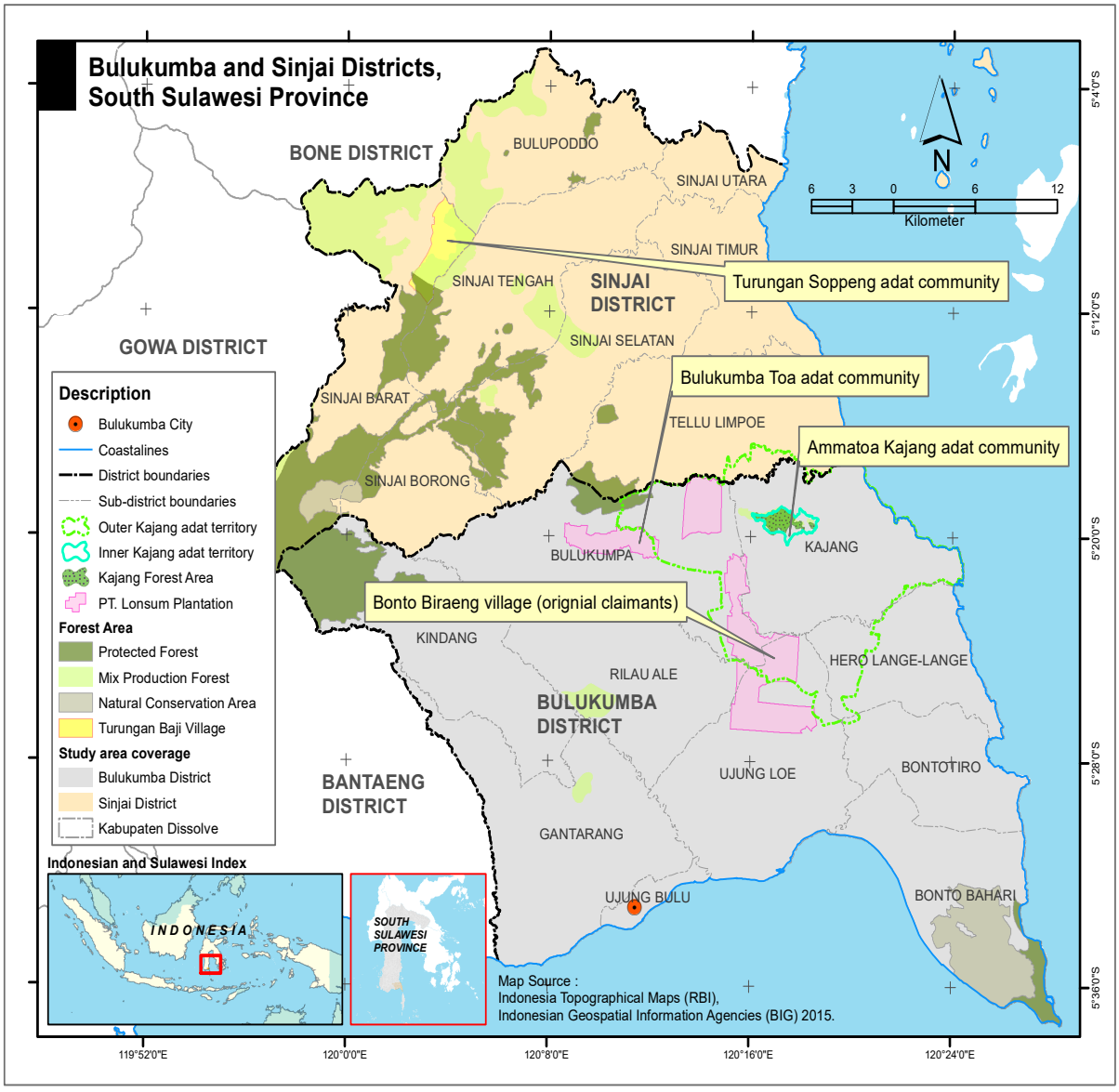
ABBREVIATIONS AND ACRONYMS

ABRI	Angkatan Bersenjata Republik Indonesia (Republic of Indonesia Armed Forces during the New Order period)
AGRA	Aliansi Gerakan Reforma Agaria (Alliance of Agrarian Reform Movements)
AMAN	Aliansi Masyarakat Adat Nusantara (Archipelago's Alliance of Indigenous Peoples)
APEC	Asian Peasant Coalition
BAL	Basic Agrarian Law (Ind. *Undang Undang Pokok Agraria*)
BFL	Basic Forestry Law (Ind. *Undang Undang Pokok Kehutanan*)
BTI	Barisan Tani Indonesia (Indonesian Peasant Guard)
BRWA	Badan Registrasi Wilayah Adat (Organization for mapping/registration of customary land)
DRB	Dewan Rakyat Bulukumba (People's Assembly of Bulukumba)
FKSN	Forum Keraton Silaturahmi Nusantara (national organization for local kings and sultanates)
HGU	Hak Guna Usaha (right to cultivate or exploit state land)
Tim IP4T	Tim Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah (Team for Inventarization of Control, Ownership, Use and Utilization of Land)
Kodim	Komando Distrik Militer (district military unit)
Komnas HAM	Indonesian National Human Rights Commission
KPA	Konsorsium Pembaruan Agraria (Agrarian Reform Consortium)
MEF	Ministry of Environment and Forestry
NGO	Non-Governmental Organization
NLA	National Land Agency (Ind. *Badan Pertanahan Nasional*/*BPN*)
pilkada	pemilu kepala daerah (regional elections)
PKI	Partai Komunis Indonesia (Indonesian Communist Party)
PT. Lonsum	PT. PP. London Sumatra
DFPD	District Forestry and Plantation Department (Dinas Kehutanan dan Perkebunan)
SNUB	Solidaritas Nasional Untuk Bulukumba (National Solidarity for Bulukumba)
SPJB	Serikat Petani Jawa Barat (West Java Peasant Union)
WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment)
YLBH	Yayasan Lembaga Bantuan Hukum (legal aid foundation)

YPR	Yayasan Pendidikan Rakyat (People's Education Foundation)
YTM	Yayasan Tanah Merdeka (Foundation for Liberated Land)

Table of Content

Map of research locations



1 INDIGENEITY, CONFLICTS AND COLLECTIVE LAND RIGHTS IN INDONESIA: QUESTIONS, CONCEPTS AND METHODS

1.1 BACKGROUND OF THE RESEARCH[1]

1.1.1 Land conflicts in the Global South

For millions of citizens of countries located in the Global South, securing land rights is a struggle. This struggle is layered: ordinary people who attempt to secure land rights in the Global South face numerous obstacles, varying from a disadvantaged position under the law to limited access to the services of state institutions. Particularly for people who work and live in rural areas, land is crucial not only as a source of income but also as a marker of social status and power, means to access credit, and source of economic and nutritional security (Hanstad, Prosterman, and Mitchell, 2009). Rapid urbanization, infrastructural development projects and the vast expansion of state forests and plantation zones aggravate the competition over land. Massive land use changes throughout the Global South have sparked widespread conflicts over control and access to land (Overbeek, Kröger, and Gerber, 2012).

Rural land conflicts typically involve competing claims between local land users and powerful coalitions of plantations firms and state actors. They tend to be particularly rampant in countries where a weak legal system allows the formation of informal alliances between state bureaucracies and private enterprises (Bavinck, Pellegrini, and Mostert, 2014; Schmink, 1982; Lucas and Warren, 2013). Land deals between state and transnational corporate actors – often labelled the 'global land grab' – usually involve decision-making processes that lack transparency (Peluso and Lund, 2011; Franco, 2012; Kaag and Zoomers, 2014). Such deals often result in land dispossession of local populations, posing serious threats to their livelihoods.

Local land users are generally disadvantaged in land conflicts, as they often lack secure land titles that could substantiate their counter claims (Alden-Wily, 2012a). State laws and policies on the allocation of land tend to benefit the politically and economically dominant classes (Franco, 2012). Laws that designate unregistered lands as state land have often been used by governments to legitimize the reallocation of land from peasantries into the hands of corporations (Alden-Wily, 2012b).

This research is concerned with the resistance of local land users against threats to their land tenure security.[2] People may legitimize claims to land in various ways - in terms of the human rights obligations of the state (Aspinall, 2004: 82), citizenship rights (Johnson and Forsyth, 2002: 1597), or through invocation of religious norms and values

[1] Parts of this introduction have been published in a journal article, see Muur, 2018.

[2] According to Hanstad, Prosterman, and Mitchell, land tenure security 'exists when an individual or group can confidently enjoy rights to a specific piece of land on a long-term basis, protected from dispossession by outside sources, and with the ability to reap the benefits of investment in the land, at least use probably desirably in most settings, also through transfer of the land rights to others' (2007: 21).

(Schmink, 1982: 350). In recent decades, the deployment of indigeneity as means of claiming land rights has become increasingly common, particularly by marginalized communities who have become the victims of state laws and policies on land and natural resource allocation (Holder and Corntassel, 2002: 141). In a general sense, indigeneity refers to self-identified, culturally distinct and politically non-dominant communities with longstanding ties to a bounded territory, where they live in harmony with their natural environment (Redford, 1991; Saugestad 2001; Li, 2007). Although indigeneity has become a key term in local as well as international debates on land rights, it remains a highly contested and challenged term with many meanings and interpretations (Kuper, 2003; Barnard, 2006; Fay and James, 2008).

Since the 1970s, a transnational movement for indigenous rights has emerged, composed of a wide range of international advocacy organizations (Yashar, 1998: 23-25). Support for indigenous peoples also gradually gained ground in international law, for instance in the 1989 United Nations ILO convention (no. 169) which provides for the protection of indigenous and tribal peoples. In 1995 the UN declared an 'International Decade of the World's Indigenous Peoples' and in 2008 it adopted the Declaration on the Rights of Indigenous Peoples. Such developments have bolstered the legitimacy of indigeneity as a basis for claims to land (Assies, 2000: 10). In addition, many states have adopted laws and policies that provide a measure of recognition of indigenous communities and their land rights. National governments and multilateral development institutions such as the World Bank now appear to support the notion that indigenous peoples are entitled to specific collective rights (Hale, 2002; Li, 2010). In short, both national and international support for indigenous rights has increased considerably.

This study focuses on the use of indigeneity to claim land rights in Indonesia. Its aim is to explain the rise of the indigenous movement in Indonesia and to assess to what extent local land users involved in land conflicts have secured land rights by claiming indigeneity. Since the fall of the authoritarian New Order regime in 1998, demands for indigenous rights have been accompanied by legal reforms that significantly widened the scope for recognition of indigenous communities. Indonesian law provides that the recognition of these rights is in the hands of regional government officials. The struggle for community rights is therefore not only a struggle over state policies taking place in the halls of parliament and the central government. The actual on-the-ground struggle also takes place in the offices of district governments and regional parliaments, which - in the case of Indonesia – have considerable discretionary power to decide whether or not particular communities get recognized as 'indigenous'. Focusing on how local land users in the province of South Sulawesi invoke indigeneity in their struggles over land, I explore the local and regional processes through which claims to indigenous land rights succeed or fail to be recognized.

1.1.2 The trend towards communal and indigenous land rights

The current support for the collective land rights of indigenous peoples stands in contrast to legal policies of post-colonial states in the first decades following their independence.

Governments tried to create land tenure systems based on individual property rights, in line with the idea that customary tenure arrangements provided insufficient security and were unproductive (Ubink, 2008: 15). Simultaneously, many governments designated large areas of land as state land, both to 'promote agricultural development', as well as to 'seize control of a valuable asset and a source of political power' (Cotula, 2012: 58). The scope of the laws establishing such control varied per country. Some adopted laws that designated all land inside the national territory as state land, while others recognized privately owned lands and excluded these from state control.

From the 1950s onwards, large-scale land titling programs were carried out, often funded by multilateral development banks. However, land-titling programs usually failed to achieve their objectives (Cotula, 2012: 63). Their implementation was often 'slow, expensive, difficult to keep up-to-date and hard for poor people to access' (Cotula, 2012: 63). In Indonesia, a large-scale World Bank sponsored land titling program (PRONA) began in 1984 but mostly advanced the position of elites and those with connections to the ruling party GOLKAR (Slaats et al, 2009: 513.) A second large land registration project (LAP) involved a more bottom-up, participatory process. Its implementation however hardly reached further than the urban areas of Java (Slaats et al, 2009: 515) When local landholders themselves attempt to secure their land rights through land registration, they often face many difficulties. Registering privately held land to obtain ownership certificates has proven to be a complex, lengthy and above all costly process. While on paper an impersonal state service equally accessible to all Indonesian citizens, those with informal, personal ties to the registry of the National Land Agency have often received a beneficial treatment (Reerink, 2012: 96).

Against the backdrop of the failure or ill-will of the government to secure citizens' land rights, there has been a renewed focus on community-based land tenure at the local level in recent decades. A prominent component of this shift is the attention for the rights of indigenous communities. Many scholars attribute the rise of indigenous movements to democratization and decentralization policies (Yashar, 1998; Assies, 2000; Li, 2001). Assies, writing in the context of Latin America, notes that both the transition to democracy and the implementation of liberal economic reforms by national governments in the 1980s and 1990s opened the door for 'the politicization of indigenous identity' (Assies, 2000: 3). Democratization and economic liberalization were paralleled by the demise of state development policies such as agrarian land reform programs. This shift towards neoliberalism, according to Assies, did not only involve political and economic reforms, but also 'a transformation of civil society and a new discourse on citizenship' (Assies, 2000: 10). It created the space for indigeneity to be claimed from below, while simultaneously being fueled from above by NGO's and donor organizations who provided local communities with legal and political tools to frame their counter claims and resistance (Hale, 2002; Alfred and Corntassel, 2005).

In recent decades, national governments have started to accommodate the demands of indigenous movements by implementing legal reforms (Persoon, 1998; Li, 2010). This trend constitutes an important 'paradigm shift in the state legal centralist ideology' (Prill-Brett, 2007: 16). Local identity and 'primordial cultural connection' have

become increasingly important, while the role of the state in local governance appears to have become less prominent (Fay and James, 2008). Laws on indigenous communities' rights for example, are predicated on the idea that communities can autonomously govern their communally held natural resources, without much interference from the state. Such laws are antithetical to land policies of earlier phases of post-colonial states that routinely dismissed cultural and ethnic diversity (Hale, 2002: 490; Berenschot, Schulte-Nordholt, and Bakker, 2016: 23). These land laws put emphasis on individual rather than communal rights, and not ethnicity but citizenship determined one's rights (Hooker, 1978: 64).

1.1.3 Academic debates on indigeneity

Some scholars value the claim to indigeneity as a potential tool that can help marginalized communities regain lands appropriated by the state or corporations (Barnard, 2006: 13). Others emphasize that notions of indigeneity presuppose a romanticized image of communitarian and harmonious rural communities. Activists often invoke such images for advocacy purposes, but often, they bear little resemblance to reality at the local level (Hale, 2006; Shah, 2007; Sylvain, 2017). Henley and Davidson call it a paradox that 'dispossessed people themselves demand justice, not in the name of marginality and dispossession, but in the name of ancestry, community and locality' (Henley and Davidson, 2007: 23).

The representation of indigenous peoples as custodians of the environment is also reason for concern among scholars. Some argue that the assumed balanced relationship between indigenous peoples and the environment is a shaky one and in many instances one of pragmatism and opportunism (Li, 2000). Persoon writes that there is 'a fundamental conflict between the interests of pure nature preservation or wilderness protection and the interests of indigenous people, who have to make a living in that same environment'. (Persoon, 1998: 284). Warren and McCarthy on the other hand claim that 'the correspondence between the bio-diverse regions of the global south and the parallel diversity of the cultural minorities that inhabit these environments is hardly coincidental' (Warren and McCarthy, 2009: 231).

Although an effective way to win the support of international conservation agencies, Li argues that representations of indigenous groups as guardians of the forest tend to misconceive the real interests of rural communities (Li, 2007). Her findings from the Indonesian province of Central Sulawesi illustrate that many claims by groups who identify themselves as indigenous are in fact related to the state-imposed prohibition to farm in conservation areas. These local perspectives reveal that it is 'access to agricultural land, not forest conservation, that is on the minds of villagers on the forest frontier' (Li, 2007: 352).

The examples above show the tension between the essentialized notions of indigeneity presented by activists and scholarly work that deconstructs such notions (Sylvain, 2014). Sylvain explains that although romanticized notions of communitarian, environment-preserving collectives can be 'theoretically dubious', they can nevertheless help people to secure their rights to resources (Sylvain, 2014: 251-252). Sylvain (2014:

253) argues therefore that efforts of scholars to deconstruct essentialist strategies can sometimes be 'at odds with political activism'. Activists advocating indigenous rights need to convey a simplified, powerful message to obtain their objectives, which is usually the state's recognition of indigenous communities and their land rights.

The question however is, who actually gets to benefit from laws that grant collective land rights on the basis of indigeneity? By design, such laws are limited in their scope, given that they only grant rights to those groups that qualify as indigenous. Often, laws make the recognition of indigenous land rights contingent on the decisions of government agents. According to Ribot and Peluso, by doing so governments maintain a degree of control over the allocation of land (Ribot and Peluso, 2001: 163). Such laws in fact 'leave resource users in the position of having to invest in relations with state agents to maintain access' (Ribot and Peluso, 2001: 163).

Critics of the discourse stress the divisive outcomes of making indigeneity a basis for rights. Kuper for instance asserts that policies that grant land rights to communities on the basis of genealogy or traditional ties to a territory will likely exclude large numbers of people who are not able to qualify as indigenous (Kuper, 2003). In similar vein, Li notes that 'one of the risks that stems from the attention given to indigenous people is that some sites and situations in the countryside are privileged while others are overlooked, thus unnecessarily limiting the field within which coalitions could be formed and local agendas identified and supported' (Li, 2000: 151) Hale, writing in the context of Latin America, notes that laws that recognize indigenous rights 'tend to empower some, while marginalizing the majority' (Hale, 2004: 16). In similar vein, Assies states that when distinctiveness is being treated as a prerequisite for particular rights conflicts will emerge with more 'broadly defined citizen's rights' (Assies, 2000: 19).

According to Hale, state laws that recognize indigenous rights in fact enable governments to retain control over their population. He argues that indigeneity as a basis for rights contributes to 'the fragmentation of society into multiple identity groups' without a form of 'cross-class solidarity' that could potentially pose a threat to the position of power holders (Hale, 2002: 494). Therefore, governments intentionally adopt laws and policies promoting 'multiculturalism', while discouraging more inclusive approaches to rights (Hale, 2002, 2004). In this regard, Hale speaks of the shift 'from homogenous citizenship to the ethic of neoliberal multiculturalism', asserting that the rise of neoliberalism and the increased support for indigenous peoples are closely interwoven. Governments adopted a 'managed' form of multiculturalism to legitimize their policies while simultaneously giving in to the demands of civic oppositional forces (Hale, 2002: 506-507). In this context, Hale notes that such reforms create 'just enough political space to discourage frontal opposition, but too little to allow for substantive change from within' (Hale, 2002: 509).

Other studies suggest more generally that the promotion of collective land rights may result in elite capture by local leaders. Such accounts emphasize that there are no guarantees that community-based rights are based on principles of fairness and equality. Ubink and Quan (2008: 210-211) for example, in their research on customary rights in Ghana, note that in the context of increased land scarcity and rising land prices, local

chiefs with customary authority tend to allocate land in ways that predominantly serve their own interests. Another example comes from the Philippines, where the Indigenous Peoples Right Act was enacted to 'promote unity and justice' and to improve the sustainability of natural resource management. In practice however, this law created the opportunity for local elites to obtain rights to customary domains, which could subsequently be privatized (Prill-Brett, 2007: 24). Such findings illustrate that the formal recognition of collective land rights of traditional communities may in fact strengthen the position of local elites, rather than empowering the marginalized (see also Li, 2001; 2010).

In order to grasp the extent to which in any given country the use of indigeneity can actually empower communities involved in local land right struggles, a shift to the perspective of actors at the regional and local level is necessary. This is where the realization of indigenous rights takes place and local actors engage directly with the state. By focusing on the interaction between local land claimants, activists, and regional state actors at the district level, this research surveys both the deployment and the reception of claims to land rights on the basis of indigeneity. Before turning to the main research questions of this study, I will first briefly discuss the rise of the indigenous movement in Indonesia.

1.1.4 Land conflicts and the indigenous turn in Indonesia

Competition over land is a major source of conflict globally, and in Indonesia. The most serious conflicts revolve around competing claims of local land users and coalitions of corporate and state actors.[3] Many of the legal claims to land made by the state are at odds with local, customary arrangements of land tenure and therefore, rural people widely consider them to be unjust. It is this discrepancy that makes land tenure relations in Indonesia particularly contentious. According to the KPA (*Konsortium Pembaruan Agraria*), there were 450 agrarian conflicts nationwide in 2016 involving the contestation over almost 1,3 million hectares of state-owned land. 600,000 hectares concerned plantation concession land (mostly palm oil plantations) while 400,000 hectares entailed disputed land administered as 'state forest'. Although far from being a comprehensive overview, such figures illustrate the scale of these conflicts.[4]

During the authoritarian New Order regime of President Suharto (1966-1998), state driven accumulation of land was legitimized by law. The 1967 Basic Forestry Law (henceforth BFL) dictated that all allocated forest land would be administered as 'Forest Area' (*kawasan hutan*), hence becoming state forest controlled by the Ministry of Forestry (now the Ministry of Environment and Forestry henceforth MEF), which would come to comprise approximately 70% of Indonesia's landmass. Today, the boundaries of the Forest Areas remain controversial and continue to be disputed by local land users all over

[3] In Chapter 3, I will further elucidate on my definition of a land conflict.
[4] These figures were published on the website of KPA (Agrarian Reform Consortium). KPA is an Indonesian NGO that advocates for agrarian reform. See: www.kpa.or.id, last accessed on 20 June 2018.

the archipelago (Safitri, 2017). Reportedly, around 40 million people live on land designated as Forest Area and lack secure land rights (Butt, 2014: 59).[5]

When President Suharto stepped down in 1998 after 32 years, rural communities throughout the country immediately used their newly acquired political freedom and began claiming land expropriated by the state (Lucas and Warren, 2003). Some of them justified their land claims on the basis of their rights as 'adat communities' (Li, 2000; Peluso, Afiff, and Rachman, 2008: 387; Djalins, 2011: 123). Although the word 'adat' has many meanings in Indonesian, it is generally used to refer to custom, traditions or local laws, norms and morals (Henley and Davidson, 2007). Under the highly centralized New Order, Indonesia's vast variety of ethnic groups could only express their identity through cultural forms or expression. Racial, ethnic or religious identities were 'illegitimate ground for politics' (Li, 2001: 654). Shortly after the era of *Reformasi* began, regional autonomy laws were implemented as part of a decentralization process. The locus of political power made an important shift towards the district level. These developments provided the political space for mobilization on the basis of the cultural identity of Indonesia's many ethnic groups (Li, 2000; Afiff and Lowe, 2007).

Bar none, the most important player in the post-Suharto adat resurgence is an organization named AMAN (*Aliansi Masyarakat Adat Nusantara*). AMAN was established in 1999 in Jakarta as an umbrella network organization for Indonesia's adat communities. It depicts adat communities as those groups that are 'culturally distinct from the surrounding population, spatially concentrated, and sharing common resources' (Li, 2007: 243). Because the existence of these communities predates the modern nation-state – which is associated with corruption, nepotism and other predatory practices – the pre-state societies are associated with authenticity, sustainability, and above all, social justice (Moniaga, 1993; Li, 2007). Adat community claims sometimes helped to strengthen the bargaining position of rural groups that experienced marginalization and repression under Suharto, especially in the outer islands. As a result, however, the general discourse of customary and community-based rights in Indonesia has become closely associated with stereotypizations of traditionalism, communality and conservationism (Li, 2001).

AMAN has grown to become a key player of rural and environmental justice advocacy in Indonesia (Avonius, 2009: 222-223). As of 2018, AMAN has 2,304 member communities, reportedly comprising a total of 17 million people.[6] The organization uses the English term 'indigenous people' to refer to adat communities. Doing so, AMAN has secured support from the transnational indigenous peoples' movement and also increased its potential to obtain funding from donor organizations and multilateral banks (Henley and Davidson, 2007: 7; Avonius, 2009: 222).

AMAN has had considerable success in advocating for the formal recognition of adat rights, especially at the national level (Fay and Denduangrudee, 2016). The organization played a leading role in the recent alteration of the legal regime on forestry. In 2012, AMAN and two of its member communities submitted a case at the Indonesian

[5] Although a new BFL (replacing the 1967 BFL) was passed in 1999, the boundaries of Forest Areas remained unchanged. See also Safitri, 2010: 89-91.
[6] http://www.aman.or.id/profile-kami/, last accessed 20 June 2018.

Constitutional Court, arguing that the limited recognition of adat communities in the BFL contradicted the Indonesian Constitution. The court agreed and decided on an alteration of the law. In landmark ruling no. 35/2012, it decided that customary 'adat forests' would no longer be state forests, but were to become collectively owned by adat communities (Butt, 2014). Many considered the ruling a groundbreaking case for rural communities across the archipelago offering 'an opportunity for changing the trajectory of systematic agrarian conflicts' (Rachman and Siscawati, 2016: 225).

In practice however, the realization of adat community rights is far from an easy, clear-cut process. To begin with, the Constitutional Court ruling did not alter the two main conditions of adat forest recognition. The first condition is that only an 'adat law community' can obtain adat forest rights. In order to qualify as such, communities must prove to possess a number of defining characteristics, which include the existence of a traditional communal territory, well-functioning traditional institutions and the existence of a clear leadership hierarchy.[7] Second, the law states that before the MEF can transfer adat forest rights to communities, adat law communities need first be recognized by their regional governments, either at the level of district or province.[8] In practice, the latter condition provides regional authorities with large discretionary decision-making authority (Bedner and van Huis, 2010). Safitri states that regional governments are hesitant to recognize adat forests and 'prefer to allocate the land to plantation or mining corporations' (2017: 42).

Since realizing recognition involves such a complicated procedure, the support of external mediators, most notably activists working for NGO's, is required. They play a leading role in negotiations with regional governments, with whom they have to cultivate strong relations in order to have a chance at legal recognition. Since Constitutional Court ruling no. 35/2012, activists have initiated regional advocacy campaigns and participatory mapping activities in order to 'verify' the existence of adat communities. As of January 2018, *Badan Registrasi Wilayah Adat*, a nongovernmental mapping agency created by AMAN and several other NGO's, registered more than 1083 adat territories throughout Indonesia. However, so far only 49 of these adat territories have been granted a form of legal recognition by their respective regional governments.[9]

1.2 RESEARCH QUESTIONS AND CONCEPTUAL FRAMEWORK

1.2.1 Research questions

This research aims to explain under what conditions rural communities in Indonesia have obtained recognition of their claims to indigenous land rights and to what extent this

[7] Stipulated in the elucidation of Article 67 of the 1999 BFL.
[8] Article 6 of Ministerial Regulation no. 32/2015 of the Minister of Environment and Forestry on Private Forest Rights (*hutan hak*). For an overview of the legal framework of adat rights' recognition, see Chapter 2, Subsection 5.4.
[9] From statistics published on http://www.brwa.or.id/stats, last accessed 20 June 2018. In Chapter 2 I will explain the different options for legal recognition of adat land rights.

recognition has settled land conflicts. In the light of the widened legal scope of adat land rights in Indonesia, it seeks to explain how indigeneity as a basis for rights impacts local struggles over land by zooming in on the context of South Sulawesi.

The following questions are central to this research:

1) How has the legal framework of land law – particularly with regard to customary and communal land rights - developed over time in Indonesia and what does it currently look like?

2) What are the widespread land conflicts involving local land users, plantation companies and government agencies about, why have they emerged, and why have they continued after Indonesia's democratic transition?

3) Why and by whom was the indigenous movement created in Indonesia, what are its objectives, and which frames of collection action does this movement adopt?

4) What is the history of adat-based authority in the context of South Sulawesi?

5) Why, how and by whom have adat community rights been claimed at the local level, with special reference to South Sulawesi?

6) Under what conditions have regional state actors conceded to local claims to adat land rights, with special reference to South Sulawesi?

7) When legal recognition of adat communities and their land rights materialized, what have been the implications for the different actors involved, in particular local land users? Has recognition led to secure land rights and settled land conflicts?

1.2.2 Citizenship in a post-colonial setting

The recognition of land rights in Indonesia involves the question of who has the legal power to confer rights and hence, they concern the relationship between people and political institutions (Lund, 2008, 2011). Land rights issues are therefore about citizenship (Lund, 2011: 10). In order to understand how rights are claimed and realized in a country like Indonesia, it is important to consider the characteristics of citizenship in the context of post-colonial states. Generally, citizenship in post-colonial settings can be characterized by two key terms: Informality and plurality.

Citizenship is understood in many ways, but in the most general sense it refers to 'the relation between a person and a political community, characterized by mutual rights and obligations' (Berenschot, Schulte Nordholt, and Bakker, 2016: 5). Following a

conventional, Western-oriented perspective, this political community constitutes the nation-state while the mutual rights and obligations involved are granted, imposed and enforced by the state on an impersonal basis (Holston, 2008). On paper, informality plays no role in this system. In the context of post-colonial states like Indonesia, however, such a narrow perspective may not be viable (Riggs, 1964). If we want to understand the way people realize their rights, it is necessary to look beyond the level of formal political and legal institutions and beyond the domain of formal laws and rules. Taking into account the day-to-day practices of state-citizen relations, citizenship takes very different forms in countries with 'a weakly institutionalized state and a predominantly clientelistic political system' (Berenschot, Schulte Nordholt, and Bakker, 2016: 3).

Citizenship in post-colonial settings is marked by the importance of personal, informal relations. In this respect, Berenschot, Schulte-Nordholt and Bakker write that 'the realization of rights is contingent on the character of the relationships and every day exchanges through which people live their lives' (2016: 15). This empirical observation obviously deviates from the view that state-citizen interaction is characterized by the impersonal nature of mutual rights and obligations. It implies that in order to secure resources, gain benefits or obtain rights from the state, people are dependent on personal connections.

Given the importance of informal relations, people seek for recognition of rights through alternative, non-state avenues. Berenschot, Schulte Nordholt and Bakker (2016: 12) note: 'For many among, particularly, the poor, legal certainty or the protection of one's rights, is more often attained through alternative authorities such as tribal leaders, local businessmen, regional bosses or strongmen'. Similarly, Bedner and Vel write that access to justice may well be acquired through informal avenues, rather than solely through state institutions (Bedner and Vel, 2012). Bakker and Moniaga note that in ambiguous legal settings, 'perceived legal status can be as good as the real thing' (Bakker and Moniaga, 2010: 198). For this study, the role of activist mediators is particularly important. Such persons often play the role of intermediaries between citizens and the state in order to 'get things done'.

Closely related to the informal character of citizenship is the plurality of both state and non-state institutions, and the rivalry between them (Lund, 2011). The state ideally refers to a coherent whole of institutions that exercises exclusive legal powers, which are conferred to them by law, usually based on a constitution. The state generally consists of a legislative, executive and judicial branch. Moreover, the state exists at different levels. Executive authority for instance ranges from the level of central governments to the level of municipalities or even the village level.

However, the notion of the state as a unitary organization has to be challenged. In the case of Indonesia, various state and non-state institutions are involved in the allocation of land including the MEF, the National Land Agency/Ministry of Agrarian Affairs (henceforth NLA), as well as regional governments, village heads and customary leaders (Brockhaus et al, 2012: 33). Within the state, competition between various government agencies to control certain resources can be fierce. In the case of Indonesia, The NLA is known to compete with the MEF over jurisdiction over land, often resulting in

overlapping claims to areas of land (Rachman, 2011). One reason for this competition is that recognizing rights not only gives rights to a land user, but also legitimizes the authority of the institutions that grant such recognition (Lund, 2001, 2011; Sikor and Lund, 2009).

Competition over authority between state institutions is complemented by the presence of so called 'twilight institutions' (Lund, 2006). These are legitimate non-state institutions that exercise state-like public authority because of the legitimacy given to them (Lund, 2006: 673). Sometimes, the de facto public authority of such institutions is even stronger than that of formal state institutions. Hence, rather than seeing the state as a coherent whole, we have to view the state in terms of the 'actual incoherence and incapacity of the multiple parallel structures and alternative sides of authority' (Lund, 2008: 6). Rivalry over public authority often produces contradictory decisions and validations regarding land claims, leading to ambiguous legal settings (Lund, 2012: 73). Such ambiguity may be advantageous for those with personal ties to power holders, but may not be favorable to weakly connected local land users seeking land tenure security.

1.2.3 What is a community?

This research is concerned with how local land users claim adat community rights. We will see in this study that in Indonesia, 'community' is not only a term used for advocacy purposes, it is also embedded in the legal system. Scholars too tend to conceptualize agrarian and forest conflicts in the Global South as involving local 'communities' (see for instance Kusters et al, 2007; Bouqet, 2009; Alden Wily and Mbaya, 2001). In order to gain a proper understanding of such conflicts, a local community should not be viewed as a single actor. Community is a concept that is 'used and redefined contextually' (Baumann, 1996: 4). Members of a community may have diverging interests and may act in uncoordinated manners.

Baumann writes that the term community has a 'decidedly bad press' in the social sciences for it is a social construct that is usually based on prejudice. In this regard, some scholars made a case to abandon the term in social science (Baumann, 1996: 14). In contrast to other terms that explain a set of social relations, the term community is almost exclusively used in a positive way (Williams, 1976). This is because the term presupposes 'a particular set of values and norms in everyday life: mutuality, co-operation, identification and symbiosis' (Gilroy, 1987: 234) In similar vein, when researchers writing about land conflicts denote groups as 'local communities', implicit assumptions about the cohesion of such groups are revealed. However, to properly grasp land conflicts, local communities should not be essentialized as a unitary whole. In the present study, I will not merely look at communities as single entities claiming rights, but will also examine the power relations that exist within such communities.

1.2.4 Social movements and collective action frames

While this research is concerned with local land users that attempt to secure their land rights, it also considers the role of a broader alliance of activist organizations that advocates for indigenous land rights. This alliance is tied to a transnational network of civil society organizations, receives financial support from donors and multilateral banks and is involved in collective action to address the grievances of their beneficiaries. The research thus looks at a social movement. It aims to explain the emergence, objectives and outcomes of the indigenous movement in Indonesia. This serves to answer the broader question of to what extent the alleged beneficiaries of the movement - local land users involved in land conflicts - benefit from the movement's land rights advocacy. It is in this context that the conceptual framework of social movement theory is valuable. Particularly relevant is the concept of 'collective action frames', because this concept can help to explain why out of all rights discourses, none has in recent decades been more influential than the indigeneity discourse.

Social movements engage in collective action to reach a particular outcome for a perceived problem or an injustice. Benford and Snow explain that social movements generally 'emerge in order to advance the interests of their adherents or beneficiaries by securing specifiable objectives typically conceptualized as outcomes' (2000: 632). To be able to mobilize people for collective action, social movement activists must engage in 'signifying work', meaning that they have to formulate 'action oriented sets of beliefs and meanings that inspire and legitimate the activities'. Put in terms of discourse analysis, social movements produce a *collective action frame*, which can be understood as a collectively negotiated 'shared understanding of some problematic condition or situation'. Part of this process is the creation of ideas on how the problematic situation can and should be changed (Benford and Snow: 2000, 614-615). Other authors refer to collective action frames as *injustice frames* as such frames always involve interpretations of who is a victim of a particular situation and also who has caused the injustice (Gamson, 1992: 68).

1.2.5 Adat, customary law and adat law

Central to this research are the terms adat and adat law. As mentioned, adat is a diffuse term subjected to multiple meanings and interpretations. In a general sense, adat is the Indonesian term for custom or tradition, but the concept has many more connotations and this is what makes adat deployable for a variety of political purposes (Li, 2007; Henley and Davidson, 2007). Von Benda-Beckmann and Von Benda-Beckmann note that adat refers to 'an often undifferentiated whole constituted by the morality, customs, and legal institutions of ethnic or territorial groups' (2011: 168). Adat and adat law live in society and are maintained and enforced by local institutions. Adat is regarded an essential feature of Indonesian culture and plays a prominent role in popular ideas on the harmonious nature of Indonesian society (Bourchier, 2015). Li writes that invoking adat 'is to claim purity and authenticity for one's cause' (Li, 2007: 337).

Debates on adat, and more generally, customary law, have been and continue to be plentiful. Already during colonial times government officials and researchers alike

debated about whether customary norms of native populations constituted 'real' law, and if so, whether they should be recognized by the state (Fasseur, 2007). Leiden professor Van Vollenhoven strongly argued that the normative systems that existed in Indonesian societies were legal in nature.[10] Ubink notes in relation to customary law that 'the term itself is ambiguous, as it evoked an image of an unchanging, antiquarian, and immutable normative system' (Ubink, 2008, 24). Burns writes that adat law is essentially a myth based on a colonial invention (Burns, 2004). Others argue that such a depiction underestimates the agency of indigenous populations and that their normative systems in fact did have legal characteristics, irrespective of interventions from the colonial state (Benda-Beckmann and von Benda-Beckmann, 2011: 169).

Adat law is adat, but not all adat is adat law. According to colonial scholarship of Snouck Hurgronje and Van Vollenhoven, adat law is that part of adat that is legal in nature, meaning that this adat is subjected to sanctions if it is breached (Benda-Beckmann and von Benda-Beckmann, 2011: 171). In this study, I view adat law as the Indonesian version of customary law. I regard customary laws as the rules and norms that exist in a particular locality. Rights based on customary law may be communal or individual in nature. They may be based on ancient traditional customs or on rules that have just recently come into being. The essential feature of such rights is that they are community-based. According to this interpretation, the existence of customary law is not contingent on the recognition of the state, but on whether such laws are considered valid and practiced in the community that upholds them (Benda-Beckmann and von Benda-Beckmann, 2008; 2011).

Finally, it is important to stress the difference between adat community and adat law community. Adat law community (*masyarakat hukum adat*) is the term mostly used in Indonesian legislation; Adat community (*masyarakat adat*) is the common term used by the indigenous movement. In the course of this book, it will become clear that the terms are in practice often used interchangeably. Generally, I will use the term adat community in this book. I use the term adat law community when I am explicitly referring to the legal concept *masyarakat hukum adat*.

1.2.6 Government administration in rural Indonesia

Since this study focuses on local and regional levels, it is important to briefly consider Indonesia's government administration in rural areas. Indonesia is composed of 34 provinces (*propinsi*), which are headed by a governor (*gubernur*). Provinces consist of districts (*kabupaten*). Currently, Indonesia counts a total of 415 districts. Each district is headed by a district head (*bupati*), who is elected every five years. Regional governments (*pemerintah daerah*) and elected regional parliaments (*Dewan Perwakilan Rakyat – Daerah or DPR-D*) exist at the provinical and district level. Regional governments (meaning provincial and district governments) can enact legislation in the form of regional regulations (*peraturan daerah*), while governors and district head can pass decrees (*keputusan*).

[10] See Chapter 2.

Districts are divided into sub-districts (*kecamatan*), which are headed by sub-district heads (*camat*). These are appointed by the district head for a period of five years. Sub-districts consist of villages (*desa*) headed by a village head (*kepala desa*). The village heads are elected by the village population every six years. Below the level of village is the hamlet (*dusun*). Hamlets are headed by the hamlet heads (*kepala dusun*). These are tasked with helping the village head with administrative matters.

Land administration in Indonesia is in the hands of the Ministry of Agrarian Affairs/National Land Agency (NLA). The NLA has regional offices (*kantor wilayah*) at the provincial and district level. These regional offices are not part of the regional governments, but instead fall under central government authority. The majority of Indonesia's land mass however falls under the jurisdiction of the MEF. At present, around 63% of Indonesia's land cover is administered as Forest Area (*kawasan hutan*) (Safitri, 2017). During field research (2013-2016), there were 'forest and plantation departments' (*dinas kehutanan dan perkebunan*) at the district level. In 2016, forest governance was recentralized at the provincial level and as result, the district forest and plantation departments were dissolved.

1.3 Approach, methods and research sites: Bulukumba and Sinjai

1.3.1 An interdisciplinary approach

This research approaches the deployment of indigeneity in land conflicts in the context of wider political, legal and social developments at various levels. In order to assess these, a broad research approach is required. As the conceptual framework outlined above already revealed, this research is not limited to a single discipline, but adopts an interdisciplinary approach. It includes law, history, political science and anthropology. To assess the interplay between law, governance and society, I approach law in a socio-legal way, meaning that I do not only study what the law is and how it has come into being, but also how it is implemented and what its impact is on society.

Historical developments are an essential aspect of the research. It is particularly important to study how ideas on customary land rights are rooted in political-legal thinking of colonial times, how these ideas have travelled and how they have been renegotiated in different phases of Indonesia's political history. Furthermore, the specific histories of the research locations are relevant as they can help to explain the local context in which the present-day struggle for land rights takes place. Longstanding grievances can only be understood if their histories are addressed. Historical analysis is furthermore necessary to comprehend the framing strategies of the indigenous movement.

As noted, I use concepts from the social movement literature to explain the rise of the indigenous movement. Sociological theories on framing help to explain how the 'adat community' frame has risen to prominence in society, which has in turn influenced the enactment of new laws and adoption of government policies. The interdisciplinary approach comes full circle when examining whether and how these new laws and policies affect the real-life problems of people at the local level.

In order to map the interplay between various levels, multi-level and multi-actor analyses are conducted. Struggles over customary rights involve a wide range of actors, both state and non-state. State institutions that are of special significance to this research are local officials such as village heads, regional governments especially at the district level, the MEF, the NLA and the judiciary at various levels. Similarly, non-state actors are connected at various levels. Activist networks stretch from NGO offices in Jakarta to villages. The distinction between state and non-state-actors is often a blurry one. As we will see, a single person can wear many different hats at different moments. Depending on the context, someone can be a government official at one instance, while being an adat leader or a land claimant at another moment.

I chose the district (*kabupaten*), as the geographical basis to conduct fieldwork in. Districts are administrative units with a regional bureaucracy, a district parliament, a district head, and district level courts. The district is an integral part of the larger institutional structure of the state and is hence connected to the provincial and central government. It is at the same time connected to the local level, such as the villages where local land users are based. Many NGO's operate at the district level and have their regional basis there. Furthermore, the district government is the starting point for recognition of indigenous land rights, and district courts are the courts of first instance.

1.3.2 Research locations, case studies, and methods

This study is largely based on findings from extensive ethnographic fieldwork in rural areas in South Sulawesi province. Most empirical fieldwork for this study was conducted in the districts of Bulukumba and Sinjai located in the southeastern corner of the province. South Sulawesi is one of Indonesia's most densely populated regions.[11] Within South Sulawesi province, Bulukumba and Sinjai are among the most densely populated districts and land scarcity is a pressing social problem in both districts. Most farmers cultivate rice fields and farming gardens in which they grow crops like coffee, cacao, cloves and a variety of fruit trees. There is only one large plantation in South Sulawesi, a rubber plantation in Bulukumba. The largest ethnic groups in Bulukumba and Sinjai are the Bugis and Makassarese. In the research locations, most local land users involved in land conflicts are Konjo people, who speak a local dialect of Makassarese called Konjonese (*bahasa Konjo*). The Konjo people are considered a sub-group of the Makassarese and reside in the coastal and highland areas in the border regions of the districts Bulukumba, Sinjai, Bantaeng and Gowa.

There have been a number of longstanding natural resource conflicts in South Sulawesi involving local populations, the state and companies (Robinson, 2016). This was reason to choose South Sulawesi as the main research area. The Bulukumba plantation conflict will be the main topic of Chapter 3 and Chapter 6. There are two additional reasons why South Sulawesi is an interesting place to study land claims on the basis of indigeneity. First, although South Sulawesi is located in the outer islands, it is by no means

[11] Outside of Java and Bali, South Sulawesi ranks fourth in terms of population density per province.

a 'frontier area'. Most agricultural land has been under cultivation for many decades, if not centuries. Due to population growth, South Sulawesi is in fact one of the regions from which large migration flows have departed (Ammarel, 2002). Most migrants have moved to other parts of Sulawesi or to the eastern outer islands where agricultural land is still available. Others have settled in Kalimantan where the palm oil sector provides work opportunities. In South Sulawesi itself, there are no large groups of migrants from other areas of Indonesia (with the exception of the provincial capital Makassar). Under these circumstances, it is interesting to examine how local actors perceive indigeneity and how they use it to claim land rights.

Second, the history of adat in South Sulawesi is controversial. Under colonialism, the Dutch governed South Sulawesi by indirect rule. Like elsewhere in the archipelago, indigenous officials, including local adat heads were incorporated into the colonial government administration. The political structure governed by adat was hierarchical and marked by the leadership of noblemen. Early nationalist and modern Islamic movements in South Sulawesi opted for a more egalitarian society and were very critical of adat rule (Gibson, 2000; Huis, 2015). During the Darul Islam period (1950-1965), an Islamist rebellion army led by Kahar Muzakar tried to establish an Islamic State in South Sulawesi. This army associated adat with elitism and feudalism and prohibited any expression of non-Islamic customs and rituals. Although the Indonesian army defeated the Darul Islam in 1965, the rebellion's impact on adat practices is still tangible today. Yet, even in South Sulawesi adat has experienced a 'come back', both as claiming discourse in land conflicts and as an expression of local identity and regional pride (Buehler, 2016).

The choice to conduct extensive fieldwork in one province allowed for in-depth analysis. It also provided the opportunity to compare the situation in two adjacent districts. Obviously, confining extensive fieldwork to a single province poses challenges to the generalizability of the research. Indonesia is a hugely diverse country and its rural areas are marked by different settings. Obviously, I do not claim that the findings from the selected case studies are representative for Indonesia as a whole, but I do argue that some of the core findings presented in this research are characteristic of the adat land rights struggle throughout Indonesia. This was verified during several short field trips to other regions, which I made throughout the course of my research.[12] These visits were brief, but through key informants and desk studies I did get a decent sense of the situation there.

In this research, I use the term conflict when referring to the explicit articulation of competing claims over land between different parties. With legal dispute, I refer to a narrower aspect of a conflict, namely court procedures. This study looks at two types of conflicts. The first type of conflict concerns plantation conflicts. Plantation conflicts involve the competing land claims of on the one hand state or private companies with concession rights (*Hak Guna Usaha*) located on state land (*tanah negara*) administered by the NLA, and local land users claiming the land as customary land (*tanah adat*) on the other. The main case study of a plantation conflict presented in this research is the conflict in Bulukumba between local farmers and a plantation company called PT. Lonsum. It

[12] Between 2013 and 2016, I made field visits to Mesuji (Lampung), Katingan Tengah (Central Kalimantan), Kerinci (Jambi) and Aceh Tenggara (Aceh).

began as a legal dispute in 1981 and transformed into a conflict involving organized collective action of local communities in the *Reformasi* era. Having gone through numerous legal and political channels, the conflict has grown increasingly layered and complex. Chapter 3 explains how the conflict evolved until 2006. Chapter 6 covers the conflict's more recent trajectory, focusing on the use of adat community claims by local actors.

Forest conflicts are the second type of case study. These are conflicts between local land users and the government about the boundaries of the Forest Areas (*kawasan hutan*) administered by the MEF. In Sinjai, numerous local land users were arrested in recent years for illegal farming in state forests. With the support of AMAN, several groups have contested the boundaries of the Forest Area by claiming adat community rights, but to no avail. In neighboring Bulukumba meanwhile, the Ammatoa Kajang community was among the first adat communities to be legally recognized by the central government in December 2016. The community's adat forest has been released from the state forest. The contrasting situation between Bulukumba and Sinjai allows for a comparison, which will be the topic of chapter 7.

I began my ethnographic fieldwork with a short visit to Bulukumba in July 2013. I initially chose Bulukumba as a research location because of the longstanding plantation conflict. During this trip, several activists from agrarian reform organization AGRA took me around and introduced me to several local land users involved in the plantation conflict. AGRA's help was extremely useful in these early stages of the research. At the same time, I did not want to associate myself with a particular organization, aware that this could have an impact on how my respondents would perceive me and my objectives. Upon later visits therefore, I went back to these villages by myself and expanded my network from there.

During my first longer period of fieldwork in Bulukumba from January to June 2014, my goals were to map the trajectory of the plantation conflict and study the various competing land claims made by various groups of local land users. I tried to speak to as many people involved in the conflict as possible, including land claimants, activists, laywers, judges, officials from various government departments and workers and managers of the plantation company. My second aim was to observe the legal recognition process of the Ammatoa Kajang community, a process that largely coincided with my fieldwork period. It allowed me to closely observe the role of the various actors involved, including the various stakeholders: the regional government, NGO's and community representatives. In November 2014, I paid another short visit to Bulukumba to fill in some gaps in the data.

In September 2015, I returned to Indonesia for a second period of fieldwork. By then I had decided to extend my fieldwork to Sinjai. Through AMAN's facebook page I had come across news about the forest conflict between a local adat community named Turungan Soppeng and the Sinjai Forestry and Plantation Department. I was surprised, because during my first period of fieldwork in Bulukumba I had never heard about this adat community, even though they lived in an adjacent district. I decided to conduct the second major fieldwork period in Sinjai between September 2015 and January 2016. In

Sinjai I met with local student activists who worked at the district branch of AMAN. They took me around to the villages and introduced me to local land users of the Turungan Soppeng community.

During my fieldwork in Bulukumba and Sinjai, I alternated between staying in villages and the capital towns of the districts. In the villages, I conducted interviews with villagers, including local land users, local officials such as village heads and adat leaders. In Bulukumba, I stayed for a considerable period in sub-district Kajang, which is both the location of the plantation conflict, as well as the area where the Ammatoa Kajang community lives. In Kajang I stayed with a local family. The head of the family worked as a forest police official for the Bulukumba Forest and Plantation Department. He was also a prominent figure in the adat community, particularly because of his knowledge of local adat law.

Besides interviews, the gathering of documents has been an important data collection method. Staff from the AMAN office in Makassar provided initial case study materials such as conflict reports and court decisions. Furthermore, several of the local land users who were involved in land conflicts had extensive documentation, almost like personal archives, which they allowed me to study and sometimes copy. Their documents included NGO reports, correspondence between local land users and state institutions and reports from meetings. In the district capitals I interviewed officials from district government departments and the judiciary. I spent a week working at the Bulukumba District Court where I analyzed archive material and court cases.

Although I was based in the districts, I made occasional trips to Makassar to interview provincial government officials, officials of the provincial branch of the NLA as well as judges and lawyers. I also stayed in Jakarta for a while, where I spoke with officials of the MEF and NLA, Supreme Court (*Mahkamah Agung*) judges, academics, activists and NGO leaders, commissioners of the National Human Rights Commision (Komnas HAM) and plantation company executives. In between fieldwork periods I engaged in archival and library research in the extensive old collection of Leiden University. The final bits of fieldwork for this study were conducted in December 2016 in Bulukumba and in March 2017, when I attended the fifth national AMAN congress in Tanjung Gusta (North Sumatra).

1.4 Outline of the book

The book is structured in the following way. Chapter 2 looks into the history of customary land rights in Indonesia, starting with an examination of colonial legal policies on adat rights, and the legal construct of an adat law community. It continues by explaining how land law has developed after Indonesian independence and what the current legal framework for adat community rights looks like. Chapter 3 focuses on land conflicts and seeks to explain why these conflicts became rampant under the New Order, and why many of them continued and escalated after the fall of Suharto. By zooming in on the role of the state in the Bulukumba plantation conflict, the chapter examines why such conflicts have been lingering on for decades. In Chapter 4, I delve into the rise of Indonesia's indigenous

movement. Using social movement theory, I analyze how historical, political and legal factors contributed to the rise of the 'adat community' discourse as a collective action frame. The chapter further looks at how the indigenous movement has developed in recent years. Chapter 5 moves from the national level to South Sulawesi and provides a history of adat authority in that region, in order to set the stage for the subsequent two empirical chapters. In Chapter 6 I consider how, by whom and in what situations adat community rights have been claimed at the local level; once again the plantation conflict in Bulukumba, now in its recent trajectory (2003-2017), helps us to get a deep inside view. The chapter also addresses the role of various state actors- most notably the district government - in these conflicts and how they respond to competing land claims. Chapter 7 compares local attempts to secure 'adat forest' rights of rural communities. It looks at a case of successful recognition of an adat community - the Ammatoa Kajang community of Bulukumba – comparing it with a case where regional authorities have rejected recognition– the Turungan Soppeng of Sinjai. The chapter seeks to explain the conditions that determine when a particular community might obtain legal recognition of its adat forest rights. Chapter 8 provides the conclusions of this research.

2 LAND RIGHTS DEVELOPMENTS IN INDONESIA: FROM ADAT LAW COMMUNITIES TO CITIZENSHIP AND BACK

2.1 INTRODUCTION

The position of customary land rights under Indonesian law is a contentious issue. Present day debates on customary land rights bear strong similarities to the discussions of the late colonial period, when the scope of adat law and adat land rights divided legal scholars and Dutch parliamentarians. Two key terms currently used in Indonesia to refer to indigenous communities are adat community and adat law community. These concepts, inherited from the late colonial period, play a prominent role in both the discourse of the indigenous movement and Indonesian legislation that regulates the recognition of customary land rights. Both refer to groups of people with a communal territory governed by their own customary law and institutions. In order to understand contemporary discussions and struggles over customary land rights in Indonesia, it is necessary to look at country's legal and political history. That is the focus of this chapter.

While addressing the historical developments of customary law in Indonesia, I will look at the changing role of adat law and the adat law community concept in legal policies, assessing the political factors that accounted for this change over time. I will explain how adat law and adat law community became central concepts in the colonial policy of legal pluralism. After Indonesian independence, land law changed significantly as a result of Indonesia's unification project and in the 1960s, legal pluralism largely had to make way for a unified law. Old legal terms such as adat law community lost much of their relevance. Instead, the state promised an egalitarian distribution of land on the basis of individual citizenship, but by and large failed to deliver. A land reform program was initiated in the 1960s but was never completed. Under the New Order of Suharto, the government prioritized economic development while customary rights of local populations remained of secondary concern.

After the fall of the New Order, the colonial legal concepts have regained prominence as a result of civil society advocacy for secure land rights. Rather than referring to the individual land rights provided in Indonesia's unified land law, NGO's began to invoke the colonial legal terminology related to adat law to demand secure land rights for rural citizens. The adat law community concept subsequently made its return in Indonesian law, most notably in the legal regime on forestry rights. Adat law community rights designate culturally distinct rural communities as the collective holders of customary land rights. As such, these rights are indicative of a specific, localized form of citizenship that is differentiated from national citizenship. We will see that under Indonesian law, it is almost exclusively in the context of this form of layered citizenship that customary land rights can be recognized by the government (Lund, 2011: 10-11; Yuval-Davis, 1999: 122).

2.2. ADAT LAW, LAND RIGHTS AND THE COLONIAL STATE

2.2.1 Citizenship and legal pluralism under Dutch rule

The Dutch presence in Indonesia began with the arrival of the VOC (*Verenigde Oost-Indische Compagnie*), which aimed at resource extraction. During the VOC period, direct forms of rule generally did not exceed beyond coastal settlements and trading posts. Outside of these areas the company only interfered with the rules of indigenous authorities when it was deemed necessary to safeguard commerce (Sonius, 1981: LX). Respecting the law of the indigenous people was considered the most efficient and inexpensive way of governing trade (Lev, 1985: 57-58). Despite this 'neutral' attitude towards local laws and authority, the VOC's demands for agrarian commodities probably did have an impact on indigenous laws and institutions (Sonius, 1981: LIII).

Beginning in the late eighteenth century- a time when a wave of liberalism influenced political thinking in the Netherlands – a debate emerged about which legal policy would be most suitable for colonial rule. The VOC went bankrupt in 1799 and after an interlude of British rule (1811-1815), the Dutch restored their authority and established full control on the economically important island of Java. The archipelago was subsequently incorporated into the Kingdom of the Netherlands as the Dutch East Indies.

The dual aim of both profitability and just rule lumbered the Dutch with a dilemma on legal policy (Fasseur, 2007). A choice was to be made between legal unification and legal pluralism. Under a unified legal system, all people inhabiting the archipelago would be subject to the same laws, whereas in a system of legal pluralism, different norms and rules would apply to various population groups. The Dutch eventually chose the latter mainly for reasons of expediency. The pluralist legal system, formalized in the colony's constitution (*Regeringsreglement*) of 1854, made a basic distinction between Europeans and indigenous people (Lev, 1985; Fasseur, 2007).

Citizenship in Indonesia hence became based on ethnic differentiation. The ethnic group to which a person belonged determined one's legal status. The Dutch distinguished between three major groups: the Europeans, the indigenous population and the foreign Orientals.[13] According to the law, indigenous persons were never citizens but subjects (Djalins, 2015: 229).[14] While the Europeans were subject to Dutch law[15], the indigenous population continued to 'live according to their own laws and traditional institutions'. Foreign Orientals had an intermediate status (Sonius, 1981: LVIII). This pluralist model was inspired by liberalist ideas of 'fairness and good government' but it also served other goals. By upholding indigenous rules and institutions, the Dutch could rule in an indirect way that was both efficient and cheap. In addition, allowing indigenous people their own laws and institutions would prevent rebellions against colonial rule (Benton, 2002: 2).

[13] I use the term 'indigenous' here to refer to the (now considered inappropriate) colonial term '*inlands*' (indigenous/native) or '*inlander'* (indigenous/native person).

[14] Indigenous persons had the legal status of Dutch *onderdaan,* a status established by law (Wet op het Nederlands onderdaanschap, Wet van 10 februari 1910, Stb. nr. 55)

[15] According to the '*concordantie* principle', laws enacted by the colonial government in the Dutch East Indies had to be as much as possible in conformity to Dutch law. See: Ball, 1982: 29.

The different ethnic groups were thus subject to different legal systems. Two parallel administrations were created along ethnic lines, the indigenous administration being subordinated to the Dutch. A similar duality existed in the judiciary. There were two separate, though hierarchically connected judicial systems. Appeals against decisions of indigenous courts were dealt with by European courts, reflecting the supremacy of the Dutch in deciding legal matters (Lev, 1985: 59-60).

2.2.2 Discovering the importance of adat law

Given that the Dutch presence in the archipelago was above all motivated by the potential to profit from 'agrarian production for the world market', the land rights of the indigenous population proved to be a vital matter (Sonius, 1981: LIV). The complexity of this issue particularly rose to forefront during the debates of the 1860s regarding the enactment of an Agrarian Law (*Agrarische Wet*) for the Indies. These debates revealed the awkward dual aims of colonialism: gaining profits from large-scale agrarian production was not possible without some form of encroachment of land belonging to indigenous communities. In 1870, after the abolishment of the government-controlled Cultivation System, the Dutch moved towards a more liberal economic policy allowing the establishment of large-scale plantations by private corporations (Burns, 2004: 33). Large tracts of land became available for this 'plantation economy' (Benda-Beckmann and von Benda-Beckmann, 2011: 178).

The law governing land rights was characterized by compromise between contradicting interests. The 1870 Agrarian Law stated to respect indigenous land rights, but also provided that unused virgin land (*woeste gronden*) could be leased to non-indigenous entrepreneurs. Moreover, the *vervreemdingsverbod* (alienation prohibition act) of 1875 prohibited the sale of indigenously owned land to non-indigenous people. This meant to serve as a mechanism to protect indigenous people from dispossession. Along these lines, ethnic status also determined the status of the land rights that someone in the Dutch East-Indies could obtain.

Related to the growing concern for the land rights of the indigenous population, as well as their welfare in general, was an increased interest in indigenous culture and customs. At the close of the nineteenth century, the relative indifference towards indigenous culture and customs gradually made way for a growing concern with indigenous society, particularly among colonial civil servants (Fasseur, 2007; Burns, 2004: 49-50). From 1842 onwards, colonial officials had to learn indigenous languages as part of their professional education, something which was largely neglected previously. Scholars, officials and missionaries began to carry out research in which they focused among others on the normative aspects of indigenous society such as property and village institutions (Fasseur, 2007). These developments were driven by the liberal idea that colonial rule could only be fair and just if the culture of the indigenous population was properly understood (Heslinga, 1928: 13). Moreover, opposition against abusive agrarian policies such as the Cultivation System triggered the initiation of studies on indigenous land rights (Sonius, 1981: LVI). Through this system controlled by the colonial

government, Javanese farmers were to produce agricultural commodities as a form of taxation. The system boosted agrarian productivity and was eventually highly profitable for the Netherlands, but had catastrophic effect on the farmers and put much of the population of Java in misery (Burns, 2004: 24).

A figure of particular influence was government advisor and later Leiden professor of language and culture Christiaan Snouck Hurgronje. In his research on Aceh, he found that the living norms and practices of indigenous society were more important than rules prescribed by Islam. Hence, he coined the term *adatrecht* (adat law). The term adat had for long been used to refer to many kinds of indigenous practices (Burns, 2004: 59, 66). According to Snouck Hurgronje, adat law was distinct from adat due to its law like features (Burns, 2004: 66). The work of Snouck Hurgronje was followed up by many other research projects on adat law carried out in other parts of the archipelago. The jurist Cornelis van Vollenhoven would become adat law's central figure.

2.2.3 Ethical Policy and the legal battle of Cornelis van Vollenhoven

Liberalist thinking in the Netherlands reached new heights at the turn of the twentieth century when a new era of colonial policy began. The so-called Ethical Policy was explicitly geared towards the development of the indigenous population (Otto and Pompe, 1989: 245). The Dutch had come to realize that the indigenous population had long suffered from exploitative practices, which created a common sense of debt and a conviction that justice had to be restored.[16] Liberal lawyers and prominent officials expressed the view that the best way to 'uplift' the indigenous population was through legal unification. They contended that only the imposition of equal rights and obligations could create a fair society in the Indies (Fasseur, 2007: 58). It would also allow indigenous people to fully participate in the modern sphere of trade and business and hence formed the key to their modernization. In essence, legal unification would be a first major step forward towards conferring the indigenous population with citizenship rights.

However, the idea of legal unification was met with fierce criticism. The strongest and most grounded critique to legal unification of the Dutch East Indies came from the newly appointed Leiden law professor Cornelis van Vollenhoven. His longtime study of adat law was mainly driven by his respect for culture and critique of dispossession. Hence, his ambition was to change colonial policy. He believed that 'good governance and good administration of justice' could only be accomplished if colonial officials properly understood the nature of adat law and its functions in each particular local context (Sonius, 1981: XXXVI). In his eyes, the arrogant colonial officials – particularly those at the central level – had completely failed to comprehend adat law. It had resulted in great injustices for indigenous communities, particularly in the domain of land rights. Proving that adat law was real law and existed on a wide scale therefore became his primary objective.

[16] The best-known publication in which this sense of guilt was expressed is Van Deventer's '*Een eereschuld*', published in 1899 in De Gids.

In the early twentieth century, Van Vollenhoven's ideas became highly influential and the study of adat law 'began to flourish' (Van Dijk, 2005: 136). He turned the study of adat law into a true science (Sonius, 1981: LL). Rather than solely focusing on decisions of indigenous judges, he believed that one could best learn about the nature of adat law by observing daily social practices (Benda-Beckmann and von Benda-Beckmann, 2008: 180). Scholars, colonial officials and missionaries alike devoted themselves to the study of adat law throughout the archipelago and did so with pride. Van Vollenhoven's students engaged in extensive ethnographic research in each of the nineteen separate adat law circles (*adatrechtskringen*) that van Vollenhoven identified.[17] It resulted in a large number of publications, among which 43 *adatrechtbundels*. A research project on indigenous law of this scale was unheard of in other colonial territories (Benda-Beckmann and von Benda-Beckmann, 2008: 179).

Van Vollenhoven was highly critical of the way colonial officials interpreted and applied the 1870 Agrarian Law, especially its so-called domain principle (*domeinverklaring*).[18] This principle provided that all land to which no ownership rights could be proven, either by Europeans or indigenous people, fell under the domain of the colonial state. The domain principle was controversial because it was subjected to multiple interpretations. The diverging interpretations could potentially work in favor of the colonial state, for it allowed administrative discretion in handing out plantation licenses (Burns, 2004: 32; Fitzpatrick, 2007: 133). Van Vollenhoven accused colonial officials of disregarding adat rights to lands, particularly those held under *ulayat* arrangements. *Ulayat*, to which the Dutch attached the legal term *beschikkingsrecht* (the right of avail), was a form of 'socio-political control' exercised by rural communities. It could also extend over the virgin lands that were not permanently cultivated and were located outside of the community's village borders (Benda-Beckmann and von Benda-Beckmann, 2011: 177).[19] The disregard of *ulayat* allowed land-hungry plantation corporations to dispossess communities of their communal territories (Fasseur, 2007).

2.2.4 Adat law communities

For Van Vollenhoven, another concept intrinsically linked to adat law, and in particular to the right of avail, was *inlandse rechtsgemeenschap* (indigenous law community) (Sonius, 1981: XLVI). The concept was tightly interwoven with adat law because one could essentially not exist without the other. Adat law existed because the law community applies and it upholds it, while for the law community to exist, adat law is required since it regulates its legal autonomy. Von Benda-Beckmann and Von Benda-Beckmann describe

[17] According to Van Vollenhoven, in each of these circles, with common cultural and linguistic traits, a more or less coherent system of adat law was intact.

[18] This principle was set forth in Article 1 of the *Agrarische Besluit*, an Executive Decree of the Agrarian Law of 1870.

[19] Individuals that were part of the community could obtain preferential rights to land within the *ulayat* territory. Such rights were usually granted to individuals who were first to reclaim a plot of land for cultivation. Under no circumstances however would such preferential rights undermine the community's right of avail to the wider territory.

the concept of law community as following: 'it refers to the larger or smaller constituent corporate units of an organized indigenous society which, in Van Vollenhoven's conception, derive their distinct, legal autonomy in domestic affairs from the fact that each has: (i) its discrete representative authority, and (ii) its discrete communal property, especially land, over which it exercises control' (Benda-Beckmann and von Benda-Beckmann, 2008: 181). Due to Van Vollenhoven's efforts, adat law community became a central concept in the legal policies of the late colonial period and as will be explained below, has recently re-emerged as an important legal concept in Indonesian law.

Adat and adat law were not entirely different phenomena in the eyes of Van Vollenhoven. He acknowledged that the lines between the two were blurry. Yet adat laws were legal in nature because they constituted institutionalized norms and rules to which sanctions were attached (Vollenhoven, 1933). Although adat law was 'living law', - meaning that it was flexible and dynamic –in his view it was nevertheless true law. It evolved over time and adapted itself in accordance to the needs of local society (Benda-Beckmann and von Benda-Beckmann: 2008: 180). Therefore, Van Vollenhoven argued, adat law was for the time being much more suitable to the needs of indigenous communities than an externally imposed system of Western laws with fixed, rigid norms. For the sake of keeping adat law 'living law', Van Vollenhoven did not deem it desirable to codify adat law into fixed norms as it would destroy its flexible and dynamic character (Burns, 2004; Benda-Beckman and von Benda-Beckmann, 2011; 173).[20] He further held that adat law existed autonomously in indigenous societies, regardless of whether it was recognized by the state (Sonius, 1981: XLIII; Benda-Beckmann and von Benda-Beckmann, 2008: 180).

2.2.5 Realizing recognition of adat land rights in parliament

One of Van Vollenhoven's most fruitful endeavors was his opposition against a new agrarian law proposed in 1919. This law would have 'compelled the Indonesians to the full acceptance of European legal principles with regard to the ownership of land' (Fasseur, 2007: 60). The drafters of the bill intended to amend the agrarian legislation of the *Regeringsreglement* and move towards a unified system of land rights. They drafted the law in such a way that it would end the recognition of adat land rights (Burns, 2004). Van Vollenhoven tried to change the minds of the parliamentarians by referring to the extensive history of rural injustices that colonial policies had caused (Burns, 2004: 22).[21] With his book '*De Indonesiër en zijn grond*' (The Indonesian and his land), submitted in 1919 to the Dutch parliament, Van Vollenhoven tried to prevent that the law would be enacted.

[20] However, in order to demonstrate that adat law had a core of legal principles, Van Vollenhoven drafted 'A Short Adat Law Code for the Whole of the Dutch East Indies' (*een Adatwetboekje voor Heel Indië*), but as Von Benda-Beckman and Von Benda-Beckmann point out, this book dealt with the main legal principles rather than concrete legal norms.

[21] He for instance pointed at the exploitative nature of the Cultivation System that was applied between 1830 and in 1870 in Java and some other parts of the archipelago.

In the run op to the proposed bill that would amend the agrarian law, a fierce debate between Nolst-Trenité, a special advisor to the government concerning land matters, and Van Vollenhoven, concerned the interpretation of the domain principle. Van Vollenhoven accused both his intellectual opponents and the colonial administration of misinterpreting the right of avail. This right, he argued, had a private and public dimension and therefore it did not fit with the Western legal categories that the colonial legislation provided for. For legal scholars of Utrecht University, who were proponents of legal unification, the right to avail should not be considered a right but a mere local interest that was subordinated to the rights of the colonial state. The vast uncultivated areas under the socio-political control of rural communities were considered virgin lands belonging to the public domain of the colonial state. This meant that the state could lease such lands to private parties, notably for the establishment of plantations (Benda-Beckmann and von Benda-Beckmann, 2011: 177; Korn, 1958: 143; 's Jacob, 1945).

In the final years of the existence of the Dutch East Indies, political developments kept the colonial administration occupied and hampered the further evolution of adat law (Burns: 2004: 108). A final momentum for the adat law proponents was in reach when the *Agrarische Commissie* (Agrarian Commission) was established in 1928. The commission was established at a time of frequent rural uprisings, making the agrarian policy once again the topic of debate, this time within the Volksraad (the colony's 'parliament') (Burns, 2004: 103-104). The commission consisted of Dutch and indigenous officials and was assigned to review the domain principle as well as to investigate the existence of the right of avail. Their findings resulted in a far-reaching advice, submitted to the colonial government in 1930. The commission called for the 'radical abolition' of the domain principle, which was to be replaced with the recognition of the right of avail as the basic principle of agrarian policy.

The commission thus largely followed the lines of the Adat Law School. It was probably the last concrete result of van Vollenhoven's 'tireless struggle', as he passed away in 1933. Eventually, the advice of the commission never translated into the adoption of legislation or state policy due to a lack of political opportunity. When Japanese troops invaded the Dutch East-Indies in 1942, the colonial policy and law, including adat law, came to an end. This marked the beginning of a new era.

2.2.6 The aftermath of the 'adat law policy' and retrospective debates

Van Vollenhoven's lifelong advocacy for adat law was very effective in the sense that its 'existence could no longer be denied' (Sonius, 1981: XLVIII). At two instances, in 1904 and in 1919, he managed to convince the Dutch parliament not to adopt a bill that would unify the legal system in the Dutch East Indies (Otto and Pompe, 1989: 245). Yet, although Van Vollenhoven is universally credited for his extensive ethnographic research, his ideas – and particularly the *adatrechtpolitiek* - have later become the subject of fierce criticism. The issue of adat law is, in the words of Lev, 'one of the most perplexing and ambiguous themes in Indonesia's colonial history' (Lev, 1985: 63). Lev states that adat law 'is fundamentally a Dutch creation', meaning that it were the Dutch who tied adat law to the

authority of the colonial state, while originally, adat law only existed in the context of local political and economic interests (Lev: 1985: 63-64).

According to Lev, colonial policy makers above all favored van Vollenhoven's ideas because they did not pose a threat to the continuation and legitimacy of colonial rule. He stresses that the Adat Law School and the policies based on its ideas were rooted in conservative political thinking that helped to legitimize the authority of the colonial state (Lev, 1985: 65-66). Lev exemplifies that this 'political edge' was particularly evident when considering how both scholars and officials dealt with the role of Islam in indigenous society. Studies on adat law presented an image of indigenous communities as if they existed in isolation and as if their adat laws were closed off from external influence (Lev, 1985: 66). In similar vein, Burns (2004) calls adat law a myth invented by the Dutch.

The concern for adat law that marked the last decades of colonial policy tended to ignore – or at the very least undervalue – the importance of Islam and Islamic law. Adat law scholars and colonial officials were on the other hand strongly biased towards indigenous traditions. Much attention was given to local rulers of the nobility who derived their authority from traditional belief systems. Dutch officials liked to see these rulers stay in power because they played a crucial role in managing the administration of indirect rule (Lev: 1985: 66). The recognition of adat law was an extension of the efficient and inexpensive policy of legal pluralism, albeit with better-informed officials and scholars. As we will see later in this book, colonial researchers sometimes deliberately pushed adat leaders to the forefront in order to counter the rise of nationalist, Marxist and Islamic movements, which threatened stability of the colonial state.[22]

The critique on adat law has in turn also been challenged. Von Benda-Beckmann and Von Benda-Beckmann argue that scholars who refer to adat law as a 'myth' invented by the Dutch have not sufficiently considered the role of the indigenous population in the development of adat law. According to them, the notion of adat law as a Dutch invention overlooks the agency of the indigenous populations in the construction of adat law (Benda-Beckmann and von Benda-Beckmann, 2011). They do acknowledge that the adat law doctrine cannot be detached from the political advantages it brought the colonial officials. They also see that adat law was to a degree influenced by Dutch legal scholars (2011: 176). But what the critics of adat law do not consider is how Van Vollenhoven, in contrast to the majority of legal scholars of his time, advocated for interpreting adat law in its own specific contexts 'free from ethnocentric bias' (2011: 177). For Van Vollenhoven, adat law was flexible and differed according to its social context but above all, it also existed without the recognition of a state.

Ultimately, the most important question is what difference it all made to the indigenous population. Van Vollenhoven's ideas indeed put adat law on the map, but the implementation of the colonial government's agrarian policy was far from consistent. For instance, *ulayat* territories were never mapped and administrative discretion regarding decisions on the allocation of concessions to foreign entrepreneurs continued (Li, 2010:

[22] See Chapter 5, Subsection 2.3.

394). In practice, the right of avail 'was sometimes fully respected, sometimes partially recognized and sometimes totally ignored' (Sonius, 1981: XLVII).

Other authors stress that the way Van Vollenhoven perceived the problems related to land was not in tune with the real situation. In 1933, one of his students noted that 'the era of closed communities leading their own lives was almost everywhere a thing of the past' (Sonius, 1981, XXXVII). Sonius states that Van Vollenhoven overrated the capacity of adat law to resist and did not manage to combine his idealism with 'pragmatic realism' (Sonius, 1981: XXXVI). He argues that 'adat law has no institutions which could enable it to operate effectively outside the sphere of the local communities, or to prevent the abuse of foreign concessions' (1981: XXXIX). In this context, Sonius raises the question whether a 'less dogmatic adherence to adat law and legal pluralism' would not have served Indonesian society better (1981: XXXIX).

Adding to that, Li argues that already during colonial times the capitalist practice of commodity crop farming had a large impact *within* indigenous societies. The Dutch regarded inalienable communal lands as a safety net against dispossession, but imposing a prohibition to sell communal land did not put a stop to the internal forces that caused dispossession within rural societies (Li, 2010: 399). While corporate plantation projects did pose the threat of dispossession, so did exploitative practices among indigenous people themselves. According to Li, the practices of commodity crop farming by indigenous people led to excessive land dispossession, but colonial policies based on the ideas of Van Vollenhoven and his followers paid no attention to these practices (Li, 2010: 293). Hence, recognition of community rights had no effect on the more structural issue at stake, which was the dispossessory effect of capitalism as a whole.

Despite the *adatrechtpolitiek*, there was widespread rural resentment in the 1920s and 1930s, increasingly resulting in collective resistance and mobilized action against the colonial state. Rural protest movements had already begun to emerge in the late nineteenth century. They grew mainly in response to the 'plantation economy' introduced by the colonial government, which 'upset the traditional system and created considerable discontent' (Huizer, 1972: 1). In the first decades of the twentieth century, the rural uprisings increasingly took the form of 'modern political movements' grounded either in religion or communism (Huizer, 1972: 3). In 1926 for instance, a large revolt in West-Sumatra emerged which was subsequently suppressed by the colonial government. For Huizer, the attraction that ideological and religious movements quickly gained shows how much the intrusion of the colonial system favoring private capital disrupted traditional societies.[23] He explains that the word *merdeka* (freedom) became a key word for these movements in expressing their hope for a solution (Huizer: 1972: 3). Indeed, rural grievances played a substantial role in the popular support for the nationalist movement that had steadily emerged.

[23] Huizer explains that traditional societies underwent drastic changes in the final decades leading up to independence due to the 'rapidly penetrating colonial economy.' Especially in Java, traditional leadership was deteriorating while leadership based on religion or political ideology conquered ground (Huizer, 1972: 1).

2.3 After Indonesian independence: moving towards citizenship-based land rights

2.3.1 Legal unification, rural politicization and the enactment of the BAL

In the final decades of colonial rule, the Dutch East Indies enjoyed the international reputation of a properly ruled colony where just and good governance prevailed (Sonius, 1981: LXI). But soon after Indonesia's independence, this view began to change drastically. Many Indonesians held the Dutch and their adat law policy responsible for Indonesia's 'backwardness of political, legal and economic structures' (Sonius, 1981: LXI). Some of the most prominent legal scholars, including former students of Van Vollenhoven, developed 'a highly ambiguous attitude towards adat law' (Fasseur, 2007:63). An important point of critique was the lack of legal certainty that the adat law policy had created. The mostly unwritten adat laws with all their variations posed many practical difficulties for the young republic (Sonius, 1981: XXXVI). The emphasis on regional and local differences was now seen as a manifestation of divide-and-rule policies. Moreover, where the adat law policy in theory viewed all legal orders as equal, social relations had in practice been highly unequal. Europeans had been, both in terms of education and economic status, superior to the indigenous population (Lev, 1965: 284).

Given the changed attitude towards adat law, it is not surprising that Indonesian leaders opted for a significantly different legal policy. As in most post-colonial states, the choice of legal unification following the Western legal tradition prevailed (Benton, 2002: 23). In the eyes of Indonesian scholars and national policy makers, a unified legal system was necessary as a nation-building tool, aimed at unifying the country and overcoming regionalism (Parlindungan, 1983: 6). Another rationale was that a single unified law would bring legal certainty, a necessary condition for the complexities of a modern state and economic development. Although most colonial legislation remained valid after independence, newly adopted laws and regulations no longer used ethnicity as a legal category to determine applicable rights, the only distinction made was 'between citizens and non-citizens' (Lev, 1965: 285).

The Indonesian elite in charge of determining the country's legal and political course on the one hand considered adat law as something primitive, which belonged to the colonial past. While they saw that it survived in rural areas, they believed that it would eventually also disappear there. Adat law was furthermore associated with feudalist power structures (Lev, 1965: 285, 302). Indonesia's political elite on the other hand also realized that adat had great ideological value (Lev, 1985: 249). Adat helped to underpin that 'Indonesian culture is quintessentially communally oriented, spiritually and harmony loving – the opposite of Western mainstream culture' (Bourchier, 2014: 4). Therefore, in order to emphasize the distinct character of Indonesian law, newly adopted legislation still made reference to adat and adat law, 'the very term 'adat' serving to legitimize new law' (Lev, 1965: 303.) But beyond symbolic reference, these laws would not provide any concrete and substantial space for adat rights. The importance of adat law however did not instantly disappear. At the local rural level, adat law continued to regulate many social, economic and political matters.

The first serious attempt at unifying an important field of Indonesian law was the Basic Agrarian Law (BAL) of 1960.[24] It stipulated a set of new, far reaching rules on one of the most politically sensitive issues of that time: land ownership. Amidst a period of extreme politicization in the countryside and increasing tensions between large power factions in the country, the BAL was to serve as a unifying framework of agrarian law (Huizer, 1972: 18; Utrecht, 1969: 71). Though based on compromise, the substance of the law leaned heavily towards the ideology of the Indonesian Communist Party (*Partai Kommunis Indonesia* or *PKI*) and its associated farmer movement BTI (*Barisan Tani Indonesia*) that had grown rapidly in the 1950s.[25] Massive rural support had made the PKI the third largest communist party in the world. The BTI movement demanded the end of feudalism and landlordism, and a more equal distribution of land holdings. The drafters of the BAL had tried to accommodate these demands,

First, the BAL replaced the colonial agrarian legislation with a single code that ended the colonial system of different laws for different ethnic categories (Fitzpatrick, 1997: 180, Utrecht, 1969: 73-74). The only distinction in applicable rights was made between citizens and non-citizens.[26] Second, the BAL aimed to establish a more equal and just distribution of land holdings. It therefore provides the legal basis for the redistribution of agrarian land (Parlindungan, 1983: 11; Kroef, 1960: 5-13). Third, the BAL put emphasis on individual rights. Its drafters prioritized the interests of the individual small-scaled farmer, while the concept of 'adat law community', which had been of such importance under colonial law, became irrelevant. Though the BAL declares to be based on adat law, its drafters clearly wanted to move towards a system of individual land rights in order to provide citizens with legal certainty. All previously existing land rights, including adat rights, were to converted into rights regulated by the BAL. These were exclusively Western, such as individual ownership, while collective rights were severely restricted. Before discussing the implementation of the BAL, it is important to pay some extra attention to the BAL's ambivalent relation to adat law, which continues to be the subject of debate today.

2.3.2 The BAL and its relation to adat law

The BAL's preamble provides that it is 'based on adat law, which is simple and guarantees legal certainty for all Indonesian people'. This symbolic recognition emphasized the

[24] The term agrarian (Indonesian *Agraria*) in this context means 'relating to land tenure'.

[25] During the second half of the 1950s the Barisan Tani Indonesia (BTI), managed to mobilize millions of farmers, mostly in rural Java, Bali and North Sumatra. The BTI was founded upon Indonesian independence in 1945 and was originally a farmer movement in which all political streams, the so-called *aliran,* were incorporated. From the beginning, the BTI was supported by farmers who were frustrated with their land tenure situation, especially in areas dominated by commercial plantation estates. As the BTI became more Marxist oriented over the years and more closely associated with the PKI, some factions split off and set up their own organizations. The PNI for instance, though remaining associated with the BTI, created a farmer movement named Petani (*Persatuan Tani Nasional Indonesia*) in 1948. These organizations however did not manage to gain mass support.

[26] In the sense that foreigners are not allowed to own land in Indonesia.

Indonesian nature of agrarian law, in contrast to the old colonial agrarian legislation, which supported the colonial system (Burns, 2004: 250).

Substantively, the BAL recognized adat rights in a very restrictive way. It constrained adat rights in many ways, although it also provided that adat law would remain valid as long as implementing legislation was absent (Article 56). The BAL nevertheless subjects the recognition of '*hak ulayat* and similar rights' to a strict limitation by stating that the exercise of these rights must be 'in compliance with the national interest' (Article 3). Article 5 curiously declares that agrarian law is adat law (*hukum agraria … ialah hukum adat*), as long as it is not contrary to the national interests based on national unity and Indonesian socialism. Each of these limitations reflected how much the law was based on a compromise between the interests of different political and social groups. According to Utrecht, 'these limitations gave the new law more of a Western than eastern tenor' (Utrecht, 1969: 74).

While the BAL thus rendered adat law virtually meaningless in terms of concrete rights, it reiterates Article 33 of the Constitution, which granted extensive authority to the state to 'control' land matters. Article 2 stipulates that the state has the right to control (*hak menguasai*) the land, water, air and space. This means that the state is the sole regulator of land rights (instead of the adat law community). The BAL also gave the state the power to create new land rights, such as concession rights for plantation estates. Despite the seemingly obvious similarities between *hak menguasai* and the colonial domain principle, Indonesian legal scholars rejected the notion that the two are the same. Parlindungan for instance argues that the control of the state granted by the BAL should not be understood in terms of state ownership, but merely as an authority to regulate (Parlindungan, 1983: 4).

In retrospect, the BAL should be seen in the context of the nation-building ambitions of its drafters, for which unity (*kesatuan*) was a key word. Adat law was important as an ideological concept, but its 'regionalist' dangers had to be eliminated. The 'national unity' restriction to adat law is an indicator of this. Parlindungan explains that the adat law provisions of the BAL restored the nation's dignity (*harkat bangsa*) because they abolished the dualist system of agrarian law and adat law which served colonial rather than Indonesian interests. Moreover, he argues, the adat law that Van Vollenhoven 'found' is different from the adat law of the BAL because the latter must be adjusted to 'progress' (*kemajuan*), cannot be regionalist (*bersifat kedaerahan*) or feudalist, and must be in compliance with national interests. In other words, the BAL meant to transform (or elevate) adat law from a regional and local phenomenon into a national phenomenon, the state being its final guard. That the adat law provisions remained in the abstract helped to realize the BAL's 'nation-building potential rather than its direct applicability' (Bakker, 2009: 108).

Nevertheless, even if the drafters of the BAL intended to radically break with the colonial legal regime, the law's restrictions on adat rights combined with the extensive control of the state later proved to be a basis to reinforce the almost absolute authority of the state over land (Burns: 2004: 250; Fitzpatrick, 1997: 183-184; Utrecht, 1969: 74; Bedner, 2016). The 'centralized, statist framing of land governance' was legitimized by

equating 'state sovereignty' with 'the people's sovereignty' (McCarthy and Robinson, 2016: 4). According to this rhetoric, the state, as the ultimate representative of the people, became the only valid entity to issue and register land rights.

2.3.3 The 1965-1966 massacres and the end of land reform

The BAL's most immediate effect on society was the initiation of an extensive land redistribution program. Two years after the enactment of the BAL the implementation of the program began, when President Sukarno formed land reform committees at the national, provincial and district level. The committees at the district level were the most important as they were tasked with measuring land, expropriating surplus land and determining the amount of compensation to be paid (Utrecht, 1969: 77). The land redistribution program would start in Java, Bali and West Nusa Tenggara and then the rest of Indonesia would follow. However, its implementation turned out to be highly problematic in the politicized countryside.

When the program began, many landowners resisted heavily. Mostly local elites, such as village heads, were selected to be part of the land reform committees at the district level, many of them being landowners themselves. The redistribution of land was not in their interest and this greatly slowed down the decision making of the committees. Local bureaucrats and military officials worked together with landowners to obstruct the implementation of the program (Robison, 1981: 9). There were also landowners who tried to distribute their lands to family members and associates before the reform program began. Many religious and conservative political groups, who were generally against land reform, supported the landowners. The farmer organizations on the other hand were hardly represented in the land reform committees (Huizer, 1972: 38-29). All of these factors seriously slowed down the progress of the land redistribution program.

The resistance from landowners sparked a reaction from the BTI farmer movement, many of its members being landless or semi-landless farmers. In 1963 the PKI and BTI initiated the '*Gerakan Aksi Sepihak'* (unilateral action movement), urging landless farmers to implement the land redistribution program by themselves. These actions eventually led to severe repercussions and it is in this context that we should understand the wave of massacres that shook the Indonesian countryside in late 1965. In the aftermath of an aborted leftwing coup of 30 September 1965, a nationwide hunt on PKI members and associates began. In less than a year, up to half a million people were slaughtered, mostly by para-military groups coordinated by the army. Most of the killing took place in Central and East Java, Bali and North Sumatra, all densely populated areas with tense land tenure situations. In addition, up to a hundred thousand PKI members, other leftwing elements, and people suspected to be sympathizers of the PKI were detained (Huizer, 1972: 50-52).

After the massacres came to an end, the land reform program was stopped and in many instances its results were even reverted (Utrecht, 1969: 86). Most of the beneficiaries of the land reform had been murdered and their family members were prevented from using the land. In the midst of the killing, the former landowners could

gain back their land (Wertheim, 1969). With the elimination of the PKI, the agrarian movement also came to an end. The succeeding government did not have any interest in land redistribution but instead favored the concentration of landholdings to facilitate capitalist modes of production (Wertheim, 1969; Robison, 1981).

2.4 THE DISREGARD OF CUSTOMARY LAND RIGHTS UNDER THE NEW ORDER

2.4.1 The BAL under the New Order: legitimizing dispossession

When in March 1966 Suharto rose to power in the aftermath of the massacres, political activity in the countryside had virtually gone down to zero. The massacres had eliminated the agrarian movement. In political terms, Suharto's New Order managed to secure stability, achieved by a dominant government party (GOLKAR) and a powerful army that penetrated all facets of society, including the bureaucracy. Economically, the New Order became a success story although economic growth relied heavily on the country's vast natural resources. In order to exploit these, the Suharto government needed to gain control over large tracts of land. Hence, state policy on land affairs aimed at facilitating massive appropriation of land to the domain of the state. The regime severely restricted civil liberties and suppressed almost all forms of critique towards the regime. Corruption practices soon became rampant and assured that profits would flow unevenly into the pockets of Suharto's family, his business allies and loyal officials (Robison, 1981).

The New Order period was generally marked by a disregard of land tenure systems based on customary arrangements. At the same time, the government performed very poorly in terms of registering land rights. Registration was expensive and complex and hence, often inaccessible for much of the rural population. As such, the land tenure security of millions of people was very weak. In rural areas, people were well-known within their community as the rightful owners of their land. But without a state registered certificate, the government often disregarded such rights. When local authorities gave some legitimacy to informal land rights, semi-legal land administration systems came into being. But because higher government agencies or courts often rejected such evidence in case of disputes, land tenure remained highly insecure. State interference with land rights varied from place to place. In some areas, the government did not enforce its claims to state land, but in other places, it explicitly prohibited people from entering or cultivating state land areas (Bedner, 2016: 77).

For the New Order government, the BAL became a useful tool to legitimize the authority of the state over land. Although conservative groups at first criticized it for being 'communist', the BAL remained in force during the New Order (Huizer, 1972: 54). Its centralist nature could serve the regime's interests simply because it 'reinforced the state's position in land management' (Bedner, 2016: 66). The *hak menguasai* provisions justified the state's allocation of large tracts of land to private or state companies for development projects or agricultural plantations (Fitzpatrick, 1997: 122). The BAL's restrictions on adat rights meanwhile, were useful in 'legitimising dispossessory projects' of the regime (Bedner, 2016: 67). The government did not apply the BAL in a consistent

manner, though. Provisions of the BAL that conflicted with government interests were simply ignored. For instance, the provisions covering the maximum size of land ownership were never implemented (McCarthy and Robinson, 2016: 7).

In the 1980s the government did make attempts to improve land tenure security by implementing several massive land registration projects such as the World Bank sponsored PRONA. These programs had very limited success (Bedner, 2016: 66). Acquiring a registered land title from the National Land Agency was a lengthy, complex and expensive process and as a consequence few Indonesians could actually legally register their land. What had also complicated land tenure security at the outset of the New Order was the enactment of sectoral laws on natural resources, primarily the Basic Forestry Law, which I will discuss below.

2.4.2 The 1967 Basic Forestry Law

While Suharto kept the BAL in place, he passed a number of additional laws. To a significant degree, these laws helped the New Order government to further strengthen its position in the management of the country's vast natural resources. Among them was the 1967 Basic Forestry Law (henceforth BFL), which became one of the most controversial and contested pieces of legislation in Indonesian history for it declared that all forests are to be controlled by the state (Safitri, 2010: 75).[27] All land designated as forest were administered under the legal category 'Forest Area' (*kawasan hutan*), which would automatically become state forest (*hutan negara*) and thus owned by the state (Safitri, 2010: 89-91). This control provided a legal basis for physical control over land on which forests were located.[28]

Huge areas were designated as Forest Area, of which the bulk was located in the outer islands. The Forest Areas eventually came to encompass some 70% of Indonesia's land mass (Bakker, 2010; Peluso and Vandergeest, 2001). At least one third of the land administered as Forest Area was in reality not covered with forest according to figures from the Ministry of Forestry (Safitri, 2010: 90). The Forest Areas were therefore divided between two categories: 'forested Forest Area' and 'non-forested Forest Area' (Safitri, 2010). To characterize this system of administration, Peluso and Vandergeest (2001) use the term political forest, whereas Safitri uses the term politico-administrative forest given that the designation of Forest Area is contingent on administrative decisions (2010: 91).

Through the BFL, the government legitimized its plan to exploit Indonesia's resource rich outer islands. The BFL provided the Ministry of Forestry[29] with a legal basis to grant logging concessions and other exploitation permits. During the New Order, the revenue generated from timber trade increased tremendously and the logging industry

[27] Article 5 (1) reinforced the distinction between forest and non-forests made by the Dutch in the colonial era, even though the BAL abolished this distinction some seven years earlier. Doing so, the law excluded forest land from the scope of the BAL.

[28] Safitri (2010) however contests that the right to control the forest provides a legal basis for the actual physical control of the land.

[29] Before 1983, the Forest Areas were under the authority of the Department of Forestry, which was part of the Ministry of Agrarian Affairs. Currently, they fall under the jurisdiction of the MEF.

became one of Indonesia's most lucrative sectors. Especially Suharto's close business allies and loyal military officials benefited from this exploitation, which led to massive deforestation in the outer islands (Barr, 1998). The state's claim to forest control came at the expense of the already weak land tenure security of millions of people living in or near territories that had become designated as Forest Area. While the BFL did make a distinction between state forests (*hutan negara*) and private forests (*hutan milik*), it stated that even the latter were to be controlled by the state.[30] Moreover, private forests were only to be recognized where registered private land rights existed, to be evidenced by a land ownership certificate issued by the NLA.

The BFL disregarded customary land tenure. It gave some space for rights of adat law communities, but just like the BAL, strict limitations rendered this recognition almost meaningless. The elucidation of the BFL explains that adat law communities may not invoke adat law to challenge government projects, 'for instance the large clearing of forest areas for big projects or for transmigration purposes'.[31]

2.5 ADAT LAND RIGHTS UNDER INDONESIAN LAW

2.5.1 The fall of Suharto and the call for adat community rights

In May 1998, the New Order regime collapsed after 32 years. A process of *Reformasi* began, resulting in greater civil liberties and the initiation of legal and institutional reforms towards democracy and decentralization. The power transition was an important momentum for the struggle for secure rural land rights. Already in the final years of the New Order civil opposition regarding competing land claims had grown, although activist networks then still had to operate in an underground fashion. Now that the political circumstances were changing they no longer hesitated to undertake action. Rural protestors backed by activist organizations deployed different types of actions including land occupations and rallies. These actions, labeled 'reclaiming actions' happened virtually everywhere (Lucas and Warren, 2003: 87-88). Although the outcome of these actions varied, they played an important role in shaping the political and legal reforms of the initial *Reformasi* years (Lucas and Warren, 2003: 87-88).

Many of the social movements demanding rural justice addressed their beneficiaries in terms of distinct, traditional communities eligible to special communal rights, rather than as 'the people' (*rakyat*), the rural poor, or as Indonesian citizens entitled to rights (Peluso, Rachman, and Afiff: 2008: 387; Djalins, 2011: 123). This development has to be understood in the light of a more general trend: the nationwide resurgence of adat and ethnic regionalism during the *Reformasi* years (Henley and Davidson, 2007).

While the unimplemented agrarian land redistribution program of the BAL provided an obvious legal ground to challenge the unfulfilled promises of the state towards local land users, activist movements instead invoked the term 'adat community'

[30] Introduction of the elucidation of the 1967 BFL.
[31] Elucidation of Article 17.

(*masyarakat adat*), a term strongly resembling the colonial concept of adat law community.[32] Considering that even during Van Vollenhoven's time critics already argued that the concept was outdated, it is remarkable that it now resurfaced to the main political stage. The term adat community was first coined during a meeting of NGO's and activist movements in 1993 in Toraja, South Sulawesi (Li, 2007: 333). In the years following, many local adat community organizations emerged and their activists campaigned for both agrarian and environmental justice (Peluso, Rachman, and Afiff, 2008: 388). As discussed in Chapter 1, one of the main actors behind the adat revival was AMAN.[33]

The demand addressed to the state to recognize the rights of adat communities was one of civil society's many calls for reform after decades of authoritarian rule under Suharto. Such calls did not only come from within, but also from forces outside Indonesia. Multilateral development institutions such as the World Bank and the IMF also encouraged Indonesia to implement neoliberal reforms that would decrease the power of the centralist state. In the period following Suharto's demise, decentralization and democratization laws were promulgated. Political power made an important shift to the regions. The demands of an organization like AMAN, which advocated for a less dominant role of the state and more autonomy for communities to govern their land and natural resources, appeared to resonate well with the spirit of neoliberal reform. Chapter 4 will provide further explanations on why claims for rural land rights manifested in this particular way.

2.5.2 Legal change and the return of the adat law community in Indonesian law

During late 1990s, rural groups involved in local land conflicts already began to invoke the adat community claim, sometimes with success. An example is the Katu community from Central Sulawesi, whose occupation of a conservation site was informally allowed by the Head of the Lore Lindu National Park in 1998 (Sangaji, 2007: 329). In another instance, formal recognition materialized, such as the Krui community from Lampung, whose land was recognized as a 'special objective zone' (*kawasan dengan tujuan istimewa*) within a Forest Area by a decree from the Minister of Forestry in 1998 (Djalins, 2011: 140-141). Typically, however, such battles for land rights would at best result in an informal measure of recognition by local authorities and as such, they rarely created legal certainty (Lucas and Warren, 2013). It is in this context that AMAN began to exert increasing pressure on the central government to implement legal reform that would provide a mechanism for the legal recognition of adat communities and their land rights.

As outlined above, both the BAL and the BFL did not provide substantial space for customary land rights of rural communities; its drafters had expected that these communities and their normative systems would gradually lose their significance and eventually disappear, while legal rights granted by the unitary state would come to

[32] For further discussion on the definition, see Chapter 4, Subsection 2.1.

[33] A more in-depth analysis of why organizations like AMAN fell back on colonial terminology to address their demands will be provided in Chapter 4, Subsection 2.4.

prevail.[34] They would have never imagined that such terminology would reappear at full throttle four decades later.

Adat law communities (*masyarakat hukum adat*) were given ideological reference in the BAL and the BFL, but these laws did not provide enforceable rights. Thus, for the legal position of adat communities to strengthen much had to be changed in the law. In 1999, the pressure from civil society to implement legal reforms had become so high that the government could no longer avoid undertaking some action. Various new laws and lower level regulations[35] were enacted that acknowledged the existence and rights of adat law communities.[36]

The Minister of Agrarian Affairs issued Regulation no. 5/1999 concerning Guidelines to Resolve Problems of Ulayat Rights of Adat Law Communities. According to this Ministerial Regulation, *hak ulayat* is not an ownership right, but an 'authority' over a certain territory (Article 1). Furthermore, People's Consultative Assembly Decree no. IX/2001 on Agrarian Reform and Natural Resource Management mentioned the rights of adat law communities *(*Article 4 (J)). In addition, following the second constitutional amendment of 2002, adat law communities were explicitly recognized by the Constitution (Article 18 (B)).

Arguably the most important legal change was the enactment of a new BFL. BFL no. 41/1999 replaced the BFL of 1967. The overall result was disappointing however, and civil society organizations strongly criticized the new law (Moniaga, 2007). It turned out that the Ministry of Forestry was hardly willing to relinquish its control over forest lands. The new BFL kept the state's authority over all areas designated as Forest Area intact. One of its few bright spots was the introduction of a new category of forest, adat forest (*hutan adat*). Yet, it defined adat forests as *state* forests inside the territory of adat law communities (Article 1 (6) before Constitutional Court ruling no. 35/2012). This implied that adat forests remained under the direct control of the Ministry of Forestry and that adat law communities could use these forests, but would not be their owners. Their rights were limited to managing forest and collecting forest products.[37] In that sense, this new category thus created some additional legal space, but not much in terms of ownership rights (Bedner and van Huis, 2010: 184).

---

[34] The 1967 BFL for instance states that *hak ulayat* weakens (*menjadi lemah*) as time passes.

[35] The 1945 Constitution sits at the top of the hierarchy of Indonesian law, followed by a decree of the People's Consultative Assembly (TAP MPR). Laws (*undang undang*) are the third highest form of legislation, followed by government regulations (*peraturan pemerintah*), presidential regulations (*peraturan presiden*) and provincial regulations (*peraturan provinsi*). At the bottom of the hierarchy sits the district regulation (*peraturan daerah*).

[36] Most of the new legislation used the concept *masyarakat hukum adat*, a concept also mentioned in the BAL and 1967 BFL. Some authors point at the inconsistency between the concepts *masyarakat hukum adat* and *masyarakat adat*. Arizona and Cahyadi for instance express concern that *masyarakat hukum adat* are only those communities that 'own a systematized, measurable law practice' *(*Arizona and Cahyadi, 2012: 54). They argue that by omitting *masyarakat adat*, the laws exclude communities that do not have such law practice. As we will see in Chapter 4 however, the definition under Indonesian law and the one of the most important adat community advocacy organizations, AMAN, are almost similar. AMAN's definition too stresses that *masyarakat adat* are governed by customary law and customary institutions.

[37] Article 67 (1) of the 1999 BFL.

2.5.3 Constitutional Court ruling no. 35/2012 on the separation of adat and state forest

AMAN advocated for the right of self-determination of adat communities, a well-established right of indigenous peoples in international law. However, the government was reluctant to incorporate this principle in the new legislation. Both the Ministerial Regulation no. 5/1999 and the 1999 BFL authorized the regional governments to determine who would qualify as adat law community, and as such, the powerful position of the state was retained, albeit in a decentralized way. The BFL (Article 67 (2)) and Ministerial Regulation (Article 3) provide that provincial and district governments can enact a regional regulation (*peraturan daerah*) to grant an adat law community legal recognition. Before doing so, regional governments should consider the findings from expert research and the aspirations of the community.[38] Bakker notes that in practice, the question of which groups qualify as adat law communities has become a matter of discretionary arbitrariness. In many places, a lack of political will at the district level was a serious obstacle and therefore only a handful communities were recognized in the first years after the 1999 BFL was promulgated (Bakker, 2008: 20).

The continuing dominant position of the state vis-a-vis the autonomy of adat law communities was a matter of great concern for civil society organizations. Indigenous rights activists realized that they needed a helping hand to push powerful government institutions to realize more extensive reform. This helping hand was found in the Constitutional Court (*Mahkamah Konstitusi*), which has the important task to review laws in light of the Constitution. Established in 2003 it was designed to be a neutral and objective arbitrator in disputes about fundamental issues. Such constitutional review was not allowed in Indonesia for decades, much to the benefit of the Suharto regime, which arbitrarily enacted legislation without a strong democratic basis (Butt and Lindsey, 2008: 241). Not surprisingly therefore, the establishment of the Constitutional Court met positive response from civil society.[39]

In 2012, AMAN and several of its constituent member communities decided to test their luck at the Constitutional Court, by challenging the constitutionality of the 1999 BFL. They contested the validity of the BFL on two grounds, both regarding Article 67. First, they challenged the validity of the legal provision that stated that adat forests are state forests and not community owned. Second, they objected that the district governments, not the communities themselves, were authorized to decide on who gets adat law community status. Although the judges of the Constitutional Court rejected the second claim, to the surprise of many they accepted the former. In May 2013, the court decided that adat forests are not state forest. This implied that adat forests, wherever legally recognized, would become the collectively owned forests of adat law communities. The

[38] Elucidation of Article 67 (2) of the 1999 BFL.

[39] During its first years, the general view was that the Constitutional Court's performance was more credible, more objective and more progressive than Indonesia's Supreme Court (*Mahkamah Agung*), which has had a bad reputation for decades. This seriously undermined the trust in the judiciary in Indonesia. Recent corruption scandals have however altered the public view of the court.

ruling received much publicity and was generally considered a breakthrough for the rights of adat communities across the archipelago.

2.5.4 Legal options for the recognition of adat law communities

Since the 2013 ruling of the Constitutional Court, the legal framework on adat community rights has developed further, as I will now discuss. The 1999 BFL remains the most important piece of legislation, as it provides a definition of adat law community and a procedure for its recognition. An adat law community can be recognized when it still exists (Article 67 (1). This is the case when the community; is still a law community (*recht-gemeenschap*); has institutions based on traditional authority; has customary rules and a customary judiciary that are still adhered to; has a clear communal territory; which is used for harvests that are collected for daily needs (elucidation of Article 67 (1)).

In addition, following Constitutional Court decision no. 35/2012, several ministerial regulations were passed that provide further details on how the state can recognize adat law communities and their land rights. The central government can only grant adat forest rights if there already is a regional form of government recognition.

There are two options for such regional recognition. The first is a regional regulation as stipulated in the above-mentioned Article 67 (2) of the 1999 BFL. Secondly, Ministerial Regulation no. 52/2014 concerning Guidelines on the Recognition and Protection of Adat Law Communities, enacted by the Minister of Home Affairs, grants district heads/mayors the authority to issue a decree (*keputusan kepala daerah*) on recognition based on recommendations from special committees (*Panitia Masyarakat Hukum Adat kabupaten/kota*) (Article 6 (2)). These are appointed by the district head/mayor (Article 3 (1)). They consist of: the regional secretary, the regional working unit head, the district head of legal affairs and the sub-district head. Article 4 stipulates that the committee has the task to verify the identification (*identifikasi*), validation (*validasi*) and determination (*determinasi*) of the adat law community involved.

After regional recognition has been realized, the following step for adat communities to secure their collective land rights is recognition at the national level. The MEF has issued a regulation on this procedure with regard to the recognition of adat forest rights. This procedure only appertains to Forest Areas administered by the MEF and not to state land under the jurisdiction of the NLA. Ministerial Regulation 32/2015 concerning Private Forest Rights (*hutan hak*) regulates the procedural steps to be taken. A ministerial decree (*keputusan menteri*) can designate an adat forest and hence, change its from state forest into private forest.

Article 6 of the Ministerial Regulation provides the following conditions for the Minister to recognize adat forests by ministerial decree:

- An adat law community or right to avail (*hak ulayat*) has been recognized by a regional government through a regional legal decision (*produk hukum daerah*);
- There is an adat territory that is partly or wholly located inside a forest;

- There is a formal request from an adat law community to designate the adat forest;

The Ministerial Regulation furthermore states that if an area previously administered as Forest Area used to be a protected or conservation forest, the forest should still remain protected even though it is now a private forest (Article 9). The adat law community can manage the forest according to adat principles (Article 10).

2.5.5 Towards more inclusivity: 'hak komunal'

According to the 1999 BFL, adat forest rights are to be registered as ownership rights of adat law communities. The state registers this right and determines which communities qualify as adat law communities and which do not. Given that only traditional adat communities can qualify for communal ownership of forests, the legal regime on customary land rights stipulated in the BFL is rather narrow. Alternatively, non-adat communities can apply for social forestry (*perhutanan sosial*) rights. However, current social forestry schemes only provide communities with temporary usage rights and do not confer ownership rights. Hence, under social forestry schemes, land tenure security of land users remains weak (Safitri, 2010).

It wasn't until December 2016 that - for the very first time - the Minister of Environment and Forestry formally recognized a number of adat forests by issuing a number of decrees. Nine plots of forests, in total covering 13,000 hectares, were released from the state forest and the adat law communities living in or near these forests formally became their collective owners. The transfer was made into an event at the Presidential Palace in Jakarta, where President Joko Widodo ceremonially handed over the adat forest decrees to the leaders of the communities. The President announced that this would be the starting point of a longer, systematic process of formalizing communal forest rights of adat communities. Skeptical voices have however expressed their doubts as to whether such a process will actually materialize, as its realization largely depends on the will of regional governments.[40]

In attempt to broaden the scope and to allow for the recognition of customary land rights of subjects other than adat law communities, several government departments have recently enacted new regulations. This recently adopted legislation has broadened the scope of communal land rights beyond the category of adat law communities alone.[41]

[40] For a critical account of the government's 'adat forest' policy, see for instance: https://geotimes.co.id/opini/menindaklanjuti-pengakuan-hutan-adat/, last accessed 10 June 2018.

[41] Another example is Joint Ministerial Regulation no. 79/2014 concerning Procedures for Settling Land Tenure within Forest Areas, adopted by the Minister of Forestry, the Minister of Home Affairs, the Minister of Public Works and the Head of the NLA/Minister of Agrarian Affairs. It provides a procedure for the release of land from the state forest when individuals, collectives or adat law communities have controlled this land for more than 20 years (Article 8). Special verifications teams, the so-called Tim IP4T, are tasked with inquiring the requests. They consist of officials, including sub-district heads and village heads (Article 2 (2)). The results of their inquiry are to be submitted to the head of a regional NLA office (*kantor wilayah*), who in turn sends the results to the MEF. The Minister can then decide to release the land from the state forest.

Among these is Ministerial Regulation no. 10/2016 concerning Procedures to Determine Communal Rights of Adat Law Communities and Communities in a Specific Zone, by the Minister of Agrarian Affairs/Head of National Land Agency. This Ministerial Regulation replaces Ministerial Regulation no. 5/1999 concerning Guidelines to Resolve Problems of Ulayat Rights of Adat Law Communities and adopts a more inclusive approach in two ways. First, it allows for the recognition of communal land rights (*hak komunal*) in both state forest and on state land (*tanah negara*) controlled by the NLA. Second, the Ministerial Regulation provides the possibility for both adat law communities *and* other communities to obtain communal ownership rights in a Forest Area or state land. It refers to these communities as 'communities in a Specific Zone' (*masyarakat dalam Kawasan Tertentu*). Special Zone refers to a Forest Area or to a plantation concession. Including this type of community as a category was motivated by the practical difficulties for communities to prove that they are an adat law community.[42]

For communities to obtain *hak komunal*, a request has to be filed with their district heads. These shall then form an inventory team called Tim IP4T.[43] After the Tim IP4T verifies the communal land right, the land in question shall be released either from the state forest or from the plantation concession. If the land is located inside a Forest Area, the Tim IP4T will hand over its results to the MEF, which should then release the land from the Forest Area (Article 11). If the land is located inside a plantation concession, the holder of the concession rights shall be requested to exclude the plot of land from its concession (Article 13 (1) b).

After the Tim IP4T has given its approval to the particular district head/governor, a district head decree or governor decree shall be issued, which shall then be sent to either the Ministry of Agrarian Affairs/NLA or the MEF (Article 18 (2)) who will be asked to exclude it from their jurisdiction. While the conditions for adat law communities are very similar to those stipulated in the 1999 BFL, those for non-adat law communities are less strict; the most important one is that the community has had physical control over the concerned land for at least ten years (Article 4 (2) a). As such, this Ministerial Regulation moves towards a more inclusive approach to secure community land rights.

Until now however, the Ministerial Regulation has yet to be implemented. Currently, the website of the MEF only refers to social forestry and adat forests as the legal mechanisms through which forestland will be distributed to communities.[44] There are several explanations for this. First the Ministerial Regulation includes groups that are not adat law communities, which significantly widens the number of people that could make claims to land located in the Forest Area or in a plantation concession. One major restriction of adat forest rights is that they can only be held by adat law communities. In Chapter 7, we shall see that it in order to obtain this status in practice, communities need

---

The Joint Ministerial Regulation does not provide clarity on whether the applicants will receive land ownership certificates, either on a collective on individual basis.

[42] Interview with Head of Legal Affairs and People's Relations of Ministry of Agrarian Affairs/NLA, 30 September 2015.

[43] IP4T stands for *Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah* (Inventory of control, ownership, use and benefit of land).

[44] http://pskl.menlhk.go.id/akps/index.php/site/cara_pendaftaran, last accessed 24 July 2018.

to prove that they are sufficiently 'traditional'. The Ministerial Regulation on *hak komunal* on the other hand only demands communities to have occupied a plot of land for ten years. This is a claim that arguably millions of people living in Forest Areas can make, and if recognized, would pose a great risk to the control of the MEF.

A second explanation is that the Ministerial Regulation was singlehandedly enacted by the Minister of Agrarian Affairs/NLA, but provides legal procedures for the release of land from Forest Areas, which fall under the jurisdiction of the MEF. These two ministries are known for their competing claims to state land and therefore, the MEF might view the Ministerial Regulation as an infringement on its jurisdiction. Due to the lack of implementation, the broadened scope of customary land rights in recent legislation does not yet offer an effective alternative to the limitations of the adat law community legislation. The general discourse on customary rights in Indonesia currently remains centered around the rights of adat law communities.

So far I have discussed two of the most important features of the legal framework on customary land rights in Indonesia: the narrowly defined concept of adat law community and a dependency on regional government agencies for recognition. I will show in subsequent chapters that the political constellation at the district level is a decisive factor for the extent of success that adat community claims might have. For claimants to qualify as adat law community, they sometimes have to 'make them fit where they do not', especially when the necessary defining conditions of adat law community are no longer in place (Bowen, 2000: 14). The practical implications of these obstacles will be more elaborately discussed in the case studies in Chapter 6 and Chapter 7.

2.6 CONCLUSION

In this chapter I have provided a historical overview of customary land rights developments in Indonesia. I have explained the importance of the concepts 'adat law' and 'adat law community' during the late colonial period, their fall into oblivion in the decades following independence, and their resurgence in the 1990s.

The full-fledged return of the adat law community concept in post-Suharto Indonesia must be understood against the backdrop of the failure of the state to provide secure land rights on the basis of citizenship. While a unified, pro-poor land law was put in place in 1960, political constraints hampered the realization of its promises; land tenure security and a fair distribution of land holdings. Under Suharto, people's land tenure security was weak while the control of the state was close to absolute. Since *Reformasi*, calls to revive colonial concepts of rural justice came about. I have explained how the concept of adat law community has regained a prominent position in Indonesian law. Little by little has the state given in to public demands to widen the scope of the recognition of adat communities. The Indonesian legal framework on the recognition of adat law communities is now fragmented over different laws and regulations. The legal position of adat law communities has transitioned from mere symbolic acknowledgment, to a concrete procedural framework of legal recognition.

The Indonesian government nevertheless remains reluctant to relinquish its decision-making authority on who qualifies as adat law community. Under the current legal framework, the realization of customary land rights is contingent on the decisions of government agencies. Like colonial officials during the Ethical Policy, they are tasked to observe and recognize the normative systems of traditional communities. This in fact confers government agencies extensive political control. Regional governments are for example required to appoint research teams to verify the existence of adat law communities. On paper, this procedure merely entails conducting research on whether a community-based normative system is still in place in a given location. However, as we will see in later chapters of this book, questions of land use and customary tenure are actually highly complex. Local land users typically make claims to adat land rights in conflict situations that not only involve a local community, but also state and corporate actors. In such cases, verifying the existence of an adat law community may be a contentious issue given the various interests at stake.

Finally, it is worth stressing that apart from the new legal concept of *hak komunal*, obtaining the status of adat law community is at present the only legal mechanism available through which Indonesian citizens can secure customary land rights. This is highly ambiguous considering that already during Van Vollenhoven's time, critics pointed out that the term was outdated. These argued that self-governing communities belonged to the past. In this regard, one can raise question marks as to whether the concept of adat law community - when becoming the center of customary land rights policies - can actually improve land tenure security in Indonesia's complex contemporary social and political reality. Later chapters of this book will further look into this issue. In the next chapter, I will first analyze the causes of long-lasting land conflicts in Indonesia, focusing on a case that has dragged on for decades.

3 AGRARIAN CONFLICT IN BULUKUMBA DURING THE NEW ORDER AND BEYOND (1981-2006)

'To grasp the role of an institution or official in an ongoing conflict, as well as the meaning and outcome of the conflict for the people involved, requires insight into the origins, context, life, history, and the consequences of the conflict – insight that can only be obtained from the participants.' (Felstiner, Abel, and Sarat, 1980: 639)

3.1 INTRODUCTION

Land conflicts in Indonesia involve a wide range of actors and are fought in various political and legal arenas. As Lucas and Warren put it, they are multi-level conflicts between 'elites and popular forces, between regional interests and central government, and between national and transitional capital' (Lucas and Warren, 2013: 2). They became frequent during Suharto's New Order (1966-1998), when land policies prioritized large-scale natural resource exploitation and local land users had 'to make way for private or state development projects' (Aspinall, 2004: 77). Under Suharto's rule, state driven natural resource exploitation intensified, especially in the outer islands where large land conversions and development projects infringed upon the customary systems of traditional land users. In the heydays of the New Order, the logging boom was one of the main drivers of growing land scarcity, especially outside of Java. From the 1990s onwards, the timber industry has gradually been replaced by oil palm, cash crops such as cocoa and trees for the paper and pulp industry. According to Lucas and Warren, contestation over land became 'the single most prominent cause of conflict between the government and the heavily repressed civil society under the New Order' (Lucas and Warren, 2013: 9).

Following the fall of Suharto however, new means became available for land claimants to address their grievances. *Reformasi* was marked by a number of dramatic political and institutional reforms. These transformed the formerly authoritarian and centralist state into one that was democratic and decentralized. Civil liberties expanded and a drastic reshuffle of political power took place. A noteworthy example of reform in the field of land law was the return of the 'adat law community' concept in legislation, as discussed in the previous chapter. The new political climate allowed citizens more freedom to organize themselves. Collective actions such as demonstrations and occupations became common all over Indonesia. Simultaneously, new coalitions were made between grassroots movements and larger NGO networks, as well as with local power holders. Also, the judiciary became more independent from government. Nevertheless, many agrarian land conflicts that began during the New Order continued, sometimes resulting in violent conflict. Restorative justice for those who had experienced rural grievances under Suharto proved hard to realize.

This chapter aims to explain why, in spite of Indonesia's democratization and decentralization process, agrarian land conflicts that became rampant during the New

Order have persisted. It is divided into three parts. Before going deeper into the dynamics of land conflicts in Indonesia, the first part considers what land conflicts are and how I approached them. This is followed by a general overview of land conflicts during and after the New Order. In the third part, an in-depth case study of a plantation conflict in the district of Bulukumba (South Sulawesi province) between local land users and a plantation company will provide further insights. This conflict has been lingering on for decades and has gone through various phases including court procedures, mass mobilization, government-led mediation and violent episodes. Mapping its long trajectory offers the opportunity to examine how political changes at the national level impacted a local conflict, and also allows for an evaluation of the various attempts of state and non-state institutions to resolve the conflict.

The case study in this chapter provides two main insights. The first is that the involvement of government and judicial institutions may actually complicate, rather than facilitate, the settlement of a land conflict, especially when the decisions and interferences by these institutions are not well aligned. Second, I will show that when government agencies only consider the legal aspects of a layered, longstanding land conflict, grievances that were not 'recorded' by a legal process will remain unaddressed. Conflicts are then likely to continue, especially when the conflict first emerged under an oppressive political system.

3.2 STUDYING LAND CONFLICTS

3.2.1 What is a conflict?

Conflicts or disputes are 'not things: they are social constructs' (Felstiner, Abel, and Sarat, 1980: 631).[45] In order to understand such constructs, we need to investigate their underlying social processes. They do not instantly come into being simply because of disagreements between two or more parties. Usually a number of social transformations take place before a conflict arises. Felstiner, Abel and Sarat (1980) identify these as the processes of naming, blaming and claiming. The first step is naming, which means that an actor identifies an experience as injurious. The second process - blaming - occurs when the injurious experience turns into a grievance. This is the case when the actor considers the injurious experience to be caused by someone else's wrongdoing. Finally, when the grievance is explicitly articulated to seek for redress, claiming takes place. When a claim is rejected by the party blamed for the grievance, either explicit or implicitly, a dispute or conflict exists (Felstiner, Abel and Sarat, 1980).

The transformation processes that precede the emergence of a conflict will certainly not occur under all circumstances. For example, whether a grievance turns into a claim depends on many social and political factors. Another important factor is the personality and social position of the actor(s) involved. In this context, Felstiner, Abel and Sarat note that 'only a small fraction of injurious experiences ever mature into disputes'

[45] For an explanation of how I use the terms 'conflict' and 'legal dispute' in this study, see Chapter 1, Subsection 3.2.

(1980: 636). When citizens face an oppressive government for instance, it is less likely that grievances caused by the government will be articulated openly than when the political circumstances allow actors more liberties.

3.2.2 Approaching land conflicts

The study of Felstiner, Abel and Sarat compels us to turn our attention not only to the more advanced stages of a conflict, for instance the moment that a conflict has turned into a legal dispute, but also to its anterior stages. For a proper understanding of the trajectory of the Bulukumba plantation conflict, the latter are often at least as important as the former. In the case study, I have not only looked at the legal trajectory of the conflict, but also at its anterior stages, including the events that took place outside of the courtroom. A wide range of actors has been involved in the conflict, including the judiciary, the district and provincial government, various NGO's, the NLA and of course the two main parties in the conflict: the local land users and the plantation company.

During my fieldwork in Bulukumba between 2013 and 2016, I tried to interview as many of the participants involved in the conflict as I could. I also collected documentation such as court hearing transcripts and written correspondence between government agencies. The combination of personal recollections from a wide array of actors and written documentation allowed me to draw up a decent reconstruction of the events that took place since the establishment of the plantation estates in Bulukumba. To reconstruct the events, I focused on the perspectives of what I perceive as the most important agents in the conflict: the dispossessed local land users who tried to get their land back. Nevertheless, I also held interviews with various government officials and managers of the plantation company.

The present study is not the first academic work on the Bulukumba plantation conflict. Most notably, Adam Tyson has devoted a chapter of his 2010 book on adat revivalism to the same conflict. His well-written take on the conflict provides rich details and many interesting observations. At certain points however, his findings and conclusions with regards to why the conflict is so difficult to settle differ significantly from my own. These divergences stem from a difference in approach: Tyson's case-study largely adopts the perspective of the plantation company involved in the conflict, while my account of the case also sheds light on the perspective of the local land users. I will return to these differences later in this chapter.

3.3 LAND CONFLICTS IN INDONESIA DURING THE NEW ORDER AND BEYOND

3.3.1 The rise of land conflicts during the New Order

After Suharto's rise to power in 1966, Indonesia drastically changed its economic policies. In order to revive its severely weakened economy, the country needed 'massive external support' (Anderson, 1983: 488). Attracting foreign investment became a government priority that paid off quickly. In the 1970s, Indonesia's economy began to grow at an

unprecedented rate (Lucas, 1992: 86). A driving force behind the economic growth was the large-scale exploitation of the country's abundant natural resources, particularly oil and timber from the outer islands (Gordon, 1998: 1-24). Huge tracts of land were to be made available for infrastructural development projects, for the conversion to plantations, and for other new types of land use. It led to 'a dramatic increase in the demand for land' (Rosser, Roesad, and Edwin, 2005: 59). The government halted the land reform agenda and the new trend was the 'increasing commercialization of land' (Lucas, 1992: 84).

Even though private companies were the main driver of economic expansion under the New Order, the state played a major role in the economy through its control over land and natural resources. The BAL and sectoral laws such as the BFL granted the central government the authority to allocate permits for the exploitation of land and natural resources. Various government factions were in charge of handing out licenses to foreign and domestic companies, including lucrative oil, plantation and mining concessions. In order to obtain these, private entrepreneurs and companies needed to establish close ties with influential officials. The allocation of concessions was often channeled through the informal alliances of businessmen and military or civilian officials, blurring the lines between public service and private sector (Robison, 1978: 24).

Some authors have labelled this system as a form of 'authoritarian bureaucratic capitalism' (Schulte Nordholt, 2003: 554), characterized by 'monopoly and lack of public accountability' (Robison, 1978: 25). In the case of land clearances, the state rarely seriously considered the interests of the existing land users (Sakai, 2002: 18). In the 1970s, the Ministry of Home Affairs established Land Release Committees (*Panitia Pembebasan Tanah*), which had to determine the price of compensation for land. Representatives of local land users were never part of these committees (Lucas, 1992: 85). Small-scale farmers who already occupied or cultivated the land were often evicted without proper compensation. The majority of them were in a very weak legal position. The BAL provides that all land rights need to be registered, but in practice, registration was difficult due to the high costs and bureaucratic hurdles of land titling procedures (Reerink, 2012).

Most local land users thus lacked formal land titles and usually, the only justification for their entitlement to land was the length of their occupation of a land plot and their payment of taxes (Lucas, 1992: 84). However, as discussed in the previous chapter, Indonesian law was (and still is) ambiguous about the status of such claims. Though the BAL proclaims to be based on adat law and provides that adat law would prevail in the absence of implementing regulations, it does not give clarity on the legal status of long term, but unregistered land occupations (Bedner, 2001: 154). Courts rarely recognize such rights and tend to give precedence to concession rights held by companies. Therefore, when local people challenged their eviction or the amount of compensation they received in court, they would often lose (Lucas, 1992: 86). Furthermore, as I will show in the case below, even if judicial rulings would be in favor of existing land users, powerful officials could obstruct the implementation of the judgment. Yet, in many

instances, conflicts would not even make it to courts, because people did not believe that the judiciary was 'fair and free of politics' (Sakai, 2002: 19; see also Rifai, 2002).

Resistance against evictions and land expropriations was severely suppressed by Suharto's regime. With the political chaos of the 1960s fresh in mind, the New Order government tried to establish order and political stability. Its successes in this regard are noteworthy, but came at the expense of civil liberties. The government demobilized and depoliticized civil society, effectively eradicating organized contestation and collective action of rural population groups (Hadiz, 2007: 882). Existing landholders were highly dependent on outside support. The Indonesian Legal Aid Foundation (YLBH) played an important role here (Lucas, 1992). However, the New Order government was cautious of any outside support that could trigger popular mobilization. Various levels of government explicitly tried to prevent student groups to become involved in land conflicts and hence 'tried to drive a wedge between the students and landholders' (Lucas, 1992: 90). While an NGO movement emerged in the early 1980s, organizations remained under government control and were expected to stay away from politically sensitive issues such as farmer land rights (Rosser, Roesad, and Edwin, 2005: 58).

Because of the repression of larger movements, most resistance up until the mid 1980s was of a small scaled, localized nature. At the local level, those brave enough to challenge land evictions or other forms of dispossession faced repression (Schulte-Nordholt, 2003: 53). In many rural areas, government presence was very strong. Local officials such as village heads tended to be loyal to the New Order regime, rather than being supportive to the land claims of local land users. They were 'patronizing, manipulative, sometimes intimidatory' (Lucas, 1992: 87). In the outer islands these officials were usually local elites of aristocratic descent. Their loyalty to the New Order could cause great frictions within rural societies (Aspinall, 2004: 80).

'Politico-bureaucrats' during the New Order generally felt 'unconstrained by either parliament or the rule of law' (Rosser, Roesad, and Edwin, 2005: 56). Their loyalty to the regime would be rewarded with informal favors and in this way regional governments were 'in fact agents of the center' (Schulte Nordholt and van Klinken 2007: 11). In addition, supporting companies was a lucrative means to generate personal revenue. According to Schulte Nordholt, their relative autonomy to operate 'facilitated the reproduction of patrimonial patterns of rule at the local level, while it may be assumed that informal networks connected the interests of both local businessmen and bureaucrats '(Schulte Nordholt, 2003: 563).

The fiercest intimidation, as well as the most frequent use of force to repress local land users came from military officials, who were often directly or indirectly involved in land conflicts during the New Order (Lucas and Warren, 2013: 10). Indonesia's military structure paralleled the civilian bureaucracy, which meant that the army (ABRI) was present at every level of government, from the central government down towards the village level (Gunawan, 2004: 160). In line with the doctrine of *dwifungsi* (dual function), the Indonesian army operated both as a military and socio-political force penetrating all facets of society to protect the interests of the regime (Jenkins, 1983: 15). Regional military units often worked as 'paid enforcers' for plantation companies, helping them to

access land by forcefully evicting existing landholders (Sakai, 2002: 15; Barber and Talbott, 2003: 145). The military was to a large extent responsible for its own funding. In need of rent-seeking opportunities, lucrative informal deals with plantation companies were the norm. At other instances, military units had direct business interests or shares in plantation companies (Anderson, 1983: 492; Barber and Talbott, 2003: 145-146).

Thus, the agrarian conflicts described above were in essence conflicts between local population groups who were bypassed in decision-making processes on land use change, and 'bureaucratic, military and corporate power' (Hadiz, 2000: 14). Lucas labels the situation of farmers under the New Order as one of 'powerlessness' (Lucas, 1992: 86).

By the late 1980s, civil society's space to maneuver increased somewhat. People facing land expropriations began to receive more external support and the numbers of NGO's and student organizations quickly rose. It was during this time that rural communities increasingly began to articulate their grievances explicitly. Activists - mostly young people of an urban middle-class background - initially focused on providing legal aid to dispossessed people. Gradually activists began to shift towards organizing broader movements that were involved in mobilizing local people and public campaigning. Their calls for justice often referred to the emerging global discourse of 'universal human rights', hence safely eluding the politically sensitive issues of social class or land reform (Aspinall, 2004: 78-82). But such campaigns often had limited concrete results and the practices of forceful dispossession largely continued. Nevertheless, because of these efforts, the issue of land conflicts began to receive more attention in public debates and in the media (Aspinall, 2004: 77).

The increased public attention for land disputes had a political impact. Though far from being a serious threat, it questioned the legitimacy of the New Order within society (Aspinall, 2004: 82). As a result, the regime's tight grip on civil society continued to loosen in the early 1990s. The resistance against the New Order land policies became more organized, following 'a long silence of rural activism' (Rachman, 2011: 7). A number of independent regional peasant organizations emerged, beginning with the SPJB (*Serikat Petani Jawa Barat* Eng. West Java Peasant Union). A national agrarian organization, KPA (*Konsorsium Pembaruan Agraria* Eng. Agrarian Reform Consortium) was founded in 1995. However, the risk of suppression remained present and most of the movements stayed confined to small circles of activists that were forced to operate in an underground fashion (Aspinall, 2004: 80). Many farmer organizations still 'lacked extensive networks as a result of the long history of repression of all forms of political activity' (Bachriadi, Lucas, and Warren, 2013: 311). Up until the end of Suharto's rule it therefore remained difficult for activists to 'connect local land struggles' to larger political movements (Rachman, 2011: 8).

3.3.2 The continuation of land conflicts after the fall of Suharto

In May 1998 President Suharto stepped down following 'massive opposition from civil society groups' (Rachman, 2011: 53). To a large extent, the power transition was the result of a wave of protests from within society, in which particularly student groups and

urban poor played a major role (Aspinall, 2004: 84). The regime change was followed by a 'rapid expansion of associational activity' (Aspinall, 2004: 85). NGO's and farmer organizations began to make serious efforts to push for legal reform, with various degrees of success. At the grassroots level however, people were 'not waiting for policymakers' reforms' and took 'matters in their own hand' (Barber and Talbott, 2003: 152).

In the direct aftermath of the New Order's collapse, a wave of 'direct actions' struck many parts of Indonesia's countryside (Lucas and Warren, 2013: 156). These collective reclaiming actions were carried out by local communities with 'decades old' grievances against the state or corporations (Barber and Talbott, 2003: 152). They involved 'occupations, blockades and the destruction of company assets' (Lucas and Warren, 2013: 15). In the province of East Java alone, there were more than 50 of such reclaiming actions counted, while in South Sumatra province, more than 20,000 hectares of disputed land were occupied by local farmers (Bachriadi, 2012). In West Java, farmer movements played a significant role in the organization of these actions. In other areas they were weakly organized and reclaiming land happened in a more or less spontaneous fashion (Lund and Rachman, 2016: 1223).

That rural people throughout the country suddenly no longer hesitated to reclaim land that had long been denied to them, must be viewed 'above all in the context of weakening state and security force power after the fall of Suharto' (Bachriadi, 2012). Habibie, who succeeded Suharto as President in 1998, dissolved the *dwifungsi* structure and formally pulled the military out of political affairs. Internal security became the primary function of the police, while the military's extrajudicial powers were abolished (Klinken, 2007b: 30).[46] Such changes significantly altered power relations in rural areas. For instance, many plantation companies could no longer blindly trust upon the 'loyalty' of local government officials.

The 1997 Asian financial crisis left many companies in severe debts and as a result, they no longer disposed of the means to pay bribes in return for support. It was under such conditions that 'many occupations took place without interference from the state apparatus' (Lucas and Warren, 2013: 15). According to newspapers, between 1998 and 2000 there were 28 mining companies that stopped operating, while 50 timber companies halted logging activities as a result of competing land claims by local land users (Lucas and Warren, 2013: 16; Barber and Talbott, 2003: 152).

In many instances however, the excitement among people with longstanding rural grievances was only of a temporary nature (Barber and Talbott, 2003: 154). Although local communities enjoyed more freedom and received more support, the lack of government control had a flipside. Ultimately, those seeking to reclaim their lost lands still 'faced powerful and violent adversaries', especially in the form of thugs working for plantation companies (Aspinall, 2004: 88). Instead of the military, companies increasingly began to deploy local thugs, known as *preman*, to use violence against land disputants in the early 2000s (Collins, 2001: 46). At other instances, the support to corporations was once again provided by the state security apparatus, particularly the paramilitary police

[46] This separation was formalized through a Presidential Instruction (*Instruksi Presiden no. 2/1999*) and later confirmed in constitutional amendments.

force (*Brimob*) (Aspinall, 2004: 88). In the absence of effective conflict resolution, many agrarian land conflicts lingered on for years, sometimes interrupted with intermezzos of relatively quiet periods. In the current era of regional democracy, conflicts have tended to heat up right before and after regional elections, when aspiring political candidates make populist promises about settling the conflict in order to gain support (Buehler, 2016). Having discussed the general trajectory of agrarian land conflicts during the New Order and their continuation following the regime change, the next section will focus on the longstanding plantation conflict in Bulukumba, which began in 1981.

3.4 THE BULUKUMBA PLANTATION CONFLICT UNDER THE NEW ORDER (1981-1998)

3.4.1 Origins of the conflict

The Bulukumba plantation conflict is a case of longstanding, ongoing resistance of local land users against the occupation of land by a plantation company named PT. PP. London Sumatra (hereafter PT. Lonsum).[47] The company holds the long-term lease rights to exploit some 6000 hectares of land on the basis of a state granted concession (*Hak Guna Usaha* henceforth HGU). Since the collective contestation against the company began in the early 1980s, the conflict has gone through various phases. It escalated in 2003, when several farmers were killed by the police during a mass occupation of the plantation. Taking into account how the conflict began and developed during the New Order helps us to understand how it reached that point.

The establishment of the plantation in Bulukumba began in 1919, when *NV Celebes Landbouwmaatschappij*, a plantation company founded by two British entrepreneurs, obtained *erfpacht (*long term lease) rights over a plot of 1600 hectares spanning over three districts (today Bulukumba's sub-districts Kajang, Bulukumpa and Ujung Loe). Local indigenous leaders had agreed on the land lease after the colonial government paid them indemnities.[48] The company established two estates on the land, Balangriri and Balombessie, which were planted with rubber and coffee. In 1926 the company became a subsidiary of Harrisons and Crosfield Ltd, the largest British plantation company operating in the Dutch East Indies. Following this take-over, the company acquired the rights to establish an additional, third estate named Palangisang in 1930. This estate was significantly larger - covering 5000 hectares - and was initially acquired to cultivate and

[47] PT is an acronym for *Perseroan Terbatas*, a term that refers to a limited liability company. PP stands for *Perusahaan Perkebunan*, meaning plantation company.

[48] The indigenous heads that agreed on the lease were the *Karaeng* Bapa Matasa of Kajang, *Karaeng* Nanrang of Ujung Loe, and *Karaeng* Nojeng of Bulukumba Toa (now sub-district Bulukumpa). This information is provided in a report of PT. Lonsum named '*Klarifikasi Issu HGU PT. London Sumatra Indonesia Tbk Sulawesi-Bulukumba'*, which I obtained from the Head of Land Conflicts of the district government of Bulukumba in April 2014. In addition, a letter entitled '*Uittreksel uit het register der handelingen en besluiten van den gouverneur van Celebes en onderhoorigheden No.719/599/AA*' of 29 October 1930 directed to the *Karaeng* of Bulukumba Toa, states that the right holders of the leased land of Palangisang estate, Bulukumba Toa were to be indemnified for the release of their land.

process kapok.[49] The estates were (and still are) the only large plantation estates in South Sulawesi, a region otherwise characterized by rice fields and farming gardens of smallholders. According to several accounts, the area surrounding the estates was still sparsely populated when the estates were developed.[50]

From the 1940s until the mid 1960s the company could not operate smoothly due to the Japanese occupation, the subsequent battle for Indonesian independence and the Darul Islam rebellion conflict that struck large parts of the South Sulawesi countryside. Although the government granted a new permit to the company (that now went by the name of PT. Perkebunan Sulawesi) in 1954, the security situation remained a significant obstacle for the intensification of production.[51] Subsequently, during the confrontation between Indonesia and British-backed Malaysia, President Sukarno nationalized all British plantation companies in Indonesia in 1964, including PT. Perkebunan Sulawesi (White, 2012: 1310).[52] During this time, state owned enterprise PP. Dwikora took over the plantation estates. Meanwhile, the *erfpacht* rights were converted into concession rights (HGU), in compliance with the newly adopted BAL. Villagers recollect that during the 1960s, PP. Dwikora hired local paramilitary soldiers to expand Balombessie estate beyond its original borders. These soldiers forced local farmers from their land and accused those who resisted of being PKI members.[53]

After Suharto became President, Indonesia re-opened its doors to foreign investors and enterprises. In 1968, Harrisons and Crosfield signed an agreement with the Indonesian government that allowed the company to restart operations on its previously held plantation estates throughout the country (White, 2012: 1312). The three plantation estates in South Sulawesi were assigned to Harrison and Crosfield's daughter company PT. Lonsum. In 1976 the company eventually obtained an HGU with a duration of 30 years.[54] According to the HGU, the three estates now covered a total of 7093 hectares. Because of the political turmoil of the previous decades, much of Palangisang estate, by far the largest estate, had not yet been converted into rubber fields, and was still covered with forest.

---

[49] The information regarding the establishment and size of the estates comes from the newspaper *De Indische Courant,* 04 November 1938.

[50] *De Indische Courant* (04 November 1938) notes that the plantation estates are located in one of the most sparsely populated regions of South Sulawesi. Furthermore, a travel report from a colonial official (Klaveren, 1918) provides a detailed description of the landscape before the plantation estates were established. The terrain alongside the main road between Kajang and Tanete, where Balombessi estate and Balangriri estate were later established, was characterized by dry, savanne-like terrain. The district of Ujung Loe on the other hand, where Palangisang estate is located today, was densely forested and home to many wild buffalo's.

[51] In the mid 1950s, fighting between the Indonesian army and Darul Islam guerillas occured near and around the plantation estates. Sometimes, this directly impacted the operations of the company. In 1954 for instance, Darul Islam soldiers burned warehouses of Balangriri estate and kidnapped some of the company's employees. From: *De Locomotief, Semarangsch Handel- en Advertentie Blad*, 20 May 1955.

[52] President Sukarno nationalized the company through *Penetepan President no. 6 tahun 1964*.

[53] Interview with an ex-paramilitary soldier who claims to have who worked for PP. Dwikora, conducted in Jawi Jawi Village, sub-district Bulukumpa, 28 April 2014.

[54] The HGU was issued by Letter of Ministry of Home Affairs no. 39/H.G.U/DA/1976 and declared retroactively valid from May 1968 to May 1998.

What had happened at the location of the plantation estates during these turbulent years? In the early 1950s the plantation company abandoned Palangisang estate and during this period, local farmers had begun cultivating plots of land in the border areas of the estate, planting it with rice, corn and banana trees. Some of them had migrated from other regions of South Sulawesi province, attracted by the available land in the area. However, most of them were from nearby villages of the sub-districts Kajang and Bulukumpa. Various accounts suggest that these farmers were the first to 'open' the forested lands located on Palangisang estate.[55]

In 1979, PT. Lonsum planned to expand rubber production on the estate, which would cause tension between the company and local cultivators. One area of such tension was Ganta, a hamlet in Tambangan village (now Bonto Biraeng village), sub-district Kajang. A significant part of Palangisang estate is located in this village (see research locations map on page 6). In October 1981, employees of PT. Lonsum showed up in Ganta and ordered the farmers to vacate their fields immediately. While the farmers initially refused to comply to the demands of the company, they eventually left the land behind after company workers and local government officials began cutting down the farmers' fruit trees. In the months that followed, dozens of company workers began to plant the land with rubber. Similar evictions occurred in other villages in the border areas of Kajang, Bulukumpa and Ujung Loe sub-districts.

Most of the local land users who were forced off Palangisang estate did not dare to resist out of fear for possible repercussions, especially because PT. Lonsum was supported by the regional military unit (*Kodim*). At the local level, they faced a powerful coalition, as the district government and military officials worked hand in hand with the plantation company. Nevertheless, a large group of farmers from Ganta decided to take action and bring the company and two local government officials to court.

In April 1982, a farmer named Hamarong filed a civil lawsuit on behalf of himself and 171 other farmers at the Bulukumba District Court against PT. Lonsum, the Tambangan Village Head and the Kajang Sub-District Head.[56] That this group of villagers turned to litigation is remarkable, as in rural Indonesia, according to scholars like Rifai (2002: 12), litigation is not a culturally accepted way to address conflict. It is also time consuming and expensive, especially for poor villagers.[57] It is also remarkable that the villagers turned against local officials. In Kajang, there is a long tradition of respect towards local authorities, which I will explain further in Chapter 5.

3.4.2 The legal dispute

[55] Interview with Selasa B in Bonto Biraeng Village, sub-district Kajang, Bulukumba, 10 April 2014. Similar stories were told by various witnesses overheard during the hearings of the lawsuit at the Bulukumba District Court in 1982, according to official transcripts of the hearings.
[56] Bulukumba District Court Ruling no. 17/K/1982/BLK.
[57] Another plausible reason why this particular group turned to litigation is the fact that the leader of the farmers, Hamarong, was originally not from Kajang but from the island of Selayar. It may be assumed that he was therefore less inclined to obey local auhtorities than other Kajang villagers.

The farmers were represented by Laica Marzuki, a dedicated and prominent law lecturer and lawyer who ran the regional Legal Aid Foundation (*Lembaga Bantuan Hukum*) of Hasanudin University in Makassar. Marzuki agreed to help the local land users after meeting Hamarong, who had gone to Makassar in search of support.[58] Hamarong and the other land users claimed legal entitlement to a plot of 350 hectares of land located in Ganta, on the basis of long-time cultivation (28 years). They insisted that during all these years there never had been any notification that PT. Lonsum was legally entitled to cultivate the land. Hence the farmers asked the court to declare them the rightful holders of the land and to receive compensation for the damage done by the company and local officials, since the land in question was the only means of livelihood of about 850 people.[59] The company rejected the claim of the farmers. Their defense statement noted that the local land users are not legally entitled to the land because they do not have land certificates, as is required by the BAL.

Courts during the New Order usually dismissed claims of land users without formal land titles, but in this case the Bulukumba District Court decided differently (Lucas, 1992). In March 1983, the court ruled that the 172 farmers were the rightful owners of the land. The court noted that according to adat law, the farmers held rights to the land (*hak atas tanah*) on the basis of their long-term cultivation of empty land. It held that such rights are valid under Indonesian law, since the BAL recognizes the principles of adat law. The court furthermore stated that under Indonesian law, HGU concessions could not be issued if the land in question is already occupied or inhabited.[60] Finally, the court noted that the village and sub-district heads had conspired with the company by illegally taking the people's land.[61] On the basis of an inspection of the judges at the location, the court ruled that 200 hectares of the disputed land belonged to the farmers.[62]

Shortly after the ruling, PT. Lonsum filed an appeal with the Makassar High Court. Several months later, in September 1983, the Makassar High Court ruled in favor of the company.[63] According to the judges, the local land users should have filed separate lawsuits because their claims of damages differed. The court therefore declared the group to be inadmissible and annulled the decision of the Bulukumba District Court. This setback did not make the farmers give up. They continued their quest for justice by lodging for cassation at the *Mahkamah Agung*, the Supreme Court of Indonesia, in December 1983.[64]

---

[58] Interview with Laica Marzuki in Makassar, 07 April 2014.

[59] As stated in the lawsuit (*gugatan*) filed by Hamarong and 171 others to the Bulukumba District Court on 2 April 1982.

[60] The court provided two legal bases for this: Ministerial Regulation no. 3/1979 from the Minister of Agrarian Affairs and Ministerial Regulation no. 5 1977 of the Minister of Home Affairs.

[61] Bulukumba District Court ruling no. 17/K/1982/BLK, page 104-105.

[62] While the farmers had claimed 350 hectares in their lawsuit (*gugatan*), the court noted that in first letter of authority (*surat kekuasaan*) only 200 hectares were claimed. After an inspection of the judges on the location, the judges found that the 200 hectares indeed matched (*cocok*) with the physical situation on the location. See page 90-91 of the ruling.

[63] Makassar High Court ruling no. 228/1983/PT/Pdt.

[64] Cassation request (*Surat Permohonan kasasi*) No.17/1982/BLK.

3.4.3 Beyond the legal dispute: Local repression and coercion

During the lawsuit, the situation in the village remained highly tense. In an interview, Laica Marzuki recalled that the company along with the military consistently threatened and intimidated the local land users.[65] Some of them reported to the Bulukumba District Court and the police that the company was 'taking the law in its own hands' (*penghakiman sendiri).*[66] But such complaints posed little threat to PT. Lonsum as the company enjoyed strong support of the military. Even amidst ongoing legal procedures, PT Lonsum continued operating on the disputed land. Even before there was a ruling of the Makassar High Court, the company continued with planting rubber trees on land claimed by the farmers.

PT. Lonsum worked closely with the regional military unit to expand its plantation at Palangisang estate. In early 1984, soldiers and village officials pressurized the farmers to withdraw their request for cassation. They visited the houses of villagers and aggressively urged people to sign an agreement, according to which a plot of 100 hectares would be granted to the local land users. Each family would receive a maximum of one hectare, under the condition that the request for cassation would be withdrawn. According to Tyson, the company was willing to give the farmers land 'in the spirit of good will and reconciliation' as it 'sought to appease the aggrieved community' (Tyson, 2010: 136, 137). However, Tyson does not mention the repressive conduct of the military and village officials. Thirteen farmers who refused to sign were taken to the office of the Tambangan Village Head, where they were tied up, muffled and severely beaten. Soldiers destroyed houses of farmers who refused to sign. Frightened by these events, some people hid in nearby villages while others fled further away.[67]

The company then tried to convince the Supreme Court that the conflict had been settled outside the courtroom and that the farmers canceled their cassation request.[68] With the help of the Bulukumba District Head, a 'dispute settlement commission' was established, which essentially served to make the agreement appear legitimate. The commission was made up of PT. Lonsum managers and district government officials. Oddly, the defendants in court were also part of the commission: the Kajang Sub-District Head and the Tambangan Village Head. The local land users were in no way represented in the settlement commission.[69] Without consulting the farmers, a 'settlement' was reached within weeks.[70] In August 1985, the land was released and distributed. The plots of land had an average size of 0,5 hectare and were randomly distributed among local

[65] Interview with Laica Marzuki in Makassar, 07 April 2014.
[66] One of the farmers, Mapiasse, sent complaint letters to the Bulukumba District Court and the district police that PT. Lonsum was not abiding by the ruling and continued to cut down people's fruit trees.
[67] The information on the forced agreement and physical abuse is derived from three complaints filed to the Bulukumba District Court: 1) A letter from Mapiasse, received by the court on 7 July 1984. 2) A letter signed by six local land users, received by the court on 05 June 1984. 3) A letter from Hamarong signed by five other claimants, received by the court on 25 June 1984.
[68] PT. Lonsum informed the Supreme Court about this by letter no. 011/B/1985, 28 January 1985.
[69] The commission was established through Bulukumba District Head Decree no.15/II/1985.
[70] A month after the establishment of the commission, PT. Lonsum issued a statement that a settlement had been reached (*Surat pernyataan PT. London Sumatera no. 026/B/0/1985*).

residents, irrespective of whether they were legal claimants or not. The land release was made official when the Bulukumba District Head came to the village to give a ceremonial speech.[71]

PT. Lonsum and its allies now assumed to have effectively dealt with the local land users and expected no more trouble. However, Hamarong and the other claimants refused to accept the agreement for two reasons. First, the agreement had come into being through repressive means. Second, the size of released land did not amount to the size that was originally claimed in court. In light of these objections, the claimants did not withdraw their appeal before the Supreme Court. In the five years that followed, three more court rulings on the case followed.[72] In June 1990 – in a surprise decision - the Supreme Court ruled in favor of the local land users. It held that the longtime cultivation of land, passed on from generation to generation (*turun-temurun*) granted the farmers the rights to the land.[73] The court therefore reinforced the initial district court decision of eight years earlier and ordered PT. Lonsum to release a plot of 200 hectares to the local land users.

A final legal option to challenge the Supreme Court ruling was available to PT. Lonsum: a revision procedure (*peninjaun kembali*). The company requested revision of the ruling based on the argument that the conflict had already been settled through a mutual agreement in 1985.[74] Hamarong responded that this agreement was 'obviously false and fabricated' (*jelas tidak benar dan mengarang-ngarang saja*).[75] The Supreme Court however accepted the request for a revision procedure, which created the opportunity for the company to prevent the implementation of the ruling. In 1991, PT. Lonsum and the Bulukumba District Head asked the Supreme Court to order the delay of the execution until the revision procedure was finalized.[76] The Supreme Court honored their request. Hence, after five court rulings and almost a decade of tension, the conflict was yet to be settled.[77]

So far, I have outlined the trajectory of the conflict by looking both at the legal procedures and the main events that occurred at the location of the conflict. We have seen that PT. Lonsum tried to end the legal procedures and settle the conflict on its own terms. The company could count on support from the regional security apparatus, as well as the

---

[71] On 2 September 1985, the Bulukumba District Head requested the Minister of Home Affairs and the Director-General of Agrarian Affairs to release 103,10 hectares from the HGU, which were to be distributed to 201 people (*Surat Bupati Bulukumba no. 593.7/250/Agr-BK/1985*).

[72] In 1985, the Supreme Court first ordered the Makassar High Court to revise the case. In 1987, The Makassar High Court subsequently ruled in favor of PT. Lonsum, arguing that there was no written evidence, certificate or confirmation from an authorized institution that proved that the farmers held rights to the land (Makassar High Court ruling no. 228/1983/Pdt, page 18). The local land users then filed for cassation at the Supreme Court again and won in 1990.

[73] Supreme Court ruling no. 2553/K/Pdt/1987, page 25-27.

[74] Letter from PT. Lonsum's lawyer Chaidir Hamid to Head of Supreme Court, 15 January 1991.

[75] From the counter-statement of Laica Marzuki (*Kontra Memori Peninjaun Kembali*), 20 July 1991.

[76] This information was provided in a January 1991 letter from Head of Supreme Court to the Head of Bulukumba District Court.

[77] Actually, it seems that there was no proper legal basis for the Supreme Court to do so. Revision as a legal remedy should not delay the implementation of the court's decision, in accordance with article 66 (2) of Law no. 14/1985 on the Supreme Court (replaced by Law no. 5 of 2004).

Bulukumba district government. Outside of the courtroom, the local land users could hardly defend themselves against the company and its allies. Their efforts to settle the conflict in court were undermined by a manipulative coalition of the corporation and regional authorities. In the next section, I will explain how the conflict changed after the fall of the New Order government.

3.5 THE BULUKUMBA PLANTATION CONFLICT DURING *REFORMASI* (1998 -2006)

3.5.2 The execution

After the fall of the New Order, the resistance of the local land users moved from litigation to mobilization and collective action. This transformation did not happen overnight. After decades of intimidation and repression, many people were at first not eager to join. Although PT. Lonsum's HGU was extended for another 25 years in 1997, there were - unlike in many other areas of Indonesia - no spontaneous reclaiming actions in Bulukumba in the immediate aftermath of the fall of the New Order.[78] What set the Bulukumba plantation conflict apart from many other land conflicts was that there was a court ruling providing a legal basis for local land users to claim their lands. Rather than taking the law into their own hands, the group of 172 farmers therefore chose to wait for the Supreme Court's decision on the revision procedure. In March 1998, the Supreme Court finally denied PT. Lonsum's request for revision. This meant that there was no more reason to postpone the execution that had been put on hold since 1991.[79] The first move of the farmers was urging the Bulukumba District Court to order carrying out the long-delayed execution.[80]

The Bulukumba District Court agreed with the request and scheduled the execution for December 1998. Prior to this, officials of the regional NLA office were called to measure the land in accordance with the natural borders specified in the legal claim of the local land users. The officials also counted how many rubber trees were located on this land. The total size of the land turned out to be 540 hectares. This was significantly larger than the 200 hectares the Supreme Court had adjudicated to the litigants. That the land was in reality much larger was in itself not strange, given that the size of land was not determined on the basis of an exact measurement, but on a mere 'examination on the location' by the Bulukumba District Court in 1982. PT. Lonsum immediately filed a complaint to the court, stating that the size of the confiscated land exceeded the 200 hectares the local land users were legally entitled to.[81] The Bulukumba District Court consulted the Makassar High Court for instructions, which ordered to follow through with the execution anyway.

---

[78] On 12 September 1997, the HGU was extended by a decision of the Minister of Agrarian Affairs/Head of the National Land Agency with a total size of 5784,46 hectares. It is unclear whether the 'disputed land' was included in the concession given that the map of the concession is not publicly accessible.

[79] Supreme Court ruling no. 298PK/PDT/1991.

[80] This request was addresses to court in a letter signed by ten of the legal claimants on 21 August 1998.

[81] Confiscation report (*berita acara sita eksekusi*) from the Secretary of the Bulukumba District Court, 3 December 1998.

In February 1999, the execution was carried out. Workers of PT. Lonsum attempted to prevent it by offering 'peace and consensus' (*perdamaian/musyawarah*), but to no avail.[82] During the execution, not the company but the farmers received support from policemen and military personnel, who were tasked with overseeing the execution. For the first time in decades, the company now seemed powerless to challenge the loss of land, at least for a while. PT. Lonsum became an Indonesian company in 1994 and was hit hard by the Asian financial crisis of 1997.[83] It carried substantial debts and was forced to lower production. It may be assumed that the company's debts affected its capacity to gain support from the government and the security apparatus.

Several months after the execution, the court changed its mind about the accurate size of the land belonging to the local land users. The Makassar High Court informed the Bulukumba District Court that it had not ordered the release of 540 hectares of land, but merely to implement the Supreme Court decision. The Makassar High Court therefore ordered to repeat the execution (*eksekusi ulang*) and return 340 hectares to the company.[84] But when officials of the Bulukumba District Court attempted to do so in July 1999, they did not receive a warm welcome. Dozens of farmers blocked the road while others occupied the disputed land. By refusing to vacate the land, the farmers eventually prevented the execution.[85] The Bulukumba District Court decided to temporarily postpone the execution, which allowed the farmers to retain control of the 540 hectares, even though their legal position was highly uncertain.

Tyson (2010) provides a somewhat different perspective on the events surrounding the execution. He notes that the expansion to 540 hectares was based on a 'clerical error', which was then used by 'opportunists' to reinterpret the borders of the land (Tyson, 2010: 139). Referring to a 2005 report by PT. Lonsum and information from a former Bulukumba District Head, Tyson writes that 'villagers were encouraged to remove NLA demarcation poles and set them around a new perimeter measuring 540 hectares'. He does not mention the initial instruction from the Makassar High Court and as such, his account suggests that the release of 540 hectares had no legal basis, but merely constituted a manipulative action of local opportunists.

[82] According to a report of the execution (*Berita Acara Menjalankan Putusan Hakim*) from the Secretary of the Bulukumba District Court, 26 February 1999.

[83] In 1994, PT. Lonsum was taken public after Harrison and Crosfield sold its shares in the company. Indofood Agri Resources Ltd (IndoAgri), which is the agribusiness arm of PT. Indofood Sukses Makmur Tbk became the largest shareholder of PT. Lonsum in October 2007, through PT. Salim Ivomas Pratama Tbk (SIMP), a subsidiary of IndoAgri. PT. Lonsum was thereafter integrated into the Indofood Group.

[84] *Surat Perintah no. B15.D1-HT.01.04-184/1999*, sent by Head of Makassar High Court to the Head of Bulukumba District Court, 05 July 1999.

[85] Interview with Bundu (original claimant) in Bonto Biraeng village, sub-district Kajang, 08 October 2015.

Bundu, one of the 1982 claimants, on his adjudicated land in Bonto Biraeng village, October 2015.

3.5.2 From legal claimants to people's movement

Despite the turmoil that followed the execution, the litigants did manage to finally get back the land the court had adjudicated to them. This signified a shift in the local power relations that had long been marked by the dominance of the company and its allies. This grassroots victory led to the articulation of other, hitherto, unvoiced grievances. People from other villages in the sub-districts of Kajang and Bulukumpa now felt encouraged to start claiming land inside PT. Lonsum's estates as well.[86] Many of them were farmers who had also been forced off their land during the New Order, but previously not dared to resist. Indeed, there were two specific developments in Bulukumba that made people eventually decide to express their grievances: the execution of the Supreme Court ruling and the involvement of external mediators.

When an influential external mediator became involved at the grassroots level, the scale of mobilization rose to another level. In Bulukumba, this was a young charismatic activist named Armin Selasa. Originally from a village near Palangisang estate, he spent his college years in Palu (Central Sulawesi province), where he became involved in student activism and joined the influential activist organization YTM (*Yayasan Tanah Merdeka,* Eng. Foundation for Liberated Land). In 1999, Armin decided to move back to Bulukumba. Basing himself in the district capital, he established an organization called YPR (*Yayasan Pendidikan Rakyat,* Eng. People's Education Foundation), a social empowerment organization.

[86] Interview with Latif, 11 May 2014 in Bulukumba city.

Using his experience of grassroots mobilization in Palu, he was able to unite local farmers in large numbers and encouraged them to resort to collective action. Armin recalled: *'Organizing the people was actually very easy. I told them that we have to collectively speak up (suarakan). The main hurdle was that the older people were still scared and traumatized by the military. Not they, but their children were the first to become involved. So, our task was to tell the older generation that we were going to take back the land and that they should no longer be afraid.'*[87]

Within months, hundreds of farmers from various villages in the border area of Bulukumpa and Kajang sub-districts decided on joining the collective contestation against PT. Lonsum. Armin Selasa managed to unite both the original claimants (*penggugat asli)* who had gone to court and wanted to keep the 540 hectares of land, and new claimants (*penggugat baru*) from neighboring villages. Armin's aim was to take back *all* the land expropriated by PT. Lonsum, including that of the new claimants to whom the Supreme Court had not adjudicated any land. The strategy of resistance by legal means made way for one involving grassroots mass mobilization. Armin believed that the most important factor in the struggle was the power of numbers.

At the village level, Selasa established an organization entitled DRB (*Dewan Rakyat Bulukumba,* Eng. The People's Assembly of Bulukumba). This organization was designed to form an alternative version of the district parliament (DPR-D). The rationale was that in the absence of a proper functioning district parliament, the people could form one themselves. The organization consisted of 32 representatives who went around villages to convince people to join the movement. Armin explained: *'We told the people we can do this! The important thing was communication with the outer world. First, we got around 40 people and each of them went out to get more people to join. They usually would go around villages at night. We went from door to door and told people that we wanted to take back the land that the company had taken from them.'*[88]

The DRB began to organize rallies and demonstrations around the plantation estates, as well as in the Bulukumba district capital. For a while, such confrontational strategies were quite successful. In 2001 for instance, the Bulukumba District Court made another attempt to confiscate 340 hectares from the original claimants in order to comply with the instruction of the Makassar High Court. This time, court officials ran into hundreds of protestors that blocked access to the land, despite the presence of many policemen.[89] Armin recalled: *'Actions like that had never happened before on such a scale in Bulukumba. It was a totally new experience, so we had no idea of the possible risks we were facing'.*[90] At the village level, the DRB functioned very much like a 'twilight institution' (Lund, 2006). While not a formal institution, it did exercise public authority in the villages surrounding Palangisang estate.

[87] Quote from interview with Armin Selasa in Bulukumba city, 05 October 2015.
[88] Idem.
[89] From a 2003 anonymous investigative report called '*Salam dari Cisadane'*, obtained from AMAN South Sulawesi.
[90] Quote from interview with Armin Selasa in Bulukumba city, 05 October 2015.

3.5.3 Escalation

PT. Lonsum perceived the empowerment of the grassroots land claim movement as a serious threat to its business. The military had gradually withdrawn its direct presence from the plantation area during the first years of the *Reformasi* period. The display of state power in the form of the omnipresent security apparatus had abated. Meanwhile, the movement of the YPR and DRB began to take vigilante-like forms. In response to this growing uncertainty, local narratives suggest that PT. Lonsum began to distribute firearms to its local employees in early 2003.[91] Like in other regions in Indonesia in the early 2000s, the tension between the company and local residents began to reach a boiling point (Lund and Rachman, 2016). Aspinall wrote at the time that in the tensest regions, such as the plantation areas of North-Sumatra, 'local conditions have come to resemble civil war' (Aspinall, 2004: 88).

Amongst this growing tension, the government abstained from any interference. Police personnel only made occasional visits to the dispute location. In June 2003, Armin Selasa posed an ultimatum through a letter addressed to the Bulukumba District Head, provocatively stating that if the people would not get back their land soon, they would take it themselves. In response, the Bulukumba District Head issued a statement on 18 July 2003, noting:

'*The people have rights to 200 hectares and the remaining area belongs to the concession of PT. Lonsum. The relevant authorities will bring security assistance* (*bantuan pengamanan*).'[92]

By referring to the Supreme Court ruling, the Bulukumba District Head refused to consider the grievances of the new claimants. He thus turned a blind eye to the developments that had taken place since political restrictions were lifted and grievances could be expressed more freely. Not surprisingly, the YPR and DRB refused to accept the statement and began to organize what would become their biggest and final collective action.

In the early morning of 21 July 2003, people began to gather in Ganta hamlet, Bonto Biraeng village, sub-district Kajang, where most of the original claimants lived.[93] At around 10 AM the crowd started to move to PT. Lonsum's Palangisang estate. By noon, the number of people that had gathered at the plantation had reached around 1500. Certainly not all of these were local land users. Through extensive informal networks of Kajang families, people had come from as far as Southeast Sulawesi to help. Using chainsaws and other equipment, several people began to take down rubber trees. Around 1 PM, a dozen officers from the district police department entered the occupied area.

[91] From a 2003 report written by Solidaritas Nasional untuk Bulukumba (SNUB) called:
Kronologis: Kasus Penembakan Petani dan Masyarakat Adat Kajang Bulukumba Propinsi Sulawesi Selatan Oleh Aparat Polda Sulawesi Selatan dan Polres Bulukumba 21 juli 2003.
[92] Citation from a written statement by the Bulukumb District Head, 18 July 2003.
[93] In the 1990s Bonto Biraeng became a new village and split off from Tambangan village.

According to an NGO report, the police immediately opened fire, without 'prior warning shots or negotiation'.[94] The police later stated that the officers used their gun to defend themselves against the occupants, some of which were throwing Molotov cocktails.[95] Following the shooting, a fight broke about between policemen and some of the occupants.

By 5 PM, as many as 400 police officers from both Bulukumba and several neighboring districts arrived at the location to disperse the crowd.[96] In an attempt to evict the crowd from the plantation, the police again used firearms. One farmer was killed on the spot, while another was severely wounded and died after being rushed to the hospital. Following the second shooting, the crowd fled the area. Many hid in nearby cornfields, while others ran to hide in the forest of neighboring villages. The next day the police carried out a large search operation in the area and issued a list with suspects. By then, the death toll had risen to four. 20 victims were admitted to the hospital, while 46 occupants, including several leaders of the DRB, were arrested.

The violent events, which became locally known as *Tragedi Juli 21 (*The tragedy of 21 July), had a major impact on the further course of the dispute. Civil society organizations throughout the country expressed their support for the plantation occupants, but the grassroots movement of land claimants ended abruptly. The lethal violence came as a shock to many who had joined the occupation.[97] The YPR and DRB were dissolved and several of its leaders put behind bars. Armin Selasa's younger brother Iwan was sent to prison for two years. Armin Selasa did not end up in jail but left Bulukumba for several years to work for an NGO in Aceh. Absent his leadership, the land claimants were left in an organizational vacuum.

The end of the land claimant movement was a relief for PT. Lonsum. Between September 2003 and early 2004, the company singlehandedly re-annexed parts of the land released to the original claimants in 1999. The company ordered its employees to remove people's tree crops on the land that was released during the 1999 execution in the villages of Bonto Biraeng and Bonto Manggiring. This time there was hardly any local resistance. The company managed to regain control over approximately 270 hectares of land. As a result, about half of the original claimants that were given land in 1999 lost their land once again.

During numerous personal conversations with managers and legal consultants of PT. Lonsum, I was told that the annexation was a legal act that was necessary to evict the unlawful squatters from the land.[98] In the company's view, taking back these 270 hectares

---

[94] From a 2003 report by Solidaritas Nasional untuk Bulukumba (SNUB) called: *Kronologis: Kasus Penembakan Petani dan Masyarakat Adat Kajang Bulukumba Propinsi Sulawesi Selatan Oleh Aparat Polda Sulawesi Selatan dan Polres Bulukumba 21 juli 2003*.

[95] From a report by Amnesty International, available at http://www2.amnesty.se/ and also: http://www.thejakartapost.com/news/2003/07/24/activists-condemn-police-shooting-protesting-farmers.html. Last accessed 21 May 2018.

[96] The Kontras report notes that there were at least 400 police officers present.

[97] Interview with Bundu (original claimant) in Bonto Biraeng village, sub-district Kajang, 18 October 2015.

[98] I obtained this information from three separate conversations with PT. Lonsum staff: 1) Endah Madnawidjaja, Corporate Secretary and Head of Legal Affairs of PT. Lonsum in Jakarta, 28 May 2014.

corrected the 'flawed' 1999 execution of the Supreme Court ruling. This shows how the fixed character of the court ruling was used against the land claimants during *Reformasi*. While the company had tried to settle the conflict outside of the court during the New Order, PT. Lonsum now invoked the Supreme Court ruling to delegitimize all claims that fell out of the ruling's scope.

3.5.4 Government mediation

The annexation of land by PT. Lonsum sparked new resistance from the land claimants, particularly from those who had lost their land again after gaining it back four years earlier. Although on a much smaller scale than before, new demonstrations were held in Bulukumba and Makassar in late 2004. The district government proposed to lead a meditation procedure, but the claimants put little trust in such a procedure. They believed that mediation by an independent institution, such as Komnas HAM - the Indonesian Human Rights Commission - would serve them better. However, PT. Lonsum only wanted to participate in mediation if it was done under government supervision. In February 2004, the provincial government of South Sulawesi became involved and formed a mediation team.

The team consisted of several provincial and district government officials, including the South Sulawesi Governor and the Bulukumba District Head. PT. Lonsum was represented by the company's director and the manager of Palangisang estate. The provincial government selected five men to act on behalf on the local land users, who were referred to as 'the groups of ex-claimants and occupants' (*kelompok-kelompok eks. Penggugat dan okupan*). Komnas HAM engaged in monitoring the process in order to ensure that 'local wisdom and customs' would be considered in the process (Komnas HAM, 2006). Between March and August 2004, the mediation team organized several meetings that allowed the two parties to negotiate a settlement.

However, the mediation process was bound to fail. In the eyes of many land users, the five men chosen to represent them were frauds paid by PT. Lonsum. According to an account from several of the original claimants, one of them worked as a security guard for PT. Lonsum, while another one was a *preman* hired by the company.[99] While some of the original claimants were invited during the preparatory meetings, the provincial government did not select them to become part of the mediation team. This gave the company a chance to influence the outcome of the mediation process.

During the mediation, the grievances of those who were not part of the 1982 original claimants were not taken into account. Once again, the government considered the 1990 Supreme Court ruling as the only valid evidence of land claims. Following several rounds of negotiations, a settlement was reached: the original claimants would be allowed to keep the 271 hectares they currently controlled. Given that this exceeded the 200 hectares adjudicated by the Supreme Court, the provincial government considered this a

Professor Abrar Salem, legal advisor to PT. Lonsum, 10 April in Makassar 3) Erwin, estate manager of Palangisang, 18 May in Bulukumba.

[99] Interview with Selasa B (original claimant) in Bonto Biraeng village, sub-district Kajang, 18 October 2015.

generous gesture. The 270 hectares annexed by PT. Lonsum in 2003 and 2004 would remain in the hands of the company.

After the news of the 'settlement' reached Bulukumba, the Bonto Biraeng Village Head issued a statement that the claimants that had gone to court in 1982 did not accept the result. Nonetheless, on 10 January 2006 the company and the five 'representatives' signed a peace agreement in the presence of the South Sulawesi Governor. It stated that the representatives of the ex-claimants and occupants recognized that the land controlled by the farmers was legally part of PT. Lonsum's concession area, but that PT. Lonsum was willing to exclude it from its concession.[100] The ex-claimants and occupants would leave and empty all other land.[101] A second document was signed stating that PT. Lonsum would hand over 271 hectares to the mediation team. The latter would authorize the Bulukumba district government to arrange the distribution of the land. All of this upset many of the original claimants. One of them expressed his discontent in the following way: '*If this is the face of our government, how can they say that they are the government of the people?*'[102]

3.5.5 The politics of internal distribution

Although the distribution of land among the farmers supervised by the district government was scheduled for March 2006, it never materialized, simply because there was nothing to be distributed. The 271 hectares that were planned for distribution had already been in hands of the original claimants since the execution of 1999. The only possible distribution that could take place was an internal redistribution of land between the original claimants that were dispossessed by PT. Lonsum in 2003 and 2004 and those that managed to hold on to their land. This implied that many would have to give away some of their land, but the majority was not willing to do so. Many of the original claimants that remained without land felt a deep resentment, not only towards the company and the district and provincial government, but also towards some of the YPR and DRB leaders who had initiated the occupation of 2003. An example is Bonggong. As an original claimant, he received a plot of one hectare in 1999, but lost it again to PT. Lonsum in 2003. In his view, if the activist leaders had not stirred up the masses to occupy the rubber plantation, in all probability he would still own his land.[103]

There have also been serious frictions among the original claimants in relation to the uneven distribution of land following the execution of 1999 earlier described in Subsection 5.2. After the execution, the Bulukumba District Court did not put a mechanism in place to distribute the land among the claimants. The land users were left to themselves to arrange the distribution of land plots. This proved to be the beginning of a whole new range of messy politics at the local level. Not the government, but Latif, the son of the claimants' original spokesperson Hamarong, stepped up to lead the distribution process

[100] Article 2 of the Peace Agreement (*Perjanjian kesepakatan perdamaian dan penyerahan sebagian tanah hak guna usaha PT. PP. London Sumatera Indonesia tbk*).
[101] Article 3 of the Peace Agreement (*Perjanjian kesepakatan perdamaian dan penyerahan sebagian tanah hak guna usaha PT. PP. London Sumatera Indonesia tbk*).
[102] Written statement (*Pernyataan sikap*) by Selasa B from 2006.
[103] Interview with Bonggong (original claimant) in Bonto Biraeng village, sub-district Kajang, 12 April 2014.

after his father passed away in late 1998. Latif bore the initial financial costs of the execution. In 1999, he agreed to pay the Bulukumba District Court 40 million rupiah in exchange for the release of 540 hectares. Most original claimants subsequently received a plot of land with a size varying between one and two hectares, but only after making a payment to Latif. Some of the original claimants contend that Latif had a double agenda (*main dua kaki*), accusing him of acquiring much more land than others, which he allegedly sold to people who had not been claimants in court.[104] Latif himself confirmed that he and several others obtained more land than most, stating that he granted himself and his siblings a total of seven hectares.[105]

In 2008, the Bonto Biraeng Village Head attempted to initiate a fair redistribution process among the original claimants (by then, the total size of land under their control was confined to 271 hectares). A document signed by several village officials and the claimants' lawyer Zainuddin (who has succeeded Laica Marzuki in 1998) regulated the procedure of redistribution. It provided that original claimants were each entitled to a maximum of one hectare. Those who held more had to give away their extra land to original claimants that had become landless in 2003 and 2004. Those who had already sold their land to outsiders or other claimants would not get additional land. Finally, the statement noted that the claimant's lawyer would get ten hectares of land, as a reward for all his services throughout the years.[106] However, since most claimants were not willing to give away any of their land, the redistribution was never carried out. Today, disagreements between original claimants continue to exist. Furthermore, both the original claimants who lost their land and newer claimants who never got back any land continue to feel resentment towards PT. Lonsum and the government.

From PT. Lonsum's point of view, the failure to resolve the conflict is to be blamed on local activists. In an interview, a manager of the company referred to them as 'the little stones in my shoe'.[107] Tyson (2010) makes a similar observation. On the basis of interviews with (former) government officials and PT. Lonsum managers, he concludes that since decentralization and democratization, 'the enhancement of popular participation and the empowerment of civil society have not brought the parties any closer to a comprehensive solution to the land dispute' (Tyson, 2010: 149). He attributes the absence of a solution to profit-seeking 'ethnic-entrepreneurs'. As examples of 'ethnic-entrepreneurs', Tyson mentions Armin Selasa and Latif.

Although it may be true that people like Latif have benefited from the conflict, to blame the overall continuation of the conflict on them overlooks the deeper underlying cause for its continuation: the unaddressed grievances of the land claimants. Latif and Armin Selasa were both frontrunners in addressing these grievances after political restrictions of the New Order were finally lifted. That most local land users in Bulukumba

[104] Interview with an original claimant in Bonto Biraeng village, sub-district Kajang, 18 October 2015.
[105] Interview with Latif, Bulukumba city, 11 May 2014 and interview with Selasa B in Bonto Biraeng village, sub-district Kajang, 10 April 2014.
[106] Written statement following a meeting (*Berita acara hasil pertemuan*), signed by the Village Head of Bonto Biraeng, 16 March 2008.
[107] Interview with Endah Madnawidjaja, Corporate Secretary and Head of Legal Affairs of PT. Lonsum in Jakarta, 28 May 2014.

kept aloof during the 1980s (and were thus left out of the court's legal considerations) makes sense, given the oppressive and violent regime they faced. For these farmers, a figure like Armin Selasa was inspiring and empowering. However, Tyson writes that Selasa stirred up the local population and tried to 'reinterpret the Supreme Court Ruling' as a means of profiting from the conflict (Tyson, 2010: 149). This view appears to follow the rationale of PT. Lonsum, as it implicitly suggests that all the additional claims made after the court procedures were illegitimate. Tyson forgets to address that various government attempts at conflict resolution during *Reformasi* failed to consider the grievances of the new claimants.

3.6 CONCLUSION

This chapter focused on agrarian land conflicts in Indonesia during the New Order and the early years of *Reformasi*. I have shown that the extensive political and legal reforms provided local land users a momentum to mobilize and collectively claim land taken from them during the New Order. We have seen that after the government lifted strict political control in 1998 regional authorities struggled to accommodate the growing rural mobilization and the increased presence of grassroots organizations. In the Bulukumba plantation conflict, the peak of local mobilization in July 2003 became a turning point. The repressive use of violence by the security apparatus eventually put an end to the grassroots movement and enabled the company to secure its business interests.

The case study discussed in this chapter has provided two important insights with regard to why agrarian land conflicts continued after the end of the New Order. A first point concerns the plurality of state institutions that were involved in resolving the conflict. In the case of the Bulukumba plantation conflict these included the judiciary (civil courts at all three instances), the NLA and the government at provincial, district, and village level. Decisions and procedures were sometimes incoherent in relation to one another. For example, due to a number of mutually divergent judicial rulings and court orders, the size of land adjudicated to the original claimants was and still is a source of contention. This illustrates how the legal complexities and the ambivalence of bureaucratic and judicial institutions have piled up into a complex web of claims and competing authorities, exacerbating the conflict. Furthermore, the absence of a mechanism to arrange an even distribution of the executed land resulted in tension and competition between the original claimants. Some of the claimants' leaders managed to obtain considerably more land than others.

The second point concerns the shifting role of the court rulings during the plantation conflict discussed in this chapter. During the New Order, the plantation company tried to settle the conflict on its own terms, without the interference of the judiciary. With support from the district government and the military, the company imposed a settlement agreement. The local land users were forced to sign and therefore viewed the agreement as illegitimate. Under these circumstances, only the court offered them some hope for redress. However, following Suharto's demise, the company's strategy changed; it now tried to use the court rulings to its own advantage. The Supreme

Court ruling provided a basis to delegitimize all the extra claims that exceeded the 200 hectares adjudicated by the Supreme Court. In the new climate of political freedom, new claimants emerged that had previously been reluctant to articulate claims. To reject these new claims, the government and the company began to refer to the Supreme Court ruling as the only valid decision regarding the size of land belonging to the farmers. But in order to settle the conflict, a broader approach was necessary, given that the conflict had already transcended far beyond the initial legal procedures. In the words of Felstiner, Abat and Sarat, the transformed conflict had become '*the*' conflict (1980: 650). As such, a more flexible approach was required but was never adopted.

Although it is true that many agrarian land conflicts in Indonesia have never made it into the courts, the point above relates to a more general issue regarding the quality of democratic governance in today's Indonesia. The fact that the grievances of most claimants were never addressed, stemmed from either the unwillingness or inability of government agencies to actually give the various groups of claimants a voice. During the mediation process, the provincial government selected several men to negotiate on behalf of the claimants, but most villagers did not consider them legitimate representatives at all. The claimants were moreover diverse and consisted of different groups with different interests. The provincial government dismissed complaints about the illegitimacy of the representatives. This kind of elitism on behalf of government agencies shows striking resemblance to the New Order, when such representatives would certainly have been chosen on the basis of their loyalty to the regime. Against this backdrop, grievances remain without redress and land conflicts persist.

Finally, it is worth commenting on the difference in perspectives between the present chapter and Tyson's account of the conflict in his 2010 book. Tyson's study of the conflict offers valuable insights, especially with regard to the perspective of the plantation company and the district government. In this chapter, I have countered some of his arguments and findings by providing a narrative that also gives attention to the perspective of the local land users involved in the conflict, as well as their activist leaders. Tyson notes spot on that in the context of complex land conflicts, finding a solution requires 'combining legal scrutiny with sociological understanding' (Tyson, 2010: 148). From my point of view, in order to gain such understanding, it is necessary to thoroughly examine the perspectives of the various parties involved in a conflict – including the grievances of the local land users - as well as to carefully reconstruct the events that determined the conflict's course.

In Chapter 6, I will discuss the trajectory of the conflict in recent years, when the 'adat community' claim became an influential new claiming strategy.

4 THE RISE OF THE INDIGENOUS MOVEMENT IN INDONESIA

'The symbols of collective action cannot be simply read like a 'text', independent of the conditions in which they struggle' (Tarrow, 2013: 109).

4.1 INTRODUCTION

The previous chapter has focused on the continuous land conflicts in Indonesia and zoomed in on the trajectory of the Bulukumba plantation conflict between 1981 and 2006. Since then, a major change in the course of many land conflicts, including the Bulukumba conflict, has been the emergence of land rights claims on the basis of adat. In order to explain this change, this chapter moves from South Sulawesi to the national level and examines the nationwide rise of the indigenous movement.

From the late 1990s onwards, the indigenous movement developed into Indonesia's most influential land rights movement. As a result of its advocacy, significant legal reforms were implemented that provide for the state's recognition of adat law communities and their land rights.[108] This chapter focuses on the emergence of the indigenous movement as a political force in Indonesia. More specifically, it aims to explain why the adat community discourse is so appealing for a variety of actors. The literature on social movement framing provides useful tools here. I will conceive the indigenous movement as a social movement that is made up of the persons, groups, organizations and institutions that adopt the adat community discourse in their conceptualization of certain social problems. In other words, the movement consists of actors who use the adat community concept as a collective action frame.[109] The most prominent actors in the movement are NGO activists, local community representatives, academics and development agencies.

I will first explain the emergence of the adat community concept, followed by four explanations of why this concept was chosen as collective action frame. Ideological, legal and political factors are all of influence here. In the subsequent section I will focus on the actors, including civil society organizations (most notably AMAN), local communities and (international) development organizations. In the last section of the chapter I will reflect on the outcomes of the indigenous movement and the challenges that come with the movement's recent growth. This serves as the contextual framework for the chapters that follow in which I will analyze what the deployment of the adat community discourse actually means for the realization of rural land rights at the local level, and more generally, the struggles of rural justice seekers.

4.2 ADAT COMMUNITY: A 'COMMON LANGUAGE' FOR THE MARGINALIZED?

4.2.1 The birth of the indigenous movement

[108] For an overview of this legal framework, see Chapter 2, Subsection 5.4.
[109] For a definition of collective action frames, see Chapter 1, Subsection 2.4.

It was hardly a surprise that nationwide rural protests ensued in the immediate aftermath of Suharto's step down. It is well known that 'contentious politics is produced when political opportunities broaden' (Tarrow, 2013: 23). What did surprise was the particular way in which many disputants framed their land claims in such protests. The indigenous movement, which rose to prominence after Suharto's fall, advocates special community rights on the basis of 'indigeneity' (Afiff and Lowe, 2007: 73).

The term adat community (*masyarakat adat*) was first coined during a workshop organized by environmental NGO WALHI in 1993 in Toraja, in the far north of South Sulawesi province. Activists chose the term as the Indonesian equivalent of indigenous peoples, but the term also resonated with the Indonesian legal concept of adat law community (*masyarakat hukum adat*) (Li, 2007: 333; Afif and Lowe, 2007: 83). The outcome of the workshop was the establishment of the Advocacy Network for Adat Community Rights (*Jaringan Pembelaan Hak-Hak Masyarakat Adat, JAPHAMA*) (Arizona and Cahyadi, 2012: 44). Carefully picked as a common term for marginalized people in rural areas across the country, activists used the concept to 'legitimate rural communities and defend their rights and other natural resources against state and corporate action' (Afiff and Lowe, 2007: 81).

Six years later, in March 1999, twelve civil society organizations founded AMAN – the Archipelago's Alliance of Indigenous Peoples (*Alliansi Masyarakat Adat Nusantara)* - at a congress in Jakarta. AMAN became an umbrella organization for all adat communities across the country. Despite positioning itself as an organization for marginalized and oppressed people, marginality is not a component of AMAN's definition of adat communities. AMAN instead defines adat communities as communities that have the following characteristics:

'Communities who live on land that has been passed down from generation to generation. They have a territory and natural wealth. Their social and cultural life is governed by customary law and customary institutions that have continuously sustained them as a community' (Faye and Dengduanrudee, 2016: 95).

According to this definition, adat communities are culturally and politically autonomous collectives that are different from the rest of society. In Li's words, they are depicted as being 'culturally distinct from the surrounding population, spatially concentrated, and sharing common resources' (Li, 2007: 243). The concept, with its focus on customary law and customary institutions, closely resembles the colonial concept of adat law community. In Chapter 2 I explained that the adat law community concept was originally constructed by Van Vollenhoven and continued to hold symbolic value in the legislation enacted after Indonesian independence. AMAN's definition is nearly identical to the legal definition of adat law community under the 1999 BFL, as well as under Ministerial Regulation no. 52/2014 by the Minister of Home Affairs.[110]

[110] For the defining legal criteria of adat law community, see Chapter 2, Subsection 5.4.

Since the inception of the term in 1993, adat community has in practice been used mainly to refer to marginalized groups and not to, for instance, regional sultanates (which are arguably also customary institutions with some contemporary relevance). Activists have strategically deployed the term as a political discourse to strengthen land claims by vulnerable communities that are involved in conflicts with state, corporate actors or migrant groups.

The resurgence of the adat community concept in the struggle for people's rights to land and natural resources is remarkable. As explained in Chapter 2, policy makers and legislators in the 1950s and 1960s assumed that adat law communities would gradually cease to exist. Leaders of the early independence period expected that adat law communities and their legal systems were to disappear (Sonius, 1982; Burns, 2004). In the early 1990s high-level Indonesian officials, such as the head of the NLA, declared the term 'defunct' (Li, 2001). Moreover, a more inclusive discourse of rights was available. Like other young states located in the Global South, Indonesia moved toward legal unification in the first decades following independence (Otto, 2010; Allot, 1984). In 1960, the BAL had introduced a unified system of individual land rights and provided a legal basis for an equal distribution of land (Fitzpatrick, 1997: 180; Utrecht, 1969: 73-74). How then can we understand that a political discourse, which originates from colonial times and had long been declared outdated, now re-emerged? Moreover, why were other political discourses that were previously deployed to mobilize people to collectively claim land rights left in abeyance?

These questions have interested scholars since the late 1990s. Li for instance writes that 'there are other languages in which claims against the state could be made, the rights of citizenship being the most obvious' (Li, 2001: 2). Afiff and Lowe ask the question why the demands for control over land and natural resources after the fall of Suharto were mostly made in the name of indigeneity rather than in the name of class struggle. Henley and Davidson call the resurgence of adat a 'paradoxical form of radical conservatism' (2007: 23). My analysis builds on some of the arguments presented by these authors. However, by applying the theoretical framework of the social movement literature and by considering some recent developments, I provide a more in-depth explanation as to why the discourse manifested in this particular form.

4.2.2 Social movements and collective action frames

Producing frames is an essential activity of any social movement. In order to engage in collective action, members of the movement need a collectively shared, coherent worldview that identifies victims who experience grievances and actors who are to blame for these grievances (Benford and Snow, 2000: 616). Social movement theory argues that framing strategies must be seen in the context of the larger power constellation that exists in society. An important factor here is the political opportunity structure, as political and institutional changes will affect framing processes. This structure both facilitates and constrains such processes (Tarrow, 2013; Tilly, 1978; Benford and Snow; 2000). Benford and Snow provide an example of the 1989 Chinese student protest movement, explaining

that activists, aware of potential backlashes by the authorities, strategically framed their actions in line with 'traditional Chinese narrations of community devotion and self-sacrifice' (Benford and Snow, 2000: 617). In a similar way, one of the leading activists during the early days of the indigenous movement recalls how the concept of adat community came into being. She explains that one of the reasons why those who participated in the 1993 WALHI workshop agreed on using the term adat community was simply because it was a 'socially accepted term' (Moniaga, 2007: 282). In subsections 2.4 and 2.5, I will further explain why this particular term was more acceptable than others.

Cultural factors, which are likewise embedded in power relations, also influence how collective action frames are shaped. Social movements tend to adopt frames that bear 'cultural resonance' in order to increase their legitimacy in society (Benford and Snow, 2000: 629). They use existing and ideological categories and through these construct new categories (Tarrow, 1992, 189). Not only do frames have to resonate with the experiences of the beneficiaries of the social movement, the worldview produced by them also needs to make sense to power holders who are in the position to realize political and legal change. Social movements thus use existing and legitimate concepts and deploy these to exert pressure on power holders (Tarrow, 1992).

Framing is not a static, linear process. On the contrary, actors within and outside of the social movement continuously negotiate and renegotiate the content of frames (Benford and Snow, 2000: 628). Tania Li, drawing on the work of Gramsci, has argued that social movements cannot go around the 'existing fields of force'. As such, they rarely adopt totally new frames, but are deemed to 'work with' what is available within the existing power configuration (Li, 2001). In the context of the emergence of the adat community frame, other related factors were of importance as well, such as the resonance of the frame with the existing legal framework, and the ability to connect the frame to the language of broader social alliances.

4.2.3 The adat community frame as collective resistance against the repressive state

Having considered some of the processes that have an impact on the construction of collective action frames, we can now look at the different factors that influenced how the adat community frame rose to prominence. The concept is used to imagine groups of local rural people as harmonious collectives in opposition to external actors, particularly those with whom they compete for land or other natural resources. Through the adat community frame, a boundary is created, which emphasizes the assumed shared interests of the members of communities. Demands made on behalf of the community are demands on behalf of every member of the collective. These assumptions help to collectively pit these groups of people against outside forces, in particular the oppressive state apparatus, its security forces (most notably the military), and their capitalist allies (Li, 2001).

That 'indigeneity' became a common discourse for marginalized people seems to stand in contrast with the situation of the early 1960s, when the keyword used in land rights protests was *rakyat* (the people) (Li, 2001). This was a time when the political discourse of class struggle was widely deployed in Indonesia. Despite this difference, the

wave of collective reclaiming actions on state and corporate lands in the wake of Suharto's fall were in some ways similar to the '*Gerakan Aksi Sepihak*' actions of the early 1960s.[111] During the *Reformasi* period however, there were no larger political movements that coordinated these actions, like the BTI (*Barisan Tani Indonesia*) in the 1960s (Lucas and Warren, 2013: 29). After 32 years of authoritarianism, such a movement could not simply emerge out of the blue. The reclaiming movements moreover had no direct links to political parties, unlike the PKI supported BTI.

The suppression of activism during the New Order period not only left a major scar on agrarian movements' mobilizing capacities, but it also constrained the available framing tools at hand. Terms like class and land reform were dangerous, as the Suharto government associated these terms with communism. Invoking them could lead to serious repercussions. Throughout the New Order period, demanding rural land rights would put farmers at risk of being suspected a communist. The massacres of 1965-1966 wiped out the land reform movement and left 'the political left all but eliminated' (Henley and Davidson, 2007: 13). Land reform remained a taboo ever since. Peluso, Rachman and Afiff explain that 'Java's violent agrarian history remained an obstacle to rights-based agrarian movement activities through the 1980s and early 1990s' (Peluso, Rachman, and Afiff, 2008: 386).

Activists initially lacked a common language that could unite the diverse and vast number of rural societies in Indonesia. Arianto Sangaji, a former land rights activist from Central Sulawesi province, recently explained that in the Palu region, activists always used the term adat community, avoiding banned terms like 'land laborer' or 'peasant' since they were fully aware that these were associated with communism.[112]

The rise of the adat community discourse thus has to be understood against the backdrop of the suppression of other discourses. There is however an additional reason behind the large appeal of the adat community frame in comparison to class or *rakyat*. This has to do with one of the major differences between the struggle for land rights in the early 1960s and the one during the New Order and *Reformasi* periods. In the 1960s, the agrarian movement's main objective was realizing the redistribution of farming lands. The main opponents of the BTI were the rural landlords who held large portions of land and exploited landless farmers as their laborers. The movement was centered in Java and initially received considerable support from the Sukarno government. In contrast, many of the movements that emerged during and after Suharto emerged in the outer islands and targeted a different kind of landlord: the government, particularly the Ministry of Forestry (Peluso, Rachman and Afiff, 2008: 378).

As we have seen in the previous chapter, some of the most compelling cases of government oppression took place outside of Java. The vast areas of exploitable land on the densely forested islands of Sumatra, Kalimantan and to a lesser degree Sulawesi made the outer islands of great interest to the New Order regime and its business allies (Peluso, Rachman, and Afiff, 2008). The majority of the rural population of these islands lacked

[111] See Chapter 2, Subsection 3.3.

[112] Excerpt from Arianto Sangaji's presentation at the 6th Annual Conference of Journal Anthropologi, held at at Universitas Indonesia, Depok, 27 July 2016.

formal land titles and held on to customary land arrangements. In this context, the adat community discourse carried significant *empirical credibility*, as it resonated well with rural people's experiences (Benford and Snow, 2000: 626). Through the common language of adat communities, rural people from across the archipelago were able to articulate their grievances relating to the government's disregard of customary land rights.

That the discourse of adat communities 'takes on meaning and force' in the context of people's grievances towards the state, must also be viewed in the context of the use of the term 'adat law community' during the late colonial period (Li, 2001: 646). Proponents of the Adat Law School deployed the concept adat law community (*inlandse rechtsgemeenschap*) to protect local rural communities against the expropriation of land by the colonial state for private land leases. In many ways, the policies of massive private leases under the New Order resembled those of the late colonial government (Lev, 1985). As explained in Chapter 2 however, already during Van Vollenhoven's time the ideas of closed and harmonious communities were contested. Despite the critiques, the concept had significant political utility, as Van Vollenhoven and his followers 'promoted it as normative concept aimed at ensuring the recognition of ... local legal orders' (Anders, 2015: 418). The current applicability of the adat community discourse has similar political force to challenge the authority of the Indonesian state. In ways resembling colonial times, the idea of autonomous and harmonious collectives helps to position groups of rural people against intruders.

4.2.4 The legitimacy of adat communities in national ideology and law

As we move beyond the repressive policies of the New Order government, the second explanation for the rise of the adat community discourse in Indonesia we find is the position of adat and adat law in ideas on Indonesian culture, as well as their position under Indonesian law. Here we see what Benford and Snow call the 'cultural resonance' of collective action frames, meaning that notions of adat and adat communities are in line with the dominant ideology of the state (2000; 626). Tarrow writes that 'it is the combination of new frames embedded within a cultural matrix that produces explosive collective action frames' (Tarrow, 2013: 122).

Well aware that ideas on adat could play a significant role in the formulation of a distinct Indonesian state ideology, Indonesian elites paid lip service to adat ever since Indonesian independence. Notions of adat could serve to compare Indonesia with Western countries and highlight that Indonesian culture is one of collectivity rather than individuality. Influential scholar Djojodigoeno for example (1952: 13) wrote that 'individualistic and liberalistic views do not live in the minds of Indonesians. We are socio- and tradition-bound people' (cited in Hooker, 1978: 28). Under the New Order, such notions of adat became part of a political agenda that promoted 'both national unity and obedience to authority' (Henley and Davidson, 2007: 22). For Suharto, adat was useful to legitimize his rule in 'cultural terms', something he needed more than Sukarno because of

the New Order's proximity to Western governments and corporations (Bourchier, 2007: 120).

In Chapter 2 we have seen that despite the adoption of unifying laws, adat law continued to have a symbolic position in Indonesian law. Furthermore, the legal terminology designed by colonial scholars like Van Vollenhoven and Ter Haar never disappeared from the curriculum of Indonesian law schools.

Activist leaders seemed aware that their terminology resonated well with important symbols of Indonesian culture and law. By picking the term adat community, they adopted a language that on the one hand was relevant for their proclaimed adherents, and on the other hand was compatible with prevailing ideas on national harmony and identity promoted by the state. Doing so, they anticipated possible repercussions from government authorities, such as the accusation of being separatist or communist. Given that adat and adat law are embedded in both narratives of national culture and important legal texts, they prevented the Indonesian government from making this kind of accusation, while at the same time ensuring that the government could hardly deny the existence of adat communities and their rights.

4.2.5 The depiction of adat communities as indigenous custodians of the environment

The third explanation is that through the language of adat community, the movement managed to find an alley in the broader international indigenous peoples movement. Establishing this linkage has strengthened the legitimacy of the movement both within and outside Indonesia. Placing adat communities under the indigenous peoples banner is what Benford and Snow call *frame bridging* (Benford and Snow, 2000: 624). The equation of adat communities and indigenous peoples created a bridge to notions of traditional ecological wisdom and environmental sustainability. Of utmost importance here is the popular idea that indigenous peoples are guardians of the environment and better capable of protecting nature than non-indigenous peoples. Connecting to these ideas has significantly increased the potential of adat advocacy organizations to become eligible for financial support of multilateral development banks, as well as from large international environmental programs like REDD+.

Initially, the notion of culturally distinct original inhabitants of a particular territory did not seem to provide much ground to connect with the struggles of rural Indonesians. For years the Indonesian government insisted that all of its people were equally indigenous (Bowen 2000: 12). In its policies regarding the development of certain 'backward' groups, the government did not categorize groups on the basis of indigeneity, but rather on the basis of their marginal social and economic position. Therefore, initially there hardly appeared to be a legitimate basis to start an indigenous peoples movement in Indonesia. Nevertheless, by strategically equating adat communities with indigenous peoples, the movement has managed to connect to a broader, international discourse, even though the Indonesian government itself has yet to explicitly acknowledge that adat communities are indigenous peoples. The inauguration of the term at the 1993 Toraja congress almost coincided with the beginning of the International Decade of the World's

Indigenous People, proclaimed by the UN in 1995. AMAN moreover, ever since its establishment, has translated *masyarakat adat* in English as indigenous people, which has helped to increase the organization's visibility in the eyes of international donor organizations (Henley and Davidson, 2007: 7; Avonius, 2009: 222). As a result, AMAN in its early years received much more financial support than more radical land reform organizations like KPA (Peluso, Rachman, and Afiff, 2008).

The success of equating adat communities with nature-preserving indigenous peoples must furthermore be understood in the context of the Indonesian state's longstanding tolerant stance towards environmental activism. In 1978, a time during which the impact of Suharto's resource extraction on the environment began to be noticed, Indonesia appointed a Minister of the Environment. The Basic law on Living Environment was enacted in 1982 (Cribb, 1990: 1126). During this period, environmentalism became one of the very few ways through which citizens could express critique towards the state. Partly to save its reputation before the eyes of the international community and partly to legitimize its claims over large areas of forests for the Indonesian people, the government allowed the environment to be a domain in which civil society actors could engage with the government, which 'created a refreshing element of dialogue in Indonesian politics' (Cribb, 2003: 41, 45).

Although the strict government control of civil society activity largely persisted, the 1980s saw the rapid growth of the number of NGO's in Indonesia. These were tolerated as long as it was clear that they did not aspire to be *ormas*; organizations with political networks aimed at mobilizing large numbers of people. NGO's lacked formal membership and political power. Yet, some of their main activities involved the monitoring of the conduct of government (Cribb, 1990, 1131-1132).

By forming alliances with government actors, an NGO based activist movement could 'literally gain ground' (Peluso, Rachman, and Afiff, 2008: 379). A prime example is Indonesian environmental forum WALHI (*Wahana Lingkunan Hidup Indonesia*), an NGO established in 1980. WALHI quickly developed into one of Indonesia's most influential civil organizations and numerous times managed to exert serious pressure on the Indonesian government. Its strength lay partly in its close ties with Minister of Environment Emil Salim, who was a loyal supporter of WALHI's cause (Peluso, Rachman, and Afiff, 2008: 384; Cribb, 2003: 46). As a result, WALHI could maneuver with relative freedom and openly express concerns about government conduct. Because the New Order's focus on large-scale projects involving the expropriation of large tracts of land, there was a certain overlap in the concerns of environmental activists and activists demanding rural land rights.

Despite several ideological differences, both environmental and rural justice activists challenged the natural resource policies of the New Order government, the difference being that environmental activism was a much 'safer' place to voice discontent than the domain of agrarian reform. Many activists who were part of environmental organizations such as WALHI therefore also advocated social justice issues such as respect for human rights and the state's recognition of adat lands (Muur, 2010: 19-20). Cribb states that 'environmental criticism also became a vehicle for more wide-ranging

objections to New Order policy' (Cribb, 2003: 44). Warren similarly notes 'that the environment had become a legitimate ground (for a period at least) for the expression of dissent on broader issues – government corruption, social inequality, and democratization' (Warren, 1998: 180).

To a certain extent, the Indonesian government took the critique on its environmental policies seriously and made attempts at improvements (Cribb, 2003: 44). But there were limits as to how far the environmental movement could advocate issues that were considered politically sensitive. This became evident by the late 1980s, when NGO's began to criticize the government's agrarian land rights policies in a more explicit way. A turning point was the conflict that revolved around the Kedung Ombo dam in Central Java. The construction of the dam, planned by the government with financial support of the World Bank, was met with fierce protests from a coalition of NGO's (including WALHI) on both environmental and human rights grounds. One of the demands was the proper compensation for displaced farmers. The reaction of the government was that NGO's had gone too far and were now engaging themselves in politics. Minister of Environment Emil Salim publicly distanced himself from the NGO protests (Peluso, Rachman, and Afiff, 2008: 385).

The growing suspicion towards environmental activists seriously disrupted the relationship between the government and environmentalist movements. In the 1990s, activists concerned with social issues still had to operate covertly, particularly those working on agrarian land reform. Nonetheless, the ties and overlap between environmentalists and social justice advocates that had developed throughout the 1980s remained strong, and organizations like WALHI continued to expand their agenda to social issues (Muur, 2010: 33-34). After the fall of Suharto, the Indonesian indigenous movement quickly became the new safe haven for both agrarian and environmental activists (Peluso, Rachman, and Afiff 2008: 394). Doing so, organizations advocating the rights of isolated communities could become part of a 'global rights based movement', which expanded their scope and reach to the outside world to unprecedented levels (Avonius, 2009: 221).

4.2.6 Adat communities and identity politics

A final important factor accounting for the rise of the adat community discourse is the political shift towards the regions that followed Suharto's demise. Under the highly centralized New Order, Indonesia's vast variety of ethnic groups could only express their identity through cultural forms of expression (Li, 2001: 654). As explained above, adat played a vital role in the creation of national ideology and the legitimization of state law. In the domain of local politics however, the role of adat was restricted and limited to narrow forms of expression such as arts, dances and local architecture, but 'no political rights were allowed to follow from cultural difference or ethnic identity' (Henley and Davidson, 2007: 11). The government permitted and often promoted the celebration of local traditions to highlight Indonesia's cultural diversity, but it was simultaneously cautious that adat would not become a ground for mobilization (Acciaioli, 2001: 69;

Avonius, 2003: 123). Suspicious of all forms of popular mobilization, the New Order government suppressed the regional and local political authority based on adat or local identity (Cribb, 2003: 45).

During the *Reformasi* period, decentralization was implemented and political authority more evenly spread across the regions. Law no. 22/1999 on Regional Autonomy (replaced in 2004 with Law no. 32/2004) shifted a wide range of powers, including the management of natural resources and the distribution of lease permits, from the national level to regional governments, particularly to the district level (Buehler, 2010: 267). This law also emphasized the significance of traditional norms in village governance (article 1 (15)). Although Law no. 22/1999 was not very specific on this matter, such a shift was a remarkable development, given the formal abolition of adat village leadership by the 1979 Village Law (Henley and Davidson, 2007: 15). In some areas, local government structures were restored to their old state. In West Sumatra for example, the nagari - a traditional polity that was formally dissolved under Suharto - was revived throughout the province (Nurdin, 2017).

A parallel development with decentralization was the nationwide revival of identity politics (Henley and Davidson, 2007: 7). The deployment of adat was not limited to isolated or marginalized communities, but also became a tool of elites to compete for political power, especially in rural districts. Henley and Davidson wrote that: 'adat, then, became both a means of redressing past injustices and a way of securing an advantageous position in the post-Suharto scramble for power in the regions' (Henley and Davidson, 2007: 14). Various formerly abolished sultanates began to demand to be formally reinstalled (Klinken, 2007a). Likewise, the return of the adat law community concept in Indonesian law, and in the Indonesian public discourse in general, created a new basis for local identity politics (Benda-Beckmann and von Benda-Beckmann, 2011: 183-184).

While vulnerable farming groups usually claim adat community status as a defense strategy to protect their lands against powerful external forces such as plantation corporations and government agencies, the same claim can also be used by original population groups to exclude poor migrants from gaining access to land and natural resources. During *Reformasi*, local identity was also invoked to incite hostile sentiments between ethnic groups. This facilitated the collective mobilization in places where there was fierce resource competition between different population groups. In Central Kalimantan, where ethnic tensions between Dayaks and Madurese migrants resulted in a brutally violent conflict, adat organizations openly justified the use of violence against Madurese people (Klinken, 2007b). Unsurprisingly, in a country as diverse as Indonesia, a collective action frame based on local and regional identity stirs up emotions, as emotions surely enhances mobilizing capacities (Tarrow, 2013: 111).

The next section is devoted to the different actors involved in in the movement, the advocates of adat communities, adat communities themselves and external funding agencies. I will look into their role inside the movement, their objectives and their repertoires of action. I will also discuss how the various actors relate to one another, how they interact and where their interests meet or conflict.

4.3 ACTORS IN THE INDIGENOUS MOVEMENT

4.3.1 The advocates of adat communities

In many regions in the early and mid-1990s, rural people began to claim rights to land and natural resources on the basis of adat community status, albeit in various forms and constellations (Acciaioli, 2001; Djallins, 2011; Afiff and Lowe 2007). Yet, that the movement has been able to evolve into a countrywide network connected through countless organizations from the national level all the way down to the district level can largely be accredited to people who themselves 'are not masyarakat adat' (Li, 2001: 660). Activist leaders and intellectuals engage in the advocacy for the rights of adat communities. They have played a crucial role in the dissemination of a common language for dispossessed, marginalized or neglected communities throughout Indonesia. In Tania Li's words 'they undertake the cultural-political labor of translating innumerable, particular instances of isolation into a common language, assembling them so they can be understood and potentially resolved on a national scale' (Li, 2001: 660).

Some authors mark the early development of the indigenous movement as one of grassroots mobilization, meaning that local actors initiated collective action as a direct response to their experienced grievances. Acciaioli for instance emphasizes the bottom up character of the emergence of the indigenous movement (Acciaioli, 2001: 107) Although in a few cases this may have happened, more typically the positioning of a group as adat community takes place in an interplay with external mediators (Li, 2001; 2007). We will see in later chapters that the identification of a community as an adat community often occurs in a conflict situation with an external party. It is in such situations that activist leaders and intellectuals working for NGO's or local organizations become involved. As part of their work, they embed the perceived problem into a broader framework of injustice. They help to come up with strategies to achieve the aspired objectives.

Generally, activist leaders also perform the role of brokers, as they are the people who are well connected to both the wider networks of NGO's and other actors of importance, such as government officials. They assist in formulating people's claims and help to address them to a targeted audience; this audience may be a specific government agency, a court, a corporation or the general public at large. They furthermore determine which kind of collective action is necessary to reach the desired outcome. Activist leaders are predominantly young people who are relatively well educated and reside in urban centers, varying from Jakarta to regional or provincial capitals. They are often both well connected to the groups they claim to represent, especially their leaders, and to larger activist networks. As such they play a crucial role in the 'dense social networks connective structures' of a social movement (Tarrow, 2013: 19).

Individuals hailing from rural communities that claim adat community status may emerge as activist leaders themselves, usually after being introduced to and incorporated into larger NGO networks (Acciaioli, 2001: 92). Some of the more prominent adat

community advocates based in Jakarta are from places outside Java such as Sulawesi, Sumatra and Flores.

4.3.2 Adat communities: who are they, what are they?

A major issue surrounding the deployment of the 'indigeneity' card in the struggle for land rights revolves around inclusiveness. A striking question is who is able and who is not able to make claims on the basis of indigeneity. AMAN's definition of an adat community is, like the definition under Indonesian law, rather narrow. This means that when applying the definition strictly, many people will be excluded from the category, even groups who in accordance to a conventional international definition could be classified as indigenous. Gerard Persoon (1998), emphasizes the diversity in livelihoods of tribal groups existing in Indonesia. The country's many regions are the home of dispersed hunter and gatherer groups, sea gypsy peoples, shifting cultivating communities and cultural enclaves that deliberately abstain from modernity and adhere to strict customs and traditional means of living.[113]

While the different groups outlined above could each in their own ways be classified as tribal, traditional, or indigenous, it is doubtful whether, under the conventional definition, they all qualify as adat communities. For instance, dispersed hunter and gatherer groups do not always have a traditionally defined territory, while certain shifting cultivating communities may face difficulties in proving that they still have adat law or adat judicial institutions. The groups Persoon classifies as cultural enclaves on the other hand, such as the Baduy and Ammatoa Kajang communities, easily fulfill all criteria. They generally have well defined territories and still comply with their adat law systems. As we will see in Chapter 7, these groups face fewer hurdles than other groups when they try to obtain formal government recognition.

Although the conventional definition is narrow and highlights the distinctiveness of adat communities, in practice, an organization like AMAN applies the term in a rather broad and inclusive way. AMAN welcomes most rural communities to become members of the organization, even if there are doubts with regard to whether all defining features of adat community are in place.[114] The organization estimates the total number of indigenous people in Indonesia at 70 million, which is more than 25% of the Indonesian population. AMAN does not explain the methodology behind the number, but to get there, it would have to include the majority of the rural population living outside of Java. Regardless, adat community advocates use the large estimation to draw attention to the important cause of the movement. It is precisely this dichotomy between definition and application that makes the movement so influential: on the one hand, the narrow definition highlights that adat communities are special and unique and hence deserve special rights, but through the broad practical applicability of the concept on the other

[113] This categorization of tribal groups comes from Persoon (1998).

[114] In Chapter 7 I will provide an example of such a case, when discussing the Turungan Soppeng community from West-Sinjai sub-district, Sinjai.

hand, almost any rural community may position itself as adat community. This makes it a very appealing and powerful collective action frame.

In contrast to AMAN's definition, the adat community concept is in practice applied as an inclusive term for all marginalized rural people. Li stresses that most people involved in the adat community movement in Central Sulawesi in the early 2000s, when asked the question what adat communities are, answered '*rakyat yang tertindas*' (oppressed people) (Li, 2007: 246-247). But as will become evident in the subsequent chapters, the idea that 'everyone who is oppressed' can qualify as an adat community is not shared by everyone (Li, 2007: 247). Government agencies and courts often apply the term in a literal sense in accordance with the definition of an adat law community under Indonesian law. In Chapter 7 we will see that for many local land users seeking secure land rights, the narrow definition has often become a mechanism of exclusion. Is this the price that the movement pays for choosing a socially and politically acceptable term?

4.4 OBJECTIVES, ACTION AND OUTCOMES OF THE INDIGENOUS MOVEMENT

4.4.1 Organizations and objectives

There are many organizations in Indonesia that advocate indigenous rights, but AMAN has the most influence, receives most funding and has the strongest mobilizing capacity. In the early 1990s, advocates of adat community rights mostly worked for established organizations such as WALHI and YLBH. During the mid-1990s, adat community organizations started to organize at the provincial level, such as the *Aliansi Masyarakat Adat Kalimantan Barat* (Ama Kalbar) and the *Aliansi Masyarakat Adat Sulawesi Tengah* (AMASUTA) (Acciaioli, 2001: 92; Arizona and Cahyadi, 2012: 44). In March 1999, less than a year after Suharto's resignation, the first National Congress of Adat Communities (KMAN I) was held, funded by international donors including USAID and OXFAM (Li, 2001: 645). Since then, AMAN has organized four more national congresses, the latest one was held in March 2017 in North Sumatra.

After its foundation, AMAN quickly established representational bases all over the country. The organization is well embedded into international NGO networks, and has ties with organizations such as the International Working Group on Indigenous Affairs and the United Nations Working Group on Indigenous Populations (Avonius, 2009: 221). AMAN is open to membership, but only communities, not individuals can become members. In 2009, AMAN had 776 member communities (Avonius, 2009: 222). By 2018, this number had almost tripled, the total number of members now being 2304 communities, which according to AMAN, in total comprises seventeen million people.[115] AMAN's headquarters (*pengurus besar*) is in Jakarta. The organization furthermore has 21 regional branches (*pengurus wilayah*), mostly located in provincial capitals, and 115 district level branches (*pengurus daerah*). In addition, the organization works closely with a number of NGO's, of which many are environmental organizations (Avonius, 2009: 223).

[115] Information derived from http://www.aman.or.id/, last accessed 25 May 2018.

AMAN has a neat organizational structure and its leader, the Secretary-General, is elected every five years.

AMAN's most important objective is to ascertain that the Indonesian state recognizes the existence and rights of adat communities, of which the right to community land holds the largest priority (Acciaioli, 2001; Li, 2001). In line with other indigenous peoples movements around the globe, AMAN's idea is not to overthrow the government or to establish a new and separate polity, but rather, to strengthen the position of adat communities within the existing structures of the nation-state. AMAN's foundational motto is telling: 'If the state does not recognize us, we will not recognize the state' (Tsing, 2009: 46). In the view of the movement, the means through which state recognition can best be realized is legal reform, as it is through legislation that the existence and rights of adat communities can be formally acknowledged by the state. Besides AMAN, two influential Jakarta-based organizations that support the cause of adat communities are Epistema and HuMa. Both are legal reform organizations and many staff members are trained lawyers.

Initially, the indigenous movement mainly targeted the legal regime on forestry and agrarian rights, especially the 1967 BFL, for it provided the legal basis for the designation of the contested Forest Areas (Afiff and Low, 2007: 84; Bedner and van Huis, 2010).[116] In addition, the movement pushed the government to pass new legislation on adat community rights, both at the national and regional level. More recently, the main objective of AMAN has become the enactment of a national law specifically dedicated to the recognition and protection of adat communities. Abdon Nabadon, secretary general of AMAN from 2006 – 2017, recently stated that *'a law on adat communities will be the light that will guide 70 million Indonesian members of adat communities towards a more peaceful life based on justice'*.[117]

4.4.2 Legal and political strategies

To realize state recognition of adat communities, the indigenous movement has adopted a diverse repertoire of action. So far, the judiciary has been the most effective forum to realize legal reform. Adat community advocates have numerous times taken the government to court, challenging the constitutionality of state laws. Constitutional Court ruling no. 35/2012 on the separation of adat forest and state forest, discussed in Chapter 2, has been the most notable victory to date. In addition to litigation, the indigenous movement also resorts to political action to achieve its objectives. An organization like AMAN does not shy away from using its bargaining power, which has grown in recent years as a result of growing public support, as well as growing financial support from influential development organizations like the World Bank.

[116] See Chapter 2.

[117] Translated quote from https://www.aman.or.id/abdon-nababan-segera-sahkan-ruu-masyarakat-adat/, last accessed 20 January 2018.

During the presidential elections of 2014, AMAN openly showed its support for candidate Joko Widodo.[118] It was the very first time that AMAN explicitly expressed support for a candidate. Widodo's subsequent election created direct access to the highest level of government, on which the organizations' leaders can exert serious influence. In late 2016, AMAN announced to withdraw its support for President Joko Widodo if no concrete government action to recognize adat forest rights was undertaken soon.[119] Within weeks, the President invited a number of adat communities to the presidential palace, where he personally handed them nine adat forest decrees issued by the MEF.

At the regional and local level, activist strategies are also numerous. Depending on the situation, their strategies vary from contentious politics to informal negotiations with government actors. Organizing demonstrations is common and this form of action is mostly employed in imminent conflict situations, for instance between local people and plantation companies. Typically, demonstrations are organized in front of district government offices with participants dressing in their traditional clothes. In addition to protests, adat community advocates actively engage with government agents, investing in relationships with officials and politicians to win their support. They use maps to convince them about the existing rights of adat communities. Many organizations advocating adat rights are involved in community mapping. As of 2017, a total of 795 adat territories have been mapped, covering 9,4 million hectares.[120]

4.4.3 Mixed results

Many were excited when they found that President Joko Widodo would be the opening speaker at the 5th National AMAN Congress in March 2017. Something like this would have been unthinkable some years earlier. Large billboards displaying images of the President were spread along the bumpy road towards the congress site in the rural *kampung* of Tanjung Gusta, Medan, North Sumatra. To the disappointment of many however, a day before the congress began the President canceled his visit. 'Only' the Minister of Environment and Forestry would attend the congress and give a speech. Tanjung Gusta, in the far outskirts of Sumatra's largest city Medan, is largely situated on a former palm oil estate, located on state land. With the support of AMAN, local people and migrants from different regions occupied the land years ago, claiming legal entitlement to the land on the basis of their adat community status. Rumor at the congress was that at second thought, the President changed his mind about speaking at a congress that was organized on disputed state land.

The story above is characteristic of the current relationship between the indigenous movement and the central government. The latter shows occasional support,

---

[118] See: http://nasional.kompas.com/read/2014/05/23/1218537/Aliansi.Masyarakat.Adat.Nusantara.Dukung.Jokowi.Ini.Alasannya, last accessed 12 January 2018.

[119] https://news.mongabay.com/2017/01/jokowi-grants-first-ever-indigenous-land-rights-to-9-communities/, last accessed 12 January 2018.

[120] Information provided in the AMAN report: *AMAN Laporan Tanggung Jawab 2016*.

but generally abstains from concrete action and acknowledgement in sensitive situations, especially when the interests of state owned or private enterprises are involved. The many unresolved land conflicts involving claims to adat lands are particularly controversial. The government has yet to adopt a national law on adat communities, even though AMAN and other civil organizations have been campaigning for this law for more than a decade. When the government does give in to the legal demands of the movement, it is usually enough to keep activists temporarily content, but not to bring about major political change.

On the other hand, the indigenous movement did succeed to put indigenous rights on the policy agenda of the central government. The government's attitude towards remote and isolated people has significantly changed. During the New Order period, the government used the term *masyarakat terasing* (estranged people) to refer to marginalized and isolated communities. Government officials often believed that adat hampered the adaptation of rural communities to the modern world (Urano, 2010: 63). Gradually, this view has changed. By the late 1990s, the government began to use the term *masyarakat adat terpencil* (terpencil meaning remote in Indonesian) to refer to isolated, non-mainstream communities (Henley and Davidson, 2007: 15). Previous government publications spoke of the need for these communities to develop. But the new paradigm was that *masyarakat adat terpencil* have valuable unique cultures that are under threat from external influences.[121] This change in approach reveals the influence of the indigenous movement on the post New Order government.

In Chapter 2 I have shown that the indigenous movement has been at the forefront of realizing a number of legal reforms in Indonesia. As a result, the scope of adat community rights has widened considerably. The current government has declared to be seriously committed to the realization of adat community rights. But in order to make such words translate into action, AMAN is compelled to exert serious pressure on the government, as already outlined above. The 13,000 hectares of adat forest release by the MEF in December 2016 was a much-celebrated moment for the movement. However, there has been very little follow up since then. The promises of President Widodo that the first 13,000 hectares would be the start of a systematic policy to recognize adat forests has yet to materialize. In 2017, a mere 3000 hectares of adat forest was recognized, of which the majority was located outside of Forest Areas. In response, current Secretary-General of AMAN Rukka Sombolinggi stated that 'we lost our spirit in 2017', referring to the Widodo administration.[122] The most serious longtime frustration is that AMAN's long-term major goal - the adoption of a national law on the rights of adat communities - has still not been passed.

[121] For instance, the Ministry of Social Affairs contends that the traditions of masyarakat adat terpencil need to be protected through legal instruments, see: http://www.kemsos.go.id/modules.php?name=Newsandfile=articleandsid=1001, last accessed 21 December 2017.

[122] From Interview in the Jakarta Post, see: http://www.thejakartapost.com/news/2017/12/20/2017-not-a-friendly-year-for-ri-indigenous-people-alliance.html, last accessed 25 June, 2018.

4.4.4 Growth of the movement: losing its oppositional character?

Some of the people that were at the forefront of the indigenous movement during the 1990s have eventually made successful careers in civil society organizations. Others have in recent years taken up influential positions in government and government related institutions and now work as policy advisors.[123] Meanwhile AMAN has grown into a large and influential organization with substantial financial means at its disposal. Between 2012 and 2016, AMAN received more than ten million USD from donors.[124] One of AMAN's current main supporters, the World Bank, used to be precisely the kind of market-oriented organization that the likes of AMAN fought against in in the late 1990s. At the latest national AMAN congress in March 2017 however, World Bank officials were invited as speakers. The congress was also the place where the World Bank launched a new multi-million-dollar project to help forest dependent communities that live in Forest Areas. It is implemented in cooperation with the Indonesian government and AMAN.

These developments indicate that some of the movement's leaders have acquired closer ties with power holders and are as such able to exert direct influence on government policy. The confrontational character of groups like AMAN has recently transitioned into an approach that focuses more on dialogue with various government agencies. Such developments, one might argue, are necessary steps to be taken for the movement to realize its objectives. Indeed, the growth of the movement has strengthened its bargaining position and the improved relationship between activists and government agencies has been beneficial to realize some of the recent achievements. On the other hand, however, concerns exist that when connections with power holders become too strong, activist leaders might lose sight of the needs and desires of the people they claim to represent. Tarrow in this context explains that 'movements that adapt too well to their societies' cultures lose the power of opposition and alienate their most militant supporters – for what society has dominant values that do not support existing power arrangements?' (Tarrow, 2013: 110). Considering AMAN's shift towards the center of political power, the organization puts itself at risk of losing its reputation as an oppositional movement, especially in the eyes of grassroots level activists and adat community members.

One of the paradoxes of the indigenous movement is that although it has positioned itself as opposing the authority of the state, the structure and working methods of many organizations involved in advocacy on behalf of adat communities show strong similarities with how the Indonesian state operates. Avonius notes that AMAN is 'extremely Indonesian', given that the organization 'has internalized the country's regional administrative divisions and it acknowledges the existence of state bureaucracy' (Avonius, 2009: 224). Li observes that activists in Central Sulawesi, just like the

[123] For instance, agrarian reform and adat rights activist Noer Fauzi Rachman became Presidential Advisor on Land and Forestry Affairs in 2014, while Chalid Muhammad, former director of WALHI, became Senior Advisor to the Minister of Environment and Forestry. Long time adat rights activist Sandra Moniaga is a Commissioner of the National Commission on Human Rights (Komnas HAM).
[124] *AMAN Laporan Tanggung Jawab 2016.*

government, use the '*sosialisasi*' approach, referring to 'the practices and language of government and donors who try to 'socialize' their initiatives from the top down' (Li, 2007: 348). Acciaioli furthermore mentions that the jargon used by adat advocacy organizations closely resembles that of the government: 'these idioms are reminiscent of precisely the sort of governmental rhetoric which the ... movement has critiqued for subordinating local needs to state priorities that all too often have only advanced the interests of central elites' (2001: 104).

That AMAN is experiencing growth pains became clear during the 5th AMAN congress in North Sumatra in March 2017. During one of the public debates, one attendee from eastern Indonesia took the opportunity to stand up in public and address a few issues to the leaders of AMAN, who were all sitting at the most front seats next to the attending government officials, close to the main stage. The man complained that AMAN had become too much of a centralized organization, since most funding was kept at the headquarters in Jakarta and did not reach the regional offices. He also raised questions with regard to how some of this money was being spent. These statements visibly affected Abdon Nabadon, who was serving his final days as Secretary-General before a new candidate was elected. His reaction was fierce and full of emotion:

'We are not the state! We are not a corporation! We are an organization of struggle! If you want to receive a salary from AMAN, get out of this room! We are an organization of marginalized people! Do you want to be like the Governor, district heads and village heads? Then go pay taxes immediately. This is a group for struggle. Not of enjoyers. Don't you know that 84 million hectares of adat lands are being controlled by the forces of evil? So don't come here looking for a salary. 84 million hectares! Imagine working as the Secretary-General of AMAN and having to manage all the regional offices. All of you are scattered. How much money do you have, to pay for the AMAN organization? Do you know how much my salary is? Eleven million rupiah. I can't even fix my home. Working in Jakarta and going back and forth to Bogor, what do you think you can do with that salary? Who do you think is enjoying the high life? What kind of life do you think we live? Yes, we have hundreds of billions of rupiah. Do you think that belongs to us? Most of it belongs to the donors. And that has helped us to be able to not take fees. It's not our money. It's theirs. So to all of you who think you come here to enjoy the funds, get out of here. But if you want to be here to be part of a struggle, you are here in the right place'.[125]

The citation above indicates the challenges that AMAN faces. On the one hand, AMAN's position has strengthened, which means that the organization can now exert political influence on government actors. On the other hand, AMAN will need to keep framing itself as a movement of opposition and resistance, especially when concrete results and outcomes of the movement remain as modest as they are at present. Otherwise, its beneficiaries might view the movement's leaders as part of the political mainstream elite that cannot live up to the promises made to their constituents.

[125] Transcript and translation by Micah Fisher, March 20 2017.

4.5 CONCLUSION

In this chapter, I have discussed the ideological, historical, legal and political factors that influenced the emergence of the adat community discourse as a collective action frame of a social movement advocating rights of marginalized rural groups, particularly land rights. I have approached the emergence of this movement through the lens of social movement theory. An important insight following from this theory is that collective action frames need to resonate with the ideas of power holders in society in order to become effective.

The emergence of the Indonesian indigenous movement must first and foremost be understood in relation to the unaddressed grievances of local land users during the authoritarian New Order period, particularly of those residing in the outer islands. While other collective action frames were suppressed, the adat community discourse came into being as a discourse of resistance, but yet, one that would be viewed as legitimate by the state. This legitimacy can be attributed to the legacy of colonial legal policy; the symbolic position of adat law in Indonesian legislation; the prominent position of adat in national ideology on Indonesian culture; and the popular idea that adat communities are custodians of the environment. In the era of democratization, the adat community discourse gained more ground as local and regional identity became a basis for popular mobilization. In addition, connecting with the transnational indigenous peoples movement helped the Indonesian indigenous movement gain support from development agencies.

The concrete results of the indigenous movement have been modest. While advocacy through the judicial system has led to legal reforms, organization like AMAN are required to exert pressure on the government for the actual realization of adat community rights. This has occasionally resulted in ad-hoc victories, such as the recognition of 13,000 hectares of adat forest in late 2016. However, the adoption of a systematic and consistent government policy on the recognition of adat communities has yet to ensue. Simultaneously, as the movement becomes increasingly influential, it risks losing its oppositional image, which might eventually result in a decrease of grassroots support.

Ultimately, the most important question regarding the long-term legitimacy of the indigenous movement is whether AMAN and other advocacy organizations are able to realize concrete results at the local level. Can these organizations, advocating the adoption of new laws laws and legislation that recognize adat communities, realize land rights for local land users and if so, to what extent will these efforts improve their livelihoods? These will be the central issues to be examined in the next chapters. This assessment begins in the next chapter, in which I will provide a historical account of the changing relationship between adat and political authority in South Sulawesi.

5 ADAT IN TRANSITION: SPIRITUAL CULTS, DIVINE RULERS AND STATE FORMATION IN SOUTH SULAWESI

'Notions of divine kingship surely sit uneasily with the emancipatory ideals of a resistance movement' (Klinken, 2007: 164).

5.1 INTRODUCTION

The previous chapter dealt with the rise of the indigenous movement in Indonesia and explained how adat has become a means of resistance of vulnerable rural communities vis-à-vis external forces. This chapter shifts back to South Sulawesi and focuses on the history of adat in this region. Such a historical overview is necessary to understand the context of local adat land claims that will be discussed in Chapter 6 and Chapter 7. I will show that there is a flipside to adat, which is significantly different from the image evoked by the indigenous movement. In contrast to the idea of adat as an emancipatory force to empower marginalized communities, adat in South Sulawesi has for centuries helped to legitimize the power of local noble rulers.

The first part of the chapter will look at the socio-political history of traditional belief systems and adat-based rule in South Sulawesi, focusing on the traditions of hereditary noble rule and the impact of Dutch colonial policies on this rule. Next, I will discuss the Darul Islam rebellion period (1950-1965), which was above all a resistance movement supported by the newly emerging middle class against the aristocracy. Subsequently I will cover the New Order period, particularly looking at the impact of the changes following Indonesia's unification of government administration, and the position of the nobility under the New Order. In the final section I will zoom in on the Ammatoa Kajang community from Bulukumba district, famous throughout Indonesia for its strict adat traditions. In contrast to most other rural communities in South Sulawesi, this community is known for its egalitarian culture and modest lifestyle. Often mentioned in NGO reports and advocacy speeches as a prime example of an authentic adat community, the Ammatoa Kajang community has become an icon of the indigenous movement. As a backdrop for the following two chapters, I will here discuss the community's socio-political organization.

5.2 ADAT, COLONIALISM AND POLITICAL AUTHORITY (1605 – 1948)

5.2.1 The Tomanurung cult of South Sulawesi

Invoking adat as a rights-claiming strategy for marginalized communities is actually far from self-evident if we consider the complex and turbulent history of adat and political authority in South Sulawesi. While the indigenous movement associates adat with egalitarian norms of rural society, adat in South Sulawesi has long been used by elites to legitimize a hierarchical system of social stratification. Crucially important in this regard is the ancient spiritual cult of divine ancestry practiced in the kingdoms of Gowa and Bone,

and the smaller kingdoms spread across the region. The spiritual cult formed the basis of a social organization characterized by a strict distinction between noble elites, commoners and slaves (Chabot, 1996; Gibson, 2000). For centuries, this system ensured the continuation of patronage and clientelist relations between the aristocracy and their subordinates. The spiritual cult of divine ancestry posed a serious obstruction to social mobility (Pelras, 2000). Chabot, who spent many years doing empirical research on adat law in South Sulawesi between the early 1930s and late 1960s, notes that 'according to the prince and his kinsmen, the little man has no adat (…) For a man of nobility, adat is just that which distinguishes him from the people; his adat is the real one' (Chabot, 1996: 70).

Even though Islam arrived in South Sulawesi in 1605, the pre-Islamic spiritual cult - of which some aspects are said to date back more than a thousand years - remained of outstanding importance in the realm of political authority in the centuries thereafter (Gibson, 1994: 64). Its main principle is the belief in the *Tomanurung*, the divine celestial beings who descended from the sky to the earth to bring law and order to society, before ascending back to heaven (Chabot, 1996; Andaya, 1984; Pelras, 1985; Gibson, 1994). The traditional noble rulers, called *Karaeng*, derived their special status from their ancestral ties to these celestial beings. They were considered the direct descendants from the *Tomanurung* and hence, their divine blood assigned them political authority (Röttger-Rössler, 2000). The rulers were the intermediators between the people and the divine realm, as well as the upholders of adat law (Andaya, 1984: 22).[126] The myth hence determined a 'finely graded hierarchy fixed largely by birth' (Gibson, 1994: 64).

Most regions in South Sulawesi have had their own version of *Tomanurung* but all versions showed strong similarities. Almost everywhere, the story goes that the *Tomanurung,* after descending from the upper world, was first found on a stone or rock (*gaukang*) located in an open area (Andaya, 1984: 24). The *Tomanurung* then became the divine ruler, bringing order and prosperity to regions formerly tormented by conflict and chaos. The *Tomanurung* introduced rules on land rights and inheritance, and appointed the *hadat*, the traditional council of community leaders. According to local beliefs, the *Tomanurung* left several objects behind that originated from the divine upper world, and these henceforth became sacred heirlooms. The object, known as *kalompoang*, conferred political authority on the persons who held them in their possession.[127] Traditional rulers usually kept them in their house and were viewed as 'the executive agent of the political power embodied in the sacred object' (Rössler, 2000: 163).

The *kalompoang* were usually weapons such as spears or knives and were the center of worshipping rituals. These rituals were attended by both noble elites and

[126] The *Tomanurung* myth stems both from written sources of the Buginese and Makassarese kingdoms called *Lontara*, as well as local oral traditions, see Abidin, 1971; Andaya, 1984. Cummings (2002: 152) argues that the *Tomanurung* myth originates from the Makassarese kingdom of Gowa. As the Kingdom became more influential throughout the region in the sixteenth and seventeenth centuries, local versions of the *Tomanurung* myth were adopted across the region.

[127] The Dutch referred to both *gaukang* and *kalompoang* as *ornamenten* (Chabot, 1996 and Vollenhoven, 1918).

commoners, and strengthened social cohesion (Chabot, 1996: 121). The *kalompoang* rituals also strengthened the solidarity between communities, given that outsiders often joined. A regional hierarchy was created as *kalompoang* of smaller village territories were subordinated to those held by the rulers of larger kingdoms. The *kalompoang* of Gowa for instance, was considered one of the most powerful and magical objects of the region (Friedericy, 1961). As such, the status of *kalompoang* reflected the power relations between different polities.

Given the importance of ancestry for the acquisition of political authority, genealogical ties ultimately became the most important factor of social organization in South Sulawesi (Chabot, 1996; Rössler and Röttger-Rössler, 1996) Descent is bilateral in South Sulawesi, meaning that noble blood is passed through the mother and father's family line (Röttger-Rössler, 2000). Members of shared ancestry were often spread throughout the region, but a sense of kinship connection nevertheless remained in place (Chabot, 1996). It was common that groups of various ancestries lived together in a single village.

Until the late nineteenth century, the dominant sufi version of Islam and the spiritual cult of *Tomanurung* were largely complementary to one another, in the sense that both helped to solidify the powerful position of noble elites.[128] For instance, that the Kingdom of Gowa came to possess a number of ancient sacred Islamic scripts in the seventeenth century helped to bolster its influence in the region. In a way, the sacred Islamic scripts became 'the newest form of *kalompoang* in Makassar' (Cummings, 2002: 154).

Noble elites were both agents of Islam and the spiritual cult. Pelras explains that well-to-do elites 'tried to combine the advantage of both systems, by monopolizing Islamic offices on the one hand, and on the other hand by maintaining those elements of the former system on which their political power had rested' (Pelras, 1985: 122-123). While the *Tomanurung* cult ascribed political authority 'to a class of hereditary nobles', religious authority was in the hands of those who descended from Islamic saints (Gibson, 1994: 64). Marriages between persons of noble descent, and persons with genealogical ties to Islamic saints were common and strengthened the mutual positions of families (Andaya, 1984: 40).

The strict hierarchy on the basis of family lineages was not absolute. In some situations, upward social mobility was possible. First, commoners could in theory become members of the nobility by marrying a noble person. Chabot writes in this context that a 'commoner can only be admitted into the nobility by way of kinship, that is to say, by marrying into the nobility' (Chabot, 1996: 132). However, for a commoner to marry a person of noble descent was not only very difficult, it would also take 'several generations' before admittance into the nobility was finally achieved. Second, 'personal qualities' such as 'learnedness, courage, and wealth' were also regarded important for leadership positions (Chabot, 1996: 143-144). Such personal qualities could consolidate one's

[128] Islam became the dominant religion throughout South Sulawesi, with the exception of the formerly isolated highlands in the far north of the region today kown as Toraja. In the course of the twentieth century, Christianity became the dominant religion in Toraja after various Dutch missions.

position, but yet, they would not be of much benefit without some royal blood. In sum, although becoming part of the nobility was under special circumstances possible, the traditional *Tomanurung* beliefs kept a clearly defined socio-political order based on descent intact for centuries.

5.2.2 The influence of colonialism on traditional rule

Like in the rest of the archipelago, the Dutch ruled South Sulawesi mostly in an indirect manner and the noble elites were mostly left in place (Gibson, 1994: 61). From 1667 until around 1860, the Dutch presence in South Sulawesi was 'but one state among others in the area' (Gibson, 1994: 64). Gibson speaks in this context of a 'para-colonial' government, given that the position of local rulers was virtually left untouched by the Dutch (Gibson, 1994: 61). This changed in the 1860s, after the Dutch defeated the Kingdom of Bone (Gibson, 1994: 70).[129] Inspired by liberal ideas of progress and development, as well as efficiency and profitability, the Dutch tried to make local government more modern and efficient by incorporating villages into larger regencies (Gibson, 2000: 51).

In 1905, the colonial government sent troops of the Royal Netherlands East Indies Army (KNIL) to South Sulawesi, in order to force the independent kingdoms of Bone and Gowa to recognize Dutch sovereignty. The military campaign was successful. The colonial government thereafter abolished the two self-governing kingdoms and incorporated these regions into the structure of indirect rule. It implemented many changes to harmonize government administration following the Javanese model (Herben, 1987). At the lowest administrative level, the colonial government introduced the unit of *kampung*, which had previously not existed in South Sulawesi (Pelras, 2000: 406). The Dutch now divided administrative regions into four units: *afdeling*, *onderafdeling*, *district* and *kampung (*Goedhart, 1920).

The increased influence of the Dutch on local affairs in the early twentieth century changed the position of noble rulers. Village heads were now paid by the colonial government and were henceforth prohibited to gain income from land labor of commoners or slaves. Instead, they were now required to collect taxes (*landrente*) for the colonial state. Because of these developments, the traditional patronage relationships between the landowning nobility and their subordinates slowly began to be undermined (Pelras, 2000). Moreover, the Dutch had a final say in the appointment of rulers and officials and sometimes removed or replaced noble rulers if their loyalty to the colonial government was in doubt.

The reforms imposed by the colonial government impacted the relationship between the noble rulers and their subordinates. It began to occur more frequently that commoners were appointed village head. Slowly but surely it became easier for them to

[129] In 1667, the VOC first obtained a trading monopoly in South Sulawesi, after Dutch troops defeated the Makassarese kingdom of Gowa with the help of the rivaling Buginese kingdom of Bone. From then onwards, several principalities previously part of the Kingdom of Gowa were incorporated in the VOC's territory (such as Bulukumba), while the kingdoms remained self-governing territories (Huis, 2015: 177). Following the demise of the VOC, the region came under the jurisdiction of the Dutch East Indies in 1800.

climb the political and economic ladder (Gibson, 1984; Pelras, 2000). Meanwhile, the authority of the noble *Karaeng*, once characterized by impunity and unconditional loyalty among their subordinates, somewhat decreased (Chabot, 1996: 150-151). Despite these developments, becoming part of the nobility still remained very difficult for those of common descent. Chabot, covering the situation of the late 1940s, gives several examples of commoners becoming part of the aristocracy but classifies these as 'very rare cases' (Chabot, 1996: 144).[130] Hence, despite the emergence of a new class, the regional and local elite continued to be dominated by people of noble descent.

5.2.3 The revival of traditional rule against the rise of modernist Islam

The 1920s were a turning point for Dutch colonial policy in the archipelago. During this period, the colonial government abolished their modern reform policy and suddenly switched back to encouraging the authority of traditional, noble rulers. This 'conservative turn' was motivated by ethical concerns, but even more so, it was a response to the threats of the emerging nationalist, Marxist and religious movements in the Dutch East Indies, for which the political space was in part created by the Dutch liberal policy. The rise of modern political movements became an increasingly serious concern for the Dutch. To maintain political stability and secure their rule, the Dutch began to actively stimulate and promote the continuity of the traditional socio-political order.

In South Sulawesi, the Dutch restored the kingdoms they abolished several decades earlier. The *kalompoang* of Gowa and Bone –confiscated by the Dutch in 1906 to expose them in museums in Batavia and Leiden – were brought back to Sulawesi and returned to the kingdoms (Friedericy, 1961). The colonial government furthermore abolished the districts and replaced them with a new administrative unit, the adat community (*adatgemeenschap*). These were largely created along the lines of what the Dutch called *ornamentschappen* (ornament-worship communities) (Kooreman, 1883; Vollenhoven, 1918); groups 'living together in a certain territory worshipping a certain object' (Chabot, 1996: 120). The colonial government also created new adat communities, through which a number of separate villages merged into a new polity headed by an indigenous adat community head (*adatgemeenschapshoofd)* (Friedericy, 1961; Herben, 1987).

The noble *Karaeng,* who obtained the 'divine mandate' to be the leaders of the ornament-worship communities, were usually appointed as adat community head. The colonial government adopted a new electoral system (*verkiezingsreglement*) in 1927, which prescribed that only those of noble descent could become head of an adat community (De Jong, 2011: 69). Linguists and ethnographic researchers were furthermore assigned to study adat law and ritual traditions in South Sulawesi. Their studies were sometimes used to revive traditions that were beginning to disappear,

[130] One of these cases concerned a wealthy Muslim merchant who married with a follower of the queen of Gowa. The other case concerned a young and rich official of common descent who married the daughter of a noble adat community head (Chabot, 1996: 44).

especially when these related to the inauguration of the noble rulers (Gibson, 2000; Chabot, 1996).[131]

In South Sulawesi, the biggest threat to colonial rule and political stability was not nationalism or Marxism, but a 'new, egalitarian brand of Islam' that rapidly grew and became known as the Muhammadiyah movement (Pelras, 1985: 127). This form of Islam made no distinction 'between ranks, races or genders' (Pelras, 1985: 127.) First emerging in Java in the 1910s, the movement found most support from those 'on the periphery of the two worlds': the newly emerging middle-class people who were relatively wealthy, but could not access the ranks of the aristocracy (Palmier, 1954: 256).

In South Sulawesi too, the new form of Islam was promoted mostly by the rising class of businessmen and wealthy farmers of common descent (Pelras, 1985: 127, 2000: 417).[132] The Muhammadiyah movement first found its way into South Sulawesi through Haji Adbullah Bin Abdurrahman, a man from Maros who had spent ten years in Mecca. When he returned to Sulawesi, he established his own reformist Islamic organization in 1923, which was later incorporated into the national Muhammadiyah organization (Pelras, 1985: 27; Palmier, 1954: 256).

The Muhammadiyah in South Sulawesi strongly rejected the spiritual myths of *Tomanurung*, as well as the Sufi version of Islam widely practiced in South Sulawesi. As their influence grew they began to form a serious threat to the noble elite. The traditional nobility now needed the Dutch to stay in power, and the Dutch simultaneously needed the nobility to maintain control (Gibson, 2000: 44, 68). In 1942 Japan invaded the Dutch East Indies. In South Sulawesi, the Japanese tried to unite the Muhammadiyah and the traditional nobility under a single organization named *Jemaah Islam*, but largely failed, because the organization was strongly divided over issues of religion and feudalism (Huis, 2015: 185).

After the Japanese occupation came to an end in 1945, the Dutch tried to restore order in South Sulawesi. In 1948, they declared the federal state of East Indonesia (*Negara Indonesia Timur*), as part of the Kingdom of the Netherlands, with Makassar as capital city. In November 1948, the Dutch established a council of noble rulers named *Hadat Tinggi* to rule the region. The princes of Gowa and Bone became president and vice-president of the *Hadat Tinggi* (Chabot, 1996: 122). Noble elites throughout South Sulawesi supported the idea of the East Indonesia State, knowing that this would be the best option to maintain their powerful position (Pelras, 2000: 129).

The Dutch justified the rule of the nobility by arguing that for the people of South Sulawesi, the appointment of rulers of divine descent would be the only acceptable form of political authority.[133] However, strong opposition kept coming from the

[131] An interesting example in this regard is provided by Chabot (1996: 122), who observed in 1948 that as a result of the formal positions granted to the princes of Gowa and Bone as members of the *Hadat Tinggi*, it could be expected that the importance of rituals of the ornaments of these kingdoms would increase in the future.

[132] Buehler notes that some nobles also supported the Muhammadiyah to 'oppose rival aristocratic groups' (Buehler, 2016: 59).

[133] Colonial official Schwartz for instance, states in a 1947 report on the government administration of *onderafdeling* Bulukumba that if a leader would not come from one of the families of divine descent, the

Muhammadiyah movement, which had grown increasingly anti-feudal and anti-colonial. The Dutch responded with harsh violence. Between 1946-1947, Dutch troops under the command of Captain Westerling killed many thousands of suspected independence fighters in the countryside of South Sulawesi.

5.3 After Indonesian independence: Darul Islam, administrative harmonization and the nobility

5.3.1The Darul Islam rebellion against the nobility

The idea of an Eastern Indonesian State was short lived. In 1949, the Dutch recognized Indonesian independence on the condition that it would come to consist of a federation of states. A year later however, Sukarno proclaimed the unitary Republic of Indonesia. In the fifteen years that followed, South Sulawesi continued to be torn by violent conflict, which would drastically shake up the traditional socio-political order. During this period, known as the Darul Islam rebellion period (1950-1965), the guerilla armies of Kahar Muzakar took over large parts of the South Sulawesi countryside. Kahar Muzakar was a soldier of common descent from Luwu, who returned to South Sulawesi in 1949, after having fought against the Dutch in Java. He was deeply disappointed that he and his comrades were not offered a position in the Indonesian army. In 1953, Muzakar declared his support to the independent Islamic State of Indonesia (Darul Islam). In 1947, a Darul Islam rebellion army had emerged in rural areas of West Java. It resisted both Dutch rule and the authority of the Indonesian republic. Muzakar began to form a similar army in South Sulawesi in order to wage a full-fledged war against the traditional elites and the spiritual cult that had legitimized their power for centuries.

The insurgency of the Darul Islam movement was above all an attempt to 'reconstruct the social order in more egalitarian terms' (Gibson, 1994: 71). Gibson explains that the use of Islam as a way of challenging the traditional social order was not surprising, given that Islam played a prominent role in the life of South Sulawesians, while an ideology like socialism did not (Gibson, 1994: 72). The Darul Islam movement was extremely anti-feudalist. The movement introduced Shari'a law in regions under Muzakar's control, while the *Tomanurung* beliefs became strictly forbidden and 'all symbols of social ranking were excised from life-cycle rituals' (Gibson, 1994: 72). Muzakar's guerillas quickly took over large parts of the South Sulawesi countryside. Both Bulukumba and Sinjai districts fell almost entirely in the hands of the guerillas (Gibson, 2000: 67). The rebellion attempted to wipe out all forms of traditional practices and rituals. Houses in which the *kalompoang* were kept were burned and many noble leaders were killed.

The Darul Islam found most support from the emerging Muslim middle class who liked to see the power of the nobility diminish. Many of its supporters were of non-

people would not accept his political authority in the community. Hence, Schwartz argued that tensions between the Western principles of democracy and adat were inevitably going to occur. Therefore, a smooth process towards democracy would first require the recognition of adat leadership (Schwartz: 1947: 3).

aristocratic descent and followers of the Muhammadiyah. Although often classified as a rebellion movement against the central government, Buehler instead characterizes the rebellion as 'an expression of tensions along horizontal lines between a local aristocracy in control of the state and a class of non-aristocrats outside it' (Buehler, 2016: 61). Buehler explains that local support for Darul Islam was particularly large in districts like Pare-Pare and Luwu, where the position of the nobility was relatively weak and competition from the emerging middle class of common descent was strong (Buehler, 2016: 61).

In areas where the nobility was traditionally powerful, resistance against the invasion of the Darul Islam guerillas was fierce and took on extremely violent proportions. The rebels faced the strongest resistance in the highlands of Kajang, stronghold of the traditional Ammatoa Kajang community in the northeastern part of Bulukumba district (see map of research locations on page 6). Followers of the traditional Amma Toa adat leader organized their own army (called *Dompe*) in order to defend their *Tomanurung*-inspired cult. For a while, the Darul Islam rebellion was seriously weakened by the attacks from this civilian army as the guerillas suffered several blows in combat. Despite the fact that this army did not dispose of firearms, it temporarily managed to expel the Darul Islam troops from eastern Bulukumba, until it was beaten by the machinegun-carrying troops of Muzakkar in 1955 (Gibson, 1994; 2000) In a bloody confrontation in May 1955, around 500 adherents of the Amma Toa were killed by Darul Islam rebels and 200 houses were burned.[134] Eventually, it was the Indonesian army that defeated the Darul Islam movement in the 1960s. Kahar Muzakar was killed by troops in 1965 and government authority was gradually restored thereafter (Gibson, 1994; 2000).

Under Suharto, Islamic movements were suppressed and marginalized. In South Sulawesi, overt support for Darul Islam was risky and could lead to persecution (Buehler, 2016: 62). Buehler however notes that the 'Darul Islam networks and their shari'a ambitions stayed intact throughout the Suharto years' (Buehler, 2016: 62). Through these networks, new Islamic organizations were established, including boarding schools. They continued to be driven by 'a class of economically successful but politically marginalized traders and landowners that sees itself in opposition to aristocratic elites dominating the local state and political institutions' (Buehler, 2016: 64). Hence, Islamist networks still existed but operated outside of the New Order state, which was to become dominated by the nobility and military men loyal to the regime.

5.3.2 Administrative harmonization and abolishing adat authority

After the defeat of Darul Islam, the central government could finally integrate the region into the republic. The traditional socio-political order had to make way for modern and equal citizenship. In accordance with Indonesia's new administrative system, South Sulawesi province was divided into districts (*kabupaten*) and sub-districts (*kecamatan*). The boundaries of these units largely followed those of the former administrative units

[134] From Dutch-language newspaper *De locomotief: Semarangsch handel-en advertentie-blad*, 05 May 1955.

under colonial rule.[135] The adat communities were nevertheless abolished and noble descent was no longer a formal requirement to hold government positions. Through the administrative changes, a separation between the political and spiritual sphere was enforced (Pelras, 2000: 31). Even if noble rulers were appointed as village head, the provincial government no longer allowed them to keep *kalompoang* in their house, as they were believed to contravene principles of modern public administration (Rössler, 2000:171).

5.3.3 The South Sulawesian nobility and the New Order

Both the Darul Islam rebellion and the reforms of modern government had a significant impact on the traditional socio-political order of rural South Sulawesi (Pelras, 1985, 2000; Rössler, 2000). The *kalompoang* rituals no longer played a formal role in the political domain. Although they had survived the Darul Islam rebellion period in many regions (or were reintroduced), they had often turned into somewhat of an underground practice (Gibson, 1994).[136] Commoners could now challenge the position of long-time traditional rulers and compete for political authority, given that the socio-political hierarchy was no longer fixed by birth (Rössler, 2000: 174). In some cases, the authority of traditional elites became confined to the sphere of rituals. Families that long held authority based on their divine descent sometimes lost their position as village head to other competitors. Such situations easily resulted into social conflict, 'not only between the adherents of the pre-Islamic religion and the representatives of modern administration and Islam, but also among the group of adat representatives' (Rösslerr, 2000: 172).

Under Suharto's rule it became easier for people of a non-noble background to obtain influential positions previously inaccessible to them (Huis, 2015: 190). During the New Order period, an important condition to obtain a prominent position was a person's loyalty to the regime. Village heads refusing to join Suharto's political party GOLKAR, were often removed from office and replaced by candidates considered more trustworthy (Kato, 1989: 109; Gibson, 2000: 69). New groups of elites could emerge, consisting of landowning farmers, military chiefs and high-level bureaucrats of 'common' descent.

In most places however, the dominant role of the traditional noble families persisted. Many people continued to view noble descent as a requirement for the obtention of positions of authority. Often, traditional elites were still given local and regional government positions such as village head or sub-district head, although they were often assigned to areas other than their own, in order to minimize the influence of adat (Pelras 2000; 41; Rössler, 2000; 170).

The old nobility thus largely retained its privileged status. As under colonial rule, positions in the higher echelons of the state apparatus during the New Order period remained predominantly reserved to the nobility. The bulk of military figures that rose to

[135] Law no. 29/1959 on the Establishment of the Level II Regions in Sulawesi.

[136] Pelras conducted fieldwork in the region in the late 1960ss and notes that despite the turbulent past, he 'cannot help being struck by the long-lived survival of pre-Islamic elements' in society (Pelras, 1985: 107).

prominence in South Sulawesi under Suharto were members of the nobility (Buehler, 2016: 81). Moreover, commoners with high positions in regional governments, such as district heads, began to merge with the old nobility. Many of them soon began to behave similar to the old aristocracy they once positioned themselves against, basing their rule too 'on personal links of loyalty between a supreme leader and subordinates/followers' (Pelras, 2000: 408). Furthermore, many of the new elites married with members of the old nobility in order to obtain the prestigious status of the aristocracy (Huis, 2015: 190).

On paper, the New Order regime further marginalized the role of adat authority, under the guise of uniform government administration. The Village Law (Law no. 5/1979) imposed a unified system of village government in Indonesia, following the model of the Javanese *desa*. Like other laws enacted during the New Order period, adat was only given symbolic recognition (Galizia, 1996; Kato, 1989). The old noble elites were nevertheless important regional agents of the New Order. On a basis of patron-client relations, they handed out personal benefits to subordinates in exchange for loyal support (Pelras, 2000: 399). Suharto's regime supported such structures and purposely clinged on to existing clientelist power relations, as it needed the support of loyal local elites to exert political influence and maintain political stability in the regions (Huis, 2015; Klinken, 2003). In the Bulukumba plantation conflict discussed in Chapter 3 for example, local noblemen were agents of the New Order and worked closely with the plantation company and the regional military.

Since the *Reformasi* era, noble descent has continued to be an important asset, especially for those who run as candidates in local and regional elections. Sometimes this translates into political campaigns that strongly emphasize the noble blood of a candidate or the 'royal connections' that he or she has (Buehler and Pan, 2007: 59) Buehler and Pan write in this context that 'royal and aristocratic lineage is still perceived to be of great importance in the politics of South Sulawesi', although they also note that funds and personal networks might be of even greater importance today (Buehler and Pan, 2007: 52).

5.3.4 Transitions of authority and impact on landownership

For centuries, the nobility in South Sulawesi enjoyed a privileged status on the basis of their 'divine mandate' from the *Tomanurung* myths. This is what kept the hierarchical order of society in place and determined one's social status. Another factor that played a crucial role in the stratification of society was the nobility's disposal of economic capital. Noble families often owned large tracts of land and 'the main source of aristocratic political power was an appanage system of land-ownership' (Buehler, 2016: 95).

There are no detailed accounts of the distribution of landholdings in South Sulawesi before the 1920s. The Dutch paid most attention to the communal land tenure systems and had little interest in how land was distributed within rural communities. However, one account by Van Vollenhoven (1918) provides several relevant insights. He notes that all land in South Sulawesi belonged to a certain community on the basis of the right of avail (Vollenhoven, 1918: 378). This right did not exist at the village level, but at

the larger level of the ornament-worship community. This meant that the *Karaeng*, usually the heads of an ornament-worship community, had far reaching authorities to decide on matters of land. The *Karaeng* moreover possessed land on the basis of their privileged status, the so-called ornament lands (*ornamentsvelden*), on which commoners were forced to work. According to Van Vollenhoven, it happened often that the *Karaeng* abused their position and arbitrarily allocated land as ornament land, even if this land previously belonged to other community members (1918: 378). In the same study, Van Vollenhoven stressed that the right of avail began to weaken, given that land transactions and land tenancy outside of the adat-worship community were on the rise (1918: 378).

For much of the colonial period, Dutch colonial rule did not pose a threat to the large share of landholdings of the traditional nobility in South Sulawesi. However, from the late nineteenth century onwards a number of developments began to impact the distribution of landholdings. First, as a result of the earlier mentioned modern reforms imposed by the colonial government, the absolute power of the nobility began to be undermined. The Dutch abolished slave labor on fields owned by the nobility and taxes from agrarian profits were now to be sent directly to the treasury of the colonial state. This resulted in a strong decrease in economic gains of the nobility, a decrease in their landholdings, and a decrease of 'the direct dependence of ordinary people' (Buehler, 2016: 96).

A new class of middle-class entrepreneurs and farmers emerged who became landowners too and 'replaced aristocrats as agricultural patrons' (Buehler, 2016: 97). Many of these people became supporters of the Muhammadiyah movement and later Darul Islam.

Chabot, in his study conducted in rural areas of Gowa district in the late 1940s notes that although noble families were often large landowners, descent was not the only factor that determined one's landholdings, since 'rational economic grounds' were also important (Chabot, 1996: 157). Pelras, basing himself on data from the 1920s and 1930s, contends that in South Sulawesi 'only a minority of the nobility seems to have owned much more than the average, and landless commoners seem to have been more or less a minority too' (2000, 414). However, Chabot notes that noblemen tend to have a comparative advantage to acquire land laborers, given that commoners rather work on the land of noblemen than on the land of wealthy strangers. Chabot in this regard writes: 'An ordinary kampong individual prefers to work the land of a prominent man from the *Karaeng* group. In that he has confidence; it strengthens his positions. A tie with a nobleman can always turn out to be advantageous' (Chabot, 1996: 157).

A second development that further decreased the landholdings of the nobility was the Darul Islam rebellion. During this period, many noble elites fled from the countryside into the cities, virtually the only areas where the government had retained its control. The move to the cities 'isolated them from their landholdings' (Buehler, 2016: 97). In the 1960s, the position of the nobility was reportedly further affected due to the implementation of agrarian reform, which in South Sulawesi only began in 1965 when peace had returned to the region. In the years that followed, local newspapers reported that thousands of hectares of absentee land formerly in the hands of noble families were

redistributed to landless or nearly landless farmers (Buehler, 2016: 98). Many of these lands belonged to noble families that had fled to the cities during the Darul Islam rebellion. Buehler argues that in the decades that followed, the distribution of landholdings did not change significantly. This would imply that in general, the nobility at present does not own much more land than commoners. According to Buehler, the nobility's strong position in society today is more tied to their dominant position in the state apparatus than to their landholdings.

5.4 THE LAST OF THE PATUNTUNG: THE AMMATOA KAJANG COMMUNITY

5.4.1 The patuntung communities

So far, I have explained how modernist Islamic movements and the structural changes imposed by the colonial and Indonesian government administration altered the role of adat and adat-based rule in South Sulawesi in the decades following independence. Although the nobility remained influential and traditional patronage structures remained prominent in the countryside, the *Tomanurung* myths lost the political significance they once had in most areas. In certain places they virtually disappeared, while in other places they lived on, albeit cut off from politics. However, there are some groups in South Sulawesi that continue to hold on strongly to the old traditions. Among them is one of the 'patuntung communities', which are known for their cultural emphasis on modesty and simplicity.

According to the literature, the importance on egalitarianism and a lifestyle of 'striving for modesty' set patuntung communities apart from others in South Sulawesi, (Rössler, 1990). The public perception of these communities has therefore come to resonate well with the notions of purity and authenticity promoted by the indigenous movement, as well as with the legal definition of adat law community. In recent years, this has substantiated various claims to adat land rights. In order to understand how indigeneity has been locally claimed in these cases, which will be the topic of Chapter 6 and Chapter 7, I will first further elaborate on the special character of the patuntung communities.

Patuntung communities are ornament-worship communities that were only superficially influenced by Islam. Their pre-Islamic oral traditions have remained of crucial cultural importance (Usop, 1978; Rössler, 1990). The patuntung communities are small in numbers and live in the Konjo speaking highlands and coastal areas surrounding Mount Bawakaraeng in what today is the border area of the districts Bulukumba, Gowa, Sinjai and Bantaeng. Rössler describes the difference between the patuntung and other ornament-worship communities as following: 'The basic values of simplicity and modesty are reflected in a general emphasis on social egalitarianism among patuntung. This contrasts particularly with the rigid distinctions of social rank (and economic wealth) found in the lowland/West Gowarese communities, which are commonly cited as representing the principal characteristics of 'Makassar society'' (Rössler, 1990: 315).

In recent decades, many of the patuntung communities have been subject to vast changes. Rössler, who conducted fieldwork among the patuntung of eastern Gowa in the 1980s, notes that old norms and traditions are quickly vanishing as a result of the increased criticism from religious officials who regard these as pagan traditions. However, he mentions one community as an exception: The earlier mentioned Ammatoa Kajang community from Kajang sub-district, Bulukumba. The traditions of this community seem to have withstood the test of time and as such, it is 'commonly believed to represent the last genuine patuntung' (Rössler, 1990: 294).

At several points in recent history this community has drawn the attention of outsiders. When the colonial government sent their official linguist, Abraham A. Cense, to South Sulawesi to study adat law in the early 1930s, he first spent a period in Kajang to study one of the region's most 'purest' traditional cultures.[137] It was not by coincidence that Cense was sent to this area. For the colonial government, proving the existence of such a traditional community helped to legitimize late colonial policies favoring traditional rule. It proved that at least for some South Sulawesians, Islam was only of very limited importance. This idea strengthened the argument that the most legitimate way to 'govern' communities was through their traditional leaders.

As mentioned above, the Ammatoa Kajang community became an important ally of the government army in the 1950s. It received much praise from pro-government parties for its prominent role in the fight against Darul Islam. Newspapers released sensational headlines such as 'Amma Toa is cleansing in South Sulawesi' and 'Marching with chopped off heads through the village', reporting furthermore that the government armed forces were very thankful to the Ammatoa Kajang community for its brave efforts to help the army and police with fighting the guerrillas.[138]

Many of the traditional customs and rituals that Cense described in his 1931 report are still being practiced in Kajang today, even though the community formally identifies itself as Muslim. Rössler notes that 'its members have managed to preserve many features of an almost archaic type of religious and social organization' (Rössler, 1990: 290, see also Usop, 1978; Katu, 1980; Lureng, 1980; Akib, 1990; and more recently Maarif, 2012). Thus, while other communities increasingly adapted to modern influences, the traditional patuntung culture of the Ammatoa Kajang community seems to have survived. In the next section I shall discuss several distinct aspects of this community, particularly in relation to their socio-political organization.

5.4.1 The adat of the Ammatoa Kajang community: egalitarian norms or feudalist culture?

The Ammatoa Kajang community consists of people in Kajang (a sub-district in north-eastern Bulukumba) who follow the spiritual cult of a living moral leader whose office is known as Amma Toa. A strict and dedicated compliance to a local version of *Tomanurung*

[137] The findings of this research were compiled in an unpublished report from 1931 called '*De Patoentoengs in de Berglanden van Kadjang*'.
[138] From Dutch-language newspapers *Het Nieuwsblad van Sumatra* of 01 February 1955 and *Java-Bode* of 31 January 1955.

distinguishes the community from others in the region. The Ammatoa Kajang comprises around 5000 people who live in a number of villages in sub-district Kajang. These villages are considered the inner adat territory of the community. Here, strict customary norms apply. The greater Kajang sub-district area, which today has a population of around 50,000 people, is known as the outer adat territory as customary norms apply less strictly here but are still of great influence. Bonto Biraeng village, earlier discussed in relation to the Bulukumba plantation conflict, is located in this outer adat territory.

There are three characteristics that separate the Ammaota Kajang community from other communities that traditionally lived in accordance to *Tomanurung*-inspired cults. The first thing is the great importance of the community's spiritual and moral leader, the Amma Toa (old father) or simply Amma. In contrast to more common regional titles such as *Karaeng*, the title of Amma Toa is unique to Kajang. While the various *Karaeng* traditionally held the highest political authority in much of South Sulawesi, including in Kajang, the Amma Toa is a moral leader who refrains from politics. He is the 'protector and controller of the community' and exercises 'outstanding authority' over his followers in matters of adat and beliefs (Rössler, 1990: 310-311). He is considered the personification of the normative system based on adat law.

The second characteristic is the importance and continuing abidance by a normative system of oral traditions called *pasang ri Kajang*. The *pasang* are formulated in the Konjo language and refer to 'a complex integrated whole of social morality' (Rössler, 1990: 314). They clearly prescribe social behavior within the community, as well as the relation between humans and the natural environment. If a community member violates a customary rule, a trial will take place in the Amma Toa's house, where he will decide on the appropriate sanction. One of the main principles of the *pasang* is the obligation of each individual to live a modest and egalitarian life. Rössler writes that the Ammatoa Kajang community is known for 'an extraordinary austerity of the material culture, which corresponds with the general attitude on egalitarianism and conservatism' (Rössler, 1990: 315). Examples are the tradition to wear black attire - symbolizing modesty - and a prohibition to bring modern goods inside the traditional adat territory.

A third characteristic of the community's traditional culture is the utmost importance of land in the social, political and spiritual domain. For other communities in the region, the greatest symbols of communal solidarity were the sacred objects, the *kalompoang* discussed earlier. In Kajang, sacred objects were of much less significance (Rössler, 1990). Instead, Ammatoa Kajang community members do not consider objects, but the land that they inhabit as sacred.

The sacredness of land manifests in a number of ways. First, until this day the Ammatoa Kajang community has a core adat territory known as *rembang seppang*. It is inside this territory, located across a number of villages, where the *pasang* rules apply most strictly. The Amma Toa lives inside the *rembang seppang* and is not allowed to ever go outside of it. In this area, there are no paved roads, no electric connections, no modern houses such as mosques or schools, and no one is allowed to use footwear in the area. The *rembang seppang* consists of several traditional housing complexes, rice fields and farming gardens, traditional burial sites and a dense forest. This forest, which has a size

of 314 hectares, is considered the most sacred place of all, as community members believe that the first of mankind, *Tomanurung*, landed here and introduced the *pasang* to the earth. The *pasang* prescribe strict rules with regard to the use of forest resources. Some areas in the forest are reserved for rituals, while other parts may only be used for the collection of wood when the Amma Toa gives special permission to those in need of construction materials.

However, that the Ammatoa Kajang community prioritizes a modest way of life does not mean that they are not socially stratified. In fact, the institutional structure of traditional authority in Kajang bears many similarities with the highly stratified, rural societies common to South Sulawesi. Like elsewhere, social inequality was institutionalized in Kajang by a strict distinction between commoners and nobles. Usop (1978) and Rössler (1990) relate this social hierarchy to the political influence of the Kingdom of Gowa, which dates back to the seventeenth century. Besides the position of Amma Toa as highest moral leader, the influential, through-blood-line inherited position of *Karaeng* also still exists in Kajang. Rossler notes that: 'People of very 'pure descent' — which is an important qualification for Karaengship — occupy prominent positions in the community' (Rössler, 1990: 316).

Thus, the modest lifestyle and rejection of modern goods do not imply that the community also has an egalitarian socio-political organization. The *pasang* provide a clearly defined power structure. The Kajang 'government' consists of 26 leader positions, headed by the Amma Toa. Most positions are hereditary and can only be obtained by members of noble families. Since the imposition of modern government administration in South Sulawesi, the hereditary positions have been kept alive by connecting them to modern government offices. In Kajang, important local government positions such as the village heads and sub-district head 'are expected to be members of the local nobility' (Rössler, 1990: 317). Moreover, although the *pasang* dictate that leaders should always adopt a modest lifestyle, Usop notes that generally, the hereditary adat/government leaders own much more land that the average Ammatoa Kajang community members (Usop, 1978: 38).

In sum, the Ammatoa Kajang community represents one of the last patuntung strongholds in South Sulawesi.[139] We will see in Chapter 7 that the continuous importance of the traditional *pasang*, the adherence to adat institutions and the existence of a sacred communal forest makes the community a logical candidate for legal recognition as adat law community. Since the emergence of the indigenous movement in Indonesia, the community has become somewhat of an icon of the movement. It is often mentioned as an authentic example of a forest protecting adat community with an egalitarian culture and traditional normative system. However, in this section I have argued that in fact, a strict socio-political hierarchy of noble adat leadership characterizes the community. In the next chapter, we will see that this traditional hierarchy remains present today, as noble descent continues to be of great importance for one's position in the community.

[139] It is worth noting that the word *patuntung* seems hardly used in South Sulawesi these days. Instead, people now refer to such communities as *masyarakat (hukum) adat*.

Traditional Kajang house in the inner adat territory 'rembang seppang', Tana Toa village, April 2014.

5.5 Conclusion

In this chapter I have provided a historical account of adat in South Sulawesi. I have shown that contrary to the discourse of the indigenous movement for whom adat has become synonymous to the land rights struggles of marginalized communities, adat in South Sulawesi has long been associated with the feudalist order that privileged a landed aristocracy. For the poor farmer of common heritage, adat leaders were important patrons that could offer protection. However, for the middle class of non-aristocratic descent that began to emerge in the early twentieth century, adat legitimized the un-egalitarian socio-political order and formed an obstruction to social mobility.

Resistance movements under the banner of Islam emerged from the 1920s onwards and aimed to challenge this social order. After independence, the republican government tried to create a system based on modern citizenship. Since then, the nobility and their adat have been subject to pressure from external forces promoting political and economic equality.

Today, the old socio-political hierarchy between the nobility and commoners continues to be of social and political importance in rural areas of South Sulawesi. The nobility does not own much more land than families of non-aristocratic descent, but the prominence of the nobility currently exists predominantly in relation to their influential position as officials in the local and regional governments. Noble descent is also considered an asset for candidates in regional elections. When one looks for adat in South Sulawesi therefore, one shall inevitably stumble upon the noblemen that occupy

influential state positions. Today, land rights activists deploy adat in their imagery of dispossessed tribes. But considering the history of adat in South Sulawesi provided in this chapter, we see how this imagery stands in an odd relation to the ideas of those who see adat not as a form of emancipatory resistance, but as means to keep the traditional social order in place.

It can therefore be concluded that there is a certain discrepancy between the current popular notion of adat as an emancipatory force, and the history of adat as an oppressive tool to maintain the traditional social order. Earlier in this book I have explained the new meaning that adat has taken up in recent decades as an intrinsic element of the indigenous movement. Under the influence of this movement, activists and local land users now invoke adat as a means of defending local culture and strengthening land claims of marginalized people. Paradoxically however, it is adat that has long legitimized social inequality in South Sulawesi. For generations, adat has functioned to consolidate the power of noble rulers.

Some communities do appear to match the image that the indigenous movement evokes. Yet, I have shown that one of indigenous movement's icons, the Ammatoa Kajang community, has a living tradition of distinguishing noble people from commoners. Some of those who invoke adat as a rights-claiming strategy have recently come into conflict with traditional leaders for whom adat legitimizes traditional authority. How this has worked out in practice will be addressed in the next chapter.

6 ADAT POLITICIZED: THE CONTINUATION OF THE BULUKUMBA PLANTATION CONFLICT (2003-2017)

6.1 INTRODUCTION

The dominant discourse of indigeneity finds expression in Indonesian legislation, in the reports published by NGO's and in the jargon of multilateral development institutions. In Chapter 4 I showed that this discourse depicts adat communities as harmonious entities whose members have shared interests. However, as we have seen in Chapter 5, such notions may not correspond well with the historical development of adat in particular regions. Meanings of adat can vary, and the historical account of South Sulawesi showed that besides the contemporary use of adat as a rural justice frame for the marginalized, adat has also been a consolidator of traditional leadership. Moreover, people can have multiple identities, depending on the context, so that an adat leader can be both a representative of his community and a government official.

Against the backdrop of these contrasting meanings of adat, the question is how these meanings relate to one another at the local level and how they impact the trajectory of land conflicts. In the following two chapters I will therefore zoom in on adat land claims at the local level in present-day South Sulawesi.

This chapter focuses on the deployment of adat as a strategy to claim land rights, by examining the interaction between land claimants, their activist mediators, adat leaders and government officials in the Bulukumba plantation conflict. The origins of this conflict, as well as its trajectory until 2006, have been covered in Chapter 3. The present chapter looks at the events that took place in the years thereafter, when local groups began to make adat land claims to oppose the plantation company. It aims to explain how and through whom this claiming-strategy made its way into the conflict and how it has impacted the conflict's further trajectory. Engaging with Li's work on the articulation of indigenous identity, it delves deeper into how the 'tribal slot' is filled by various actors with various interests. Where Li's article is confined to the analysis of how communities as a whole identify themselves as indigenous, this chapter will contribute to the debate by looking at how indigeneity politics create tensions and diverging interests *within* such communities. I will show that at the local level, the contradicting meanings of adat can result into tension between on the one hand activists who invoke adat to support local land users, and on the other hand, traditional leaders whose noble position is legitimized by adat.

I will first explain how after the violent escalation of the conflict in 2003, external mediators became involved who framed the land conflict in terms of a victimized adat community. The subsequent section focuses on the adat claims made by local activists and the resistance against such claims by traditional adat leaders. In the final section, I will look at the role of regional authorities, most notably the Bulukumba District Head. We will see that in the context of regional electoral politics, district officials were initially

receptive to adat land claims, but ultimately used these claims to advance their own position and as a result, did not offer any prospects for a long-term resolution.

6.2 FINDING THE 'TRIBAL SLOT': HOW ADAT BECAME A CLAIMING STRATEGY IN THE CONFLICT

6.2.1 After the violence: invoking indigeneity as an 'injustice frame'

For the local land users involved in the Bulukumba plantation conflict, deploying adat was initially not the most obvious strategy to claim land rights. As previous chapters have pointed out, there was hardly any political space to invoke local identity under the New Order. In 1982, 172 local land users filed a lawsuit against the plantation company for disowning them from their farming land.[140] Their legal claim also targeted the Kajang Sub-District Head and the Tambangan Village Head for their support to the company. The two were not only government officials, but also traditional leaders belonging to the nobility. Hence, not only did the plantation conflict pit a group of farmers against a company, it also pitted traditional leaders against their subjects. It was only after the violent events of 2003, when the conflict temporarily became the center point of national media attention and civil society advocacy, that a new discourse to frame the conflict – one of indigeneity – came about. In the years following, local activist organizations and local land claimants began to use this discourse to make land claims.

As I discussed in Chapter 3, a grassroots movement emerged in the villages surrounding the Palangisang rubber estate of PT. Lonsum in the early 2000s, led by the local organizations YPR (*Yayasan Pendidikan Rakyat)* and DRB (*Dewan Rakyat Bulukumba*). This movement, which at its peak counted several thousand villagers was essentially anti-establishment. It was above all organized as a pro-*rakyat* movement for the common villagers. Armin Selasa, the movement's unofficial leader, asserted that the presence of the plantation company was but one of the agrarian issues in Bulukumba. Equally problematic in his eyes was the position of the landlords of noble ancestry, whom he referred to as the small kings (*raja raja kecil*). Selasa explained that the YPR and DRB aimed for a more equal distribution of landholdings, which implied stripping large landowners from their land.[141]

In July 2003, the grassroots movement dissolved after a violent clash with the police during a mass occupation of Palangisang estate, organized by the YRP and DRB. Four occupants were fatally shot by the police. Those who had joined the occupation in the hope of gaining back their land were left disillusioned. With numerous activist leaders behind bars, the movement dissolved. At the same time, regional and national civil society organizations began to show en masse support to the protestors, which reflected the growing resistance against the increasingly violent conduct of the security apparatus in land conflicts in the early 2000s. Within days, a number of NGO's established a national

[140] See Chapter 3, Subsection 4.1.
[141] Interview with Armin Selassa in Bulukumba city, 05 October 2015.

network named SNUB (*Solidaritas Nasional Untuk Bulukumba*). One of the main organizations behind SNUB was environmental NGO WALHI.[142]

In Bulukumba meanwhile, many who had joined the occupation fled to the sacred Ammatoa Kajang community forest, located at some 20 kilometers from the dispute location. As explained in Chapter 5, this forest is located in the heartland of the Ammatoa Kajang community, one of the last strongholds of the traditional *Tomanurung* inspired cult once dominant in South Sulawesi. The Konjo-speaking community is well-known for its strict customs and adat institutions, which still function and exist next to modern government administration, with the Amma Toa as the highest spiritual and moral leader.[143] The forest is believed to be the place where the community's divine ancestor first descended to the earth, and hence it is to be protected at all costs. All over South Sulawesi, people believe that this forest is full of magic, and may only be entered by those who adhere to the adat laws of the Ammatoa Kajang named *pasang*.

For the occupants, the dense forest provided a good hiding spot and many figured that the police would probably not dare to enter the area. When the police did come to look in the forest, Kahar Muslim, at that time the Tana Toa Village Head, stopped them. Muslim was an influential local community leader of noble descent with strong connections to the district government. He told the police officers that there was no one hiding in the forest and suggested them to leave.[144] Afterwards, many occupants could safely return to their villages.

Several days later, Muslim received a visit from several commissioners of Indonesia's National Human Rights Commission- Komnas HAM.[145] News of the violent events had reached national and international human rights watchdogs, including Komnas HAM.[146] A week after the shooting, three commissioners travelled from Jakarta to Bulukumba to conduct an initial investigation.[147] In Tana Toa village, Kahar Muslim assisted them and took them around.

---

[142] Local activists were dissatisfied with the way WALHI activists from Makassar suddenly manifested themselves as representatives of the people. A Jakarta Post article explained that in the aftermath of the 21 July events, some local activists opposed the attempt of WALHI to push for the resignation of the Provincial Police Head (*Kapolda*). According to the director of WALHI South Sulawesi, local activists from Bulukumba were against this strategy because they feared this would spawn repercussions from 'certain parties'. Nevertheless, WALHI upheld its demand and remained convinced that it was the 'right approach' to settle the dispute. See: http://www.thejakartapost.com/news/2003/10/20/local-NGO's-challenge-walhi-over-bulukumba-land-dispute.html, last accessed 12 August 2017.

[143] When I use the term 'Ammatoa Kajang' I refer to the community as a whole. When I use the term Amma Toa, I specifically refer to the community's highest moral leader.

[144] Interview with Iwan Selasa in Bulukumba city, 14 October 2015.

[145] Interview with Kahar Muslim in Tana Toa village, sub-district Kajang, Bulukumba, 19 April 2014.

[146] Amnesty International published a report shortly after the violence in which it expressed its concern for the safety and health conditions of 24 men who were kept in detention. The report stated that several members of the YRP had turned themselves in after being put on the wanted list, but were facing the risk of being tortured by the police. See: http://www2.amnesty.se/uaonnet.nsf/dfab8d7f58eec102c1257011006466e1/108260d14fc7cf46c1256d790026d7be?OpenDocument, last accessed 12 November 2017.

[147] The Komnas HAM team was led by MM. Billah and arrived in Bulukumba on 30 July 2003. The team met with the police, the Bulukumba District Head and detained occupants. On 8 August Komnas HAM held a

During their visit, the commissioners came to know of the traditional character of the Ammatoa Kajang community. They found out that many of those who had joined the land claiming movement were community members. Some of them had worn the community's traditional black attire during the occupation. The commissioners instantly recognized that this offered an opportunity to frame the conflict in terms of indigeneity. They either overlooked or ignored the fact that some of the community's traditional leaders had sided with the company in earlier times.

The local land users had simply referred to themselves as claimants (*penggugat*) or cultivators (*penggarap*). In investigative reports and press statements, Komnas HAM instead referred to them as the indigenous peoples of Kajang (*masyarakat adat Kajang*). Following an additional investigation in February 2004, the commission published its findings in a booklet.[148] Besides a chronology of the legal trajectory of the conflict, the booklet contains many references to the traditional and spiritual culture of the Ammatoa Kajang community. An entire chapter is devoted to the 'Mythology of Kajang' (*Mytologi orang Kajang*) and explains that the people of Kajang stick firmly to their traditions (*lekat dengan tradisi yang terjaga*) and are yet to come into touch with the outside world (*belum bersentuhan dengan dunia luar*) (Komnas HAM, 2006: 12-13). Another section is headed with a phrase in the local Konjo language, which states that the Amma Toa, as the highest leader of the community, requested on behalf of his people that all adat lands of Kajang must be returned to the community (Komnas Ham, 2006: 16).

In national activist circles henceforth, the Bulukumba plantation conflict became known as a classic example of an isolated, dispossessed tribe, something that never occurred to any of the locals involved. That the commissioners framed the conflict in this way is in itself not strange. Li notes in this regard: 'Situations which set indigenous people up against big projects and the state are guaranteed attention, and they set up predictable alliances' (Li, 2000: 168).

Effective as it may be to attract public sympathy for the local land users, the indigeneity frame diverged significantly from the views of the local activist leaders who mobilized the farmers in the area in the early 2000s. They had given meaning to their actions by declaring to represent 'the people' (*rakyat*). The YPR and the DRB were not organizations based on tradition, but on a new sense of empowerment. They were established to strengthen the voices of farmers in Bulukumba, not only against the plantation company, but also against the landowning elites. For them, it did not make much sense to invoke tradition or culture, especially given that some of the traditional, noble elites of Kajang had sided with PT. Lonsum in the 1980s. Numerous Kajang leaders of 'royal blood' had been loyal pawns of the New Order, either as military officials or as

press conference in Jakarta. According to the commission, the police and the occupants had different stories about who had started the violence. Komnas HAM stated that there were nonetheless indications of human rights abuses such as illegal arrests, foreclosure of objects without a license and non-proportional violence against citizens. From a Komnas HAM press statement on the outcome of the investigation team, 08 August 2003.

[148] The second visit by Komnas HAM was made in the context of the mediation process, which began in 2004 (see Chapter 3). Komnas HAM published the book '*Proses Medias Lahan Tanah Adat Bulukumba*' in 2006.

village heads. For local activists like Armin Selasa therefore, adat legitimized inequality and the power abuses of the traditional elite. It would be odd to invoke adat as a claiming strategy for villagers in need of land. According to him, invoking the Ammatoa Kajang cult was part of a claiming strategy introduced by outsiders, with little relevance to the real situation at hand.[149]

All taken together, the involvement of Komnas HAM and large NGO's like WALHI did help to attract public attention for the conflict. But their involvement was hardly beneficial for those involved in the conflict at the local level. While the investigations helped to shed light on the possible human rights violations by police officials during the clash of the 21 July occupation, no follow up inquiry was carried out. While the government considered the conflict 'settled' after a mediation process, the outcome of this process was highly unsatisfactory for most and in the end only caused friction among the land claimants.[150] It was only a matter of time before the conflict would heat up again. We will see below that when this happened, land claimants began to adopt a repertoire of new framing strategies.

6.2.2 The Ammatoa Kajang community and the 'tribal slot'

It was hardly a coincidence that the novel way of framing came about during the nationwide adat resurgence in the early *Reformasi* years, as discussed in Chapter 4. Given the special characteristics present in Kajang – the obedience to adat rules, the pursuance of a modest lifestyle and the collective preservation of a sacred forest – the Ammatoa Kajang community was one of Indonesia's most obvious candidates to fill what Li calls the 'tribal slot' (2000).[151] In her renowned article, Li looks at the circumstances in which certain communities identify themselves as indigenous. She notes that 'self-identification as tribal or indigenous people is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a *positioning* which draws upon historically sedimented practices, landscapes and repertoires of meaning and emerges through particular patterns of engagement and struggles' (Li: 2000: 151). Li mentions two keywords here. The first keyword - engagement - refers to the interaction processes that shape the way a group of people perceives itself. One can think here of interaction with mediators and framing experts, through which people become convinced of their special position as adat community. The second keyword - struggle - refers predominantly to experienced grievances or potential harm caused by outsiders.

The struggles through which the positioning of adat communities occurs are, more often than not, livelihood struggles about natural resources. Afiff and Lowe provide a case

[149] In an interview, Selasa expressed his belief in religious values as a concept of justice, explaining that one way to create a more egalitarian society would be to implement shari'a law. According to him, the only problem was that it was very hard to properly enforce such laws in practice. From: Interview with Armin Selassa in Bulukumba city, 5 October 2015.

[150] See Chapter 3, Subsection 5.4.

[151] For a more elaborate discussion on the characteristics of the Ammaotoa Kajang community, see Chapter 5, Subsection 4.1.

of this in their study about the use of the adat community claim in the district of Sosa in North-Sumatra in the early 2000s. Here, the conflict concerned an ongoing contestation between local land users and a palm oil plantation company over the ownership of land. They observed an almost instant shift in the community's positioning from 'farmers' to 'adat community'. That the people suddenly reframed their struggle was due to their engagement with AMAN. While they initially framed their claims as farmers (*petani*), they established their own adat organization after a local activist leader attended the first AMAN congress in 1999. According to Afiff and Lowe, the positioning as adat community significantly enhanced the mobilizing capacities of activists and local land users, not in the least because it made people proud of their social status (Afiff and Lowe, 2007: 88).

In the case of the Ammatoa Kajang however, whether or not the community positioned itself as adat community was not really an issue. There has long been a general consensus that the Ammatoa Kajang community is culturally distinct from people living in adjacent rural areas (Cense, 1931; Usop; 1978; Rössler, 1990). Already during colonial times, Dutch ethnographers picked Kajang as a site for ethnographic research, because of its special culture and strong traditions. These were still in place, despite the political influence of the larger South Sulawesi kingdoms on the region (Cense, 1931; Kooreman, 1883). During the Darul Islam period moreover, the Ammatoa Kajang community fought against the Islamic guerillas to protect its spiritual cult. These events likely strengthened the local sense of community and identity. Thus, with a 'tribal slot' so evidently in place, the question is not whether there has been a process of articulating indigenous identity in Kajang. The question is rather, how do community members negotiate the meaning of this identity and the purpose for which it may be invoked?

For the Komnas HAM commissioners from Jakarta, who were fully familiar with the indigenous discourse that had become prominent in activist circles in the 1990s, the unique characteristics present in Kajang provided useful framing tools. At the local level however, the acceptance of this frame was much less univocal. In the previous chapter, I have explained that although the Ammatoa Kajang community lives in accordance to principles of modesty and egalitarianism, a strict distinction exists between adat leaders of noble descent and commoners. Those who joined the occupation were mostly commoners desperately in need of land. Many adat leaders on the other hand did not want to be associated with rebellious protest and collective contestation against the plantation company or the district government. Some of them deliberately tried to stay away from the conflict. Others, such as Kahar Muslim, only became involved when the occupants hid in the forest and urgently needed help. Most adat leaders contested the idea that the plantation conflict involved the adat community as a whole.[152] Moreover, several adat leaders held positions in the village and district government and hence were cautious about being outspoken.

[152] Traditional leaders (Including the Amma Toa, the *Karaeng Labiria* and the *Gala Lombo*) told me numerous times that the plantation conflict was a conflict between individuals and the company and did not involve the Ammatoa Kajang community 'as a whole'.

The case of Kajang thus shows that while communities may 'fill' the tribal slot, the question of who can invoke indigeneity for a particular purpose is a contentious matter. Diverging interests between various groups within the community may result into disagreements about the deployment of indigeneity. This will be the focus of the next section, where I will discuss the recent strategies of local activists and land claimants.

6.3 Actors, adat claims, and diffuse interests at the local level

6.3.1 Adat and the tension between agrarian activists and traditional leaders

When I began my research in Bulukumba in July 2013, activists tried to reorganize the farmers, after a period of little protest against PT. Lonsum. The new protagonist advocating the rights of the local land users was AGRA (*Alliansi Gerakan Reforma Agraria*). AGRA is an agrarian reform movement concerned with the situation of small farmers.[153] The organization is explicitly anti-capitalist and strongly opposes the presence of multinational plantation corporations in Indonesia. AGRA is part of an international farmer advocacy alliance through its membership of APEC (International Peasant Coalition) and ILPS (International League of People Struggle). AGRA has a central board in Jakarta but it is poorly funded. The regional bases in rural areas, where the organization enjoys a relatively large following, carry out the bulk of the work. In 2013, the organization claimed to have more than 300,000 members among farmers nationwide.[154]

An AGRA-aligned activist from the district capital of Bulukumba named Rudy Njet, took the initiative to collectively oppose PT. Lonsum. He worked closely together with Budi, an AGRA activist from Makassar who accompanied me on my first field visit to Bulukumba. I joined both of them on their trips to villages around PT. Lonsums's Palangisang estate where they tried to convince local farmers to become members of AGRA. Much like the YPR and DRB in the early 2000s, they believed that mobilizing as many people as possible would be the most effective way to put pressure on the district government and PT. Lonsum.

However, finding participants at the local level was initially not easy. Many still vividly remembered the violence of 2003 and feared that if they would mobilize again, violent repercussions were bound to follow.[155] Others had developed a skeptic attitude towards activists coming from the city and did not believe that joining a demonstration would provide any benefits.[156] Some of the original claimants who first brought PT. Lonsum to court in 1982 contended that it was better to stick to legal procedures.[157] One

[153] A profile of the organization can be found at www.agraindonesia.org, last accessed 26 June 2018.

[154] Interview with AGRA national chairman Rahmat Arjiguna in Jakarta, 28 July 2013.

[155] Personal communication with Rudy Njet in Bulukumba city, 13 October 2015.

[156] A number of people in Bonto Biraeng village, sub-district Kajang, informed me that some AGRA activists asked people to pay 300,000 rupiah (approximately USD 20) to become a member of the organization. People were promised that if they would become a member, the chances of getting back their land would be higher. Local AGRA leaders however deny to have asked membership fees.

[157] Interview with Selasa B (original claimant) in Bonto Biraeng village, sub-district Kajang, 02 April 2014.

farmer who inherited a noble Kajang title (*Galla Ganta*) explained that even though PT. Lonsum took ten hectares of his family land, contesting the company would be an infringement of the *pasang* adat laws. These dictate that one has to always accept decisions taken by the government.[158]

Despite the initial difficulties to mobilize people at the local level, AGRA eventually managed to organize a large action in Bulukumba in August 2013. News reports note that more than 3000 farmers joined AGRA during an occupation of Palangisang rubber estate, which lasted for several days.[159] Participants had various motives to join the action. Some of them were original claimants who had lost their adjudicated land in 2003/2004,[160] when PT. Lonsum took control of about half of the land released in 1999.[161] Others were landless farmers who were about to move elsewhere to search for work opportunities and had not much left to lose. There were also people who worked as plantation workers for PT. Lonsum and joined the occupation to demand a higher salary.[162]

The occupation lasted several days but eventually failed to yield results. During the time of my fieldwork, there was a general atmosphere of dissatisfaction with AGRA among local farmers. Some were disappointed that the demonstrations did not have an impact. Others had doubts about the leadership qualities of AGRA's activists. They complained that when the police dispersed the crowd, the activists seemed scared and instantly fled the scene.

AGRA activists meanwhile were of the opinion that the action failed because local people were too loyal to traditional leaders. According to Budi, the main obstacle for the efficient organization of farmers at the village level was the 'feudalist culture' that continued to exist. In his view, 'common' people were not capable of 'operating the organization', due to their persistent subordination to traditional leaders. For AGRA, this was particularly an issue in Kajang, where more than elsewhere, large landownership is still largely confined to the nobility and divine ancestry continues to be a highly important asset for people with leadership aspirations.

In Kajang, the different family lineages of noble descent continue to be held in high esteem by local people. As discussed in Chapter 5, the Amma Toa is the highest spiritual and moral leader. His authority extends over all adat related matters, but not over politics. He is never allowed to leave the traditional territory and must constantly fully abide by the modest lifestyle that is required inside this domain.

Positions associated with other families, such as the *Karaeng*, are however not confined to the spiritual and moral domain but confer political authority. Several members of the *Kareang* lineage live outside of the traditional territory, have modern daily lifestyles and are involved in business or hold a position in the local or regional government. While most of them live in Kajang, they often travel to the district capital of

[158] Interview with *Galla Ganta* in Bonto Biraeng village, sub-district Kajang, 18 April 2014.

[159] According to Indonesian newspaper *Kompas*, 17 August 2013.

[160] See Chapter 3, Subsection 5.3.

[161] Interview with three AGRA members from Malleleng village, sub-district Kajang, 25 April 2014.

[162] Meeting with four plantation workers of PT. Lonsum in Bonto Manggiring village, sub-district Bulukumpa, 01 May 2014.

Bulukumba, as well as to the provincial capital Makassar. A prominent example is the Kajang Sub-District Head, who holds the noble title of *Karaeng Labiria*. He lives a modern life, holds a position in the district government and owns much land. He is nevertheless considered to be an integral part of the adat community and takes pride in being of noble descent. He regularly visits the traditional adat territory and participates in adat rituals.

There are also noble families in Kajang who hardly adhere to the culture of modesty anymore, but still reap the benefits of having noble blood. In Tambangan for example, a village several kilometers away from the Ammatoa Kajang heartland, village heads are virtually without exception elected from offspring of one of most prestigious *Karaeng* families of Kajang. The current Tambangan Village Head holds the traditional position of *Karaeng Muncong Bulowa*, which is one of the three traditional *Karaeng* princes of Kajang. He was first elected at the exceptionally young age of seventeen.[163] The *Karaeng* family of Tambangan also owns a lot of land and allegedly obtained much wealth through successful businesses and close ties to the military under the New Order. It is this privileged position of noble elites in areas like Kajang that AGRA contests and tries to change. For AGRA, equal land relations can only be realized when traditional culture makes way for a more egalitarian one. Hence, AGRA's contentious politics were not only targeting the district government and the company, they also aimed to change power relations at the village level.

For poor farmers on the other hand, traditional patronage structures can provide a firmly rooted personal safety net, and such structures are therefore not easily challenged. In the aftermath of the 2003 violence, the traditional patronage relations offered Kajang villagers protection. Tana Toa Village Head Kahar Muslim (who later became a member of the district parliament) in particular proved to be a reliable patron. One poor and illiterate farmer asserted that he regards Muslim as his father (*saya punya bapak*), especially after Kahar bailed him out of jail when he was arrested in relation to the 2003 plantation occupation. He promised to be forever loyal to Muslim by always voting for him. Having political ambitions beyond the position of district parliament member, Muslim of course expected his clients to return the favor. Many Kajang farmers voted for Muslim when he ran as the GOLKAR candidate for Bulukumba District Head in the 2015 regional elections.[164] Local people often appreciate such traditional patronage-client relations more than the promises of activists from town, who in the eyes of many, are not reliable when times get rough.[165]

[163] Interview with Tambangan Village Head in Tambangan village, sub-district Kajang, 19 April 2014.

[164] Despite winning the majority of votes in sub-district Kajang, Kahar Muslim nevertheless lost the elections to another candidate.

[165] Various villagers in Bonto Biraeng village told me that they were disappointed in AGRA activists because they appeared to be scared of the police and left demonstrators behind when the police came.

Kahar Muslim, dressed in Kajang attire on a GOLKAR campaign poster for the 2014 Bulukumba district parliament elections.

While AGRA activists considered traditional culture a problem at the local level, they simultaneously saw the potential of invoking the traditional image of the Ammatoa Kajang community. They realized that emphasizing the more communitarian and egalitarian aspects of Kajang culture would surely attract sympathizers. AGRA's strong ideological basis as anti-feudalist and its objections against what the organization viewed as traditional 'feudal culture' thus did not stop the Bulukumba activists to use adat as one of their strategies.[166] For AGRA, any opportunity to strategize against the company was to be seized.[167]

[166] See for instance the following political statement made by chairperson Rahmat Arjugna: http://agraindonesia.org/political-statement-of-the-national-executive-committee-of-aliansi-gerakan-reforma-agaria-agra-in-commemorating-57-years-of-national-peasant-day-htn-2017/, last accessed 26 June, 2018.

[167] At the time of my first field visit, the indigenous movement in Indonesia experienced a significant boost due to Constitutional Court ruling no. 35/2012 of May 2013 on the separation of adat forest and state forest (see Chapter 2). Throughout the country, self-proclaimed adat communities mobilized to claim their ancestral lands by putting signs in the ground stating 'adat forest, not state forest' (*hutan adat bukan hutan negara*). Rudy believed that the Constitutional Court ruling also provided a new basis for the Bulukumba

In March 2013, AGRA and its international partner APEC organized a three-day international fact-finding mission to Bulukumba joined by 32 activists from Indonesia, Cambodia, India and the Philippines. Guided by Rudy, the participants visited four villages near the Palangisang rubber estate. The final report, entitled 'The case of PT Lonsum and the Indigenous Peoples' Struggle to Reclaim their Land', was published on various NGO websites and submitted to the United Nations High Commissioner for Human Rights (OHCHR). Much like the booklet of Komnas HAM, the report refers to the land claimants as the Kajang indigenous people, who have 'one of the most ancient cultures in South Sulawesi'. Several sections emphasize the egalitarian aspects of Kajang society, such as the modest houses located in the inner territory. The report moreover contains pictures derived from a tour agency based in Makassar, which show traditional rituals being performed by Kajang people dressed in black.

Recently, the underlying tension between activists and traditional leaders rose to the surface. During AGRA's demonstration in November 2017, dozens of protestors, of which many barefooted and dressed in traditional black attire, demanded that PT. Lonsum's concession will not be extended in 2022. This time around, one prominent Kajang nobleman and retired military officer named Mansur Embas publicly expressed his opposition to use the name of the Ammatoa Kajang community in the plantation conflict. Embas claims to be of *Karaeng* descent and is generally regarded to be very knowledgeable of the community's traditional culture and socio-political organization. He is also vice-chairman of the board of AMAN South Sulawesi. Several regional online media reported that Mansur Embas complained about 'outsiders with certain interests' using the Ammatoa Kajang community in the conflict against PT. Lonsum. He claimed that there never had been any conflict between the community and the company.[168] Rudy, who was not mentioned but obviously referred to, replied on Facebook that this adat leader might as well start a career as manager of PT. Lonsum. In addition, one of Rudy's friends commented that Embas had apparently forgotten that the company had stolen his community's customary land.

farmers to claim land, although he knew that the ruling only applied to the Forest Areas, not plantation concessions. Nevertheless, shortly after the ruling, Rudy and fellow activists went around the plantation estates and put up signs on which they wrote 'this land is owned by the people and was seized by Lonsum' (*tanah ini milik rakyat yang dirampas oleh Lonsum*). Hence, while AGRA did not deploy the adat community claim at the local level, they did follow the buzz and mode of action of the movement.

[168] See: http://makassar.tribunnews.com/2017/12/01/masyarakat-adat-ammatoa-jangan-dijadikan-tameng-untuk-bergerak and https://makassar.terkini.id/wakil-ketua-dewan-aman-minta-jangan-bodohi-masyarakat-kajang/, last accessed 26 June 2018.

Demonstration held in the capital of Bulukumba organized by AGRA, November 2017. Protestors walk barefooted and are dressed in traditional Kajang attire.

6.3.2New claims from marginalized noblemen: reviving a former kingdom

For some people, adat serves to legitimize their privileged position as noblemen. For others, adat is useful as a defense strategy to protect marginalized communities from outside intrusion. For a number of recently emerged land claimants, it was both. The new group - calling itself the Bulukumba Toa adat community - revolves around two figures, Pak Sangkala, a retired farmer in his early seventies and *Karaeng* Gatot, the great grandson of *Karaeng* Nojeng. Nojeng was once appointed as the head of the Bulukumba Toa *Karaengschap* in 1918. Bulukumba Toa had been a local kingdom subordinated to the larger Kingdom of Bone and came under colonial rule through the 1860 Palakka-treaty. The Dutch administered Bulukumba Toa as a district, it became an *adatgemeenschap* in the 1920s. The *Karaeng* was traditionally a man of noble descent elected by the local *hadat* council. Under colonial administration, the *Karaeng* would automatically be appointed as *Regent* and later as *adatgemeenschapshoofd* (Goedhart, 1947). Following Indonesian independence, Bulukumba Toa became Bulukumpa, one of Bulukumba's ten sub-districts (see research locations map on page 6).

In contradiction to the nobility in adjacent sub-district Kajang, where traditional noblemen remain political elites, the Bulukumpa nobility lost its prominent role in the local government administration after Indonesian independence. From the 1950s onwards, the *Karaeng* family of Bulukumpa was gradually ousted by political competitors of common ancestry and today, most of the village heads in the sub-district are commoners.

Gatot now invokes his family's former authority to claim land located inside PT. Lonsum's concession. By invoking a glorified history of equal partnership between the

colonial government, the Bulukumba Toa adat community and the plantation company, he highlights the current abusive and selfish conduct of PT. Lonsum. Gatot still refers to himself as *Karaeng* and speaks with great pride of the late colonial period, when his family ruled the area. The adat house of his great grandfather, built in 1913, is still intact and now functions as a museum. It exhibits various objects of the community, such as sacred *kalompoang* objects and old letters of the colonial government. Although people still visit the house now and then for rice harvest rituals, adat hardly plays a role in the local political domain. In an interview, Gatot admitted that the adat community in Bulukumpa is 'already extinct' (*kita sudah punah*). All land previously regulated by communal arrangements is now held under individual ownership.[169] Gatot nevertheless tried to keep his family's legacy alive as a member of a national organization for local and regional sultanates and kingdoms named FKSN (*Forum Keraton Silaturahmi Nusantara*).

While wearing traditional clothes and practicing worshipping rituals are still the order of the day in Kajang, these practices have lost their every-day significance in Bulukumpa. Therefore, all that the Bulukumba Toa claimants could do to deploy adat as a claiming-strategy was referring to the past. In 2012, Sangkala and Gatot began to write up the history of the rubber plantation in Bulukumpa, to show that the relationship between local people and the company over the course of time had transformed from one of equality and benefit sharing to one of exploitation. They later sent the story as a report to the Bulukumba District Head. It explains how in 1919, *Karaeng* Nojeng agreed to lease a part of the land under his jurisdiction to *NV Celebes Landbouwmaatschappij*, the company of two British entrepreneurs that later became PT. Lonsum.[170] For many years, the company successfully improved local welfare, providing working opportunities for the local population. The company respected the boundaries of the adat lands (*ornamentsgronden*) located outside of the *erfpacht* land.

The report further notes that when the company was nationalized in 1964, the situation changed significantly. With support of the military, the company began to expand its rubber plantation beyond the borders of the original concession. The local adat leaders were afraid to resist, as a result of traumas from the Darul Islam rebellion, as well as the risk of being labelled communists. In the 1980s, the company, now under the name of PT. Lonsum, began to illegally expand its rubber estates again. The total size of land belonging to the Bulukumba Toa adat community taken by the company comprised 254 hectares.[171]

Although the adat community in Bulukumpa had long lost its formal position, Gatot, as a descendant of the Bulukumba Toa *Karaeng* family, still presents himself as a local authority, sealing each letter sent to government agencies with government-like stamps stating *Lembaga Adat Bulukumba Toa, Kabupaten Bulukumba, prov. Sulsel*. However, it was not Gatot, the grandson of *Karaeng* Nojeng, but Sangkala, a retired, university-educated farmer of common descent, who manifested himself as the group's

[169] Interview with *Karaeng* Gatot in *kelurahan* Jawi-Jawi, sub-district Bulukumpa, 11 November 2014.
[170] See Chapter 3, Subsection 4.1.
[171] A report named '*Sejarah Keberadaan PP. PT. Lonsum Tbk Di Kelurahan Jawi-Jawi Kecamatan Bulukumpa*' written by *Lembaga Adat Bulukumba Toa*.

leader and main claimant. Sangkala organized all the documents, including maps, the written history and pictures of soldiers who supported the company in the 1960s. Gatot himself was less involved and allowed Sangkala to represent the adat community as adat leader (*pemangku adat*) in meetings and negotiations with government officials, even though Sangkala did not have any kinship lineage to the *Karaen*g family. Sangkala had the will and verbal skills to take the lead in negotiations, while Gatot had the noble blood to legitimize the claims to rights over the land.

In an interview, Sangkala stressed that he had no desire to restore the political influence of adat in Bulukumpa. The only reason why the Bulukumba Toa adat community was revived, was because doing so provided an opportunity to claim the land taken by the company.[172] After numerous conversations at his house, Sangkala eventually informed me that his biggest personal discontent in fact not even concerned land. In principle, he supported the presence of the plantation company, but felt that the company did not do enough for local development. He for instance complained about the bad conditions of the roads surrounding the plantation. Hence, rather than to restore an old older, the invocation of adat served as a means to obtain a share of the fruits reaped from capitalism.

To summarize this section, we have seen that the deployment of indigeneity in relation to the Bulukumba plantation conflict is a contentious issue. Initially, external mediators - the Komnas HAM commissioners – framed the conflict in terms of an adat community victimized by a plantation company and the government. The local level is however marked by various stances toward adat. The conservative nobility of Kajang, of which many are tied to the local and regional government, are proud of their noble position but rather not see the indigeneity card being played in the conflict. Prominent activist leaders in the early 2000s did not see the point of invoking something which in their eyes hampered a more egalitarian and emancipated society. More recently emerged activists, such as those aligned with AGRA, do see the potential of the 'tribal slot'. While aware of the conservative and sometimes even suppressive role of adat at the local level, they nevertheless use the indigeneity frame for strategic purposes. The local land claimants are generally not very fond of activists but join protests organized by AGRA in the hope of getting a plot of land. Finally, I have discussed the recently emerged Bulukumpa Toa claimants, who use adat in the form of a tactical revival of a long abolished former kingdom in order to get more benefits from the plantation company. Overall, the deployment of adat land claims has added another layer to the conflict, which was already complex. In the next section, I will look at how regional authorities have responded to the conflict amidst the growing number of claims.

6.4 THE ROLE OF THE DISTRICT GOVERNMENT IN THE ERA OF REGIONAL ELECTORAL POLITICS

6.4.1 Negotiating land claims through the Bulukumba District Head

[172] Interview with Sangkala in *kelurahan* Ballasaraja, sub-district Bulukumpa, 28 April 2014.

In March 2014, I met with ibu Suarni, the Regional Head of the NLA in Bulukumba. When I asked her about the plantation conflict while having coffee in her office, she took out a huge pile of documents from her desk drawer and handed it to me. The unorganized stack comprised the related claims that she had accumulated over the course of time. Among the hundreds of papers was a map, which indicated the locations of the three groups of active claimants with dots. There was the AGRA group, the Bulukumba Toa adat community and the original claimants from Bonto Biraeng village that had gone to court in 1982. Ibu Suarni informed me that NGO's such as AGRA had regularly come to her office to demand the re-measurement of PT. Lonsum's concession. She told me that she found this confusing, as it had become impossible for her to determine which claims were valid. She also mentioned that it was the authority of the central government (*kewenangan pusat*) to resolve such large-scale conflicts. Numerous times had she proposed to the claimants to go to court and enter legal procedures, but the claimants declined. According to her, they refused to go to court because, she claimed, they knew they lacked the legal proof to substantiate their claims.

Ibu Suarni was not the only official with a stack of claims tucked away in a desk drawer. A similar pile of documents could be found at other government offices. With the exception of those who had litigated in 1982, few claimants put much trust in the judiciary. Most did think that the NLA was important, since its mother office, The Ministry of Agrarian Affairs, is formally in charge of issuing plantation concessions. However, most claimants believed that particularly the district government of Bulukumba could play a key-role in resolving the conflict, especially the Bulukumba District Head, as a high, yet relatively accessible official. What also mattered for some were their personal connections to the power circle of the Bulukumba District Head.

When AGRA and the Bulukumba Toa adat community became active, a new Bulukumba District Head named Zainudin Hasan had recently taken office in 2010. Hasan was a wealthy businessman owning several factories in Sulawesi and a five-star hotel in Makassar. In the eyes of many, a man of such wealth could not possibly become a 'clean' civil servant. Rumor was that he bought each of his children living in Jakarta a Ferrari. There were also people who respected him because of his 'commoner' background, although he was now usually addressed with the noble Buginese title of *puang*. He grew up in a simple rural household and was a security guard before eventually working his way up. In the early years of his term, he actively manifested himself as a capable mediator in the plantation conflict, presenting himself towards the claimants in a patron-like way. Such a role fits well into the context of the politics prompted by regional elections, in which 'candidates facing newly competitive elections for governor and district head posts now need local allies and mass support' (Buehler, 2016: 107). Therefore, right before and right after elections, political candidates tend to concede to demands made by their constituents, in order to boost their image as caring and responsible leaders.

Shortly after being elected, the Bulukumba District Head first formed a team of district government officials to examine PT. Lonsum's plantation borders,[173] followed by a second team to investigate the claims on location.[174] He asked village Heads and sub-district heads in the disputed area, to submit people's claims to him.[175] The claimants initially felt supported by this active approach as they had the impression that serious steps were taken to resolve the conflict. They submitted their claims on paper, in most cases signed by their sub-district head or village head.

Rudy and his fellow activists made a list of hundreds of claimants from more than ten villages, reporting about the location and size of the land taken by the company. They furthermore collected the transcripts of court hearings and took photographs of what claimants called 'natural evidence' (*bukti alam*) of people's land rights, such as the presence of burial sites inside PT. Lonsum's concession. Taken together, the registered claims amounted to a size of more than two thousand hectares, approximately a third of the company's concession. In addition, the Bulukumba Toa adat community demanded 254 hectares of land that belonged to the former adat community.

The government investigation team concluded in its final report that there was strong evidence that the plantation estates of PT. Lonsum extended beyond the borders of the concession and overlapped with land owned by local land users. The team therefore concluded that a re-measurement of the concession was needed. The Bulukumba District Head subsequently asked PT. Lonsum to stop operating in the areas that possibly overlapped with people's claims in order to avoid conflict.[176]

In anticipation of a possible re-measurement, some claimants formed strategic informal alliances with lower district government officials. There were rumors that some officials made deals with certain land claimants to share the profits from land transactions, in case the land was to be released from the company's concession. The re-measurement however turned out to be an empty and unrealizable promise. The district government declared that there was no budget for this two-billion-rupiah operation (approximately USD 140,000) and that PT. Lonsum had to bear the costs, which the company refused.[177] PT. Lonsum contended that according to the law, a re-measurement could only be carried out at the request of the concession-holder, in this case PT. Lonsum, and that it saw no reason for such an operation. The company dismissed the adat land

[173] Decree of Bulukumba District Head no. 255/VII/2011 (*Keputusan Bupati Bulukumba nr 255/VII/2011 tentang Pembentukan Tim Terpadu Peninjauan/Pemeriksaan Batas-Batas Lokasi HGU PT. PP Lonsum Tbk. Di Kabupaten Bulukumba).*

[174] Decree of Bulukumba District Head no. 44G/X/2012 (*Keputusan Bupati Bulukumba nr 44G/X/2012 Tentang Pembentukan Tim Verifikasi Lapangan Lokasi HGU PT. Lonsum Indonesia Tbk. Di Kabupaten Bulukumba).*

[175] Letter of the District of Head of Bulukumba of 28 March 2012, entitled 'Request for data of land owned by the people inside the concession' (*Permintaan Data Warga Pemilik Lahan Dalam Areal Lokasi Pengelolaan*).

[176] Letter of the Bulukumba District Head to PT. Lonsum of 31 September 2012, entitled 'Request to temporarily stop activities' (*Permintaan Kesediaan Menghentikan Aktivitas Sementara*).

[177] Notes of a mediation meeting between PT. Lonsum, the claimants and the regional government in Makassar, 23 September 2013, chaired by the regional secretary of South Sulawesi province.

claims, arguing that such claims had no legal validity.[178] In a long letter addressed to the Bulukumba District Head, the CEO of PT. Lonsum noted:

'*We have opened this land in a gradual, systematic way with good intentions for the local communities, who were given the chance to cultivate the land while the company did not yet use it. But since the Reformasi era, groups of NGO's have constantly made new claims about adat land. (…) We hope that the Bulukumba District Head can offer protection and legal certainty to our company, which has been investing in Bulukumba since 1919'*.[179]

After PT. Lonsum sent this letter, the Bulukumba District Head initially continued to appear determined to settle the conflict. In January 2013, he even informed the provincial and central government that he was trying to settle the conflict at the district level, calling it 'one of the classic problems' (*salah satu permasalahan klasik*) of the Bulukumba district government.[180] However, in November, he suddenly announced that as the Bulukumba District Head, he had no authority to deal with the conflict. The statement noted the following:

'*The Bulukumba District Head has never said and will never say to the people that the land inside the concession of PT. Lonsum will be divided among the people, because that matter is not in the hand of the district government. If there are any remaining problems between the people and the company, I recommend proceeding through the available legal mechanisms*'.[181]

Upon reading the statement, many activists and land claimants felt cheated. Some were convinced that the Bulukumba District Head had used the conflict to the advancement of his personal interests. For example, Sangkala, leader of the Bulukumba Toa adat community, believed that the Bulukumba District Head used the claims submitted to him to pressurize PT. Lonsum and extract bribes. Although hard to verify, such accounts do fit the broader patterns that characterize regional politics in decentralized Indonesia, where the district governments have more power and 'a weak, fragmented state also makes it easier for local government officials and the private sector to engage in collusive corruption' (Wollenberg et al, 2006, see also Palmer, 2001; Smith et al, 2003; Luebke, 2009).

6.4.2 New Government, new alliances

During my first fieldwork period in early 2014, not much was going on in terms of collective action of the various groups of claimants. Activists seemed to lack motivation and the statement of the Bulukumba District Head appeared to have been a serious blow to their spirit. Groups like AGRA saw no reason to demonstrate as there was not much left

[178] Letter of PT. Lonsum CEO to the Minister of Home Affairs, 28 January 2013.

[179] Letter of PT. Lonsum CEO to the Bulukumba District Head, 04 October 2012.

[180] Letter of the Bulukumba District Head of 11 February 2013, entitled 'Handling the problem of people's claims of PT. Lonsum's concession' (*Penanganan Permasalahan Tuntutan Masyarakat atas Lokasi HGU PT PP Lonsum Tbk*).

[181] Statement of the Bulukumba District Head, 6 November 2013, sent to sub-district heads and village heads.

to bargain for. When I returned for my second period of fieldwork in late 2015 moreover, it appeared as if there had hardly been any developments during my absence. In fact, it seemed as if the conflict had become somewhat of a non-issue in Bulukumba. However, a village head in Kajang sub-district explained to me that this was only the silence before the storm. In December 2015, district head elections (*pilkada*) were scheduled in Bulukumba. The village head asserted that until that time, all four candidates would certainly stay away from the conflict, even though several candidates had strong informal connections to prominent figures in the land claiming movement.[182] He assured me that as soon as the election period had passed, Bulukumba would once again become agitated by the conflict.

His predictions proved to be right. It turned out that for some of the claimants the new political constellation was promising, particularly for the Bulukumba Toa adat group. The newly elected Bulukumba District Head, Sukri Sappewali, was a man of noble ancestry from sub-district Gantarang, and known for his sympathy toward the old former kingdoms of the region.[183] But even more important was that the new Vice District Head (*wakil bupati*) Tomy Satria, was the son of the leader of the Bulukumba Toa adat community, Sangkala. This connection provided the Bulukumba Toa group a direct line to the regional center of power. Prior to becoming a government official, Tomy worked for the powerful US NGO called The Nature Conservancy in East Kalimantan. His civil society background and the fact that his father was one of the main claimants in the plantation conflict, was reason for optimism among local activists. AGRA activist Rudy organized numerous meetings with the Bulukumba Toa group, in order discuss cooperation.

Similar to the previous Bulukumba District Head, Satria initially presented himself as a flexible leader who is supportive of the claimants. When AGRA organized a new demonstration in front of the district head office in 2016, it was Satria who went outside to meet the protesting crowds. There he announced the formation of an investigation team to verify the people's land claims. Satria has also organized various formal meetings with his father and representatives of AGRA. During one of these meetings, he noted that he does not think that the presence of PT. Lonsum contributes to the prosperity of Bulukumba's people in any way. Satria also coined a plan to replace the company with a local company, so that more people could benefit from it.[184] It is yet to be seen whether this is going to materialize and whether his attitude will remain the same throughout the further course of his term.

---

[182] An example is Kahar Muslim, the adat leader from Kajang who had protected the hiding occupants in 2003. Having already served three terms in the district parliament (DPR-D), he now ran as district head candidate for GOLKAR. His campaign team (*tim sukses*) was led by Armin and Iwan Selasa, the two main leaders of the YPR and DRB, the grassroots mobilizations organizations that coordinated the mass occupation of PT. Lonsum's plantation in 2003.

[183] Sukri Sappaweli claims noble ancestry from the kingdom of Gantarang and is known to be proud of his hereditary connection to this former regional kingdom. In this context, he accepted an initiation of *Karaeng* Gatot to visit the adat house and meet with the Bulukumba Toa adat community in 2017.

[184] See also the following online news article: https://www.suaralidik.com/wabup-bulukumba-sepeserpun-saya-dan-bupati-tidak-pernah-terima-dari-pt-lonsum/, last accessed 26 June 2018.

Prominent noblemen of the Ammatoa Kajang community currently appear divided. While figures like Mansur Embas have argued that there is in fact no land conflict between the Ammatoa Kajang community and PT. Lonsum, the Kajang Sub-District Head/*Karaeng Labiria* recently began showing support for the land claimants. Local voices claim that this support is motivated by his political aspirations. Although he has not publically spoken on the issue, he has informally announced his support to revoke the concession after its expiration in 2022. As such there is at presence a relatively strong local coalition against the extension of the company's plantation concession. However, whether this coalition will survive the next round of electoral politics is far from certain.

6.5 CONCLUSION

In the contentious politics revolving around land claims in the era of democracy and decentralized governance, invoking adat has become a common strategy in Indonesia. The plantation conflict in Bulukumba has sparked various representations of adat. External mediators found in the traditional Ammatoa Kajang culture a powerful symbol to frame the conflict. Emphasizing the egalitarian aspects of the community's traditional lifestyle helped to create an image of a harmonious and pure traditional rural community, pitted against a greedy corporation. But adat also has a different face in Kajang, as it simultaneously serves to legitimize the privileged position of the nobility.

In the plantation conflict, adat has been used for both ends. The Bulukumba Toa group referred to a glorified past of a former kingdom in Bulukumpa, while Komnas HAM and AGRA deployed the traditional culture still present in adjacent sub-district Kajang. Although AGRA activists believed that adat was suppressive and a problem for organization at the grassroots level, they also saw that the egalitarian aspects of the Ammatoa Kajang culture provided powerful tools to present an appealing story of rural injustice to the outside world. Noblemen in Kajang on the other hand viewed adat not so much as an emancipatory resistance force, but rather as a legitimization of their privileged position. Tension between such traditional noblemen and activists signifies the dichotomoy of adat: it has been a source of contention among different groups with vested interests.

However, adat must not be understood exclusively in terms of its politicization. On the contrary, it continues to play a dominant role in many people's lives in the Bulukumba countryside, especially in a traditional area like Kajang. Besides the traditional normative system called *pasang*, traditional patronage structures based on adat remain important in Kajang. Adat leaders enjoy considerable authority while newcomers such as activists from outside face distrust. Adat leaders can offer their subordinates protection in difficult times. But if it is in their interest, these leaders may at times also oppress their followers. We have seen in Chapter 3 that several leaders of noble blood worked with the plantation company during the New Order.

The point is that the role of adat leaders in society is not always the role that the indigenous movement wants them to have, especially when adat leaders have retained their political authority. How, by whom, and for which purpose the 'tribal slot' is invoked

is a matter of contention between different interest groups. Traditional leaders simultaneously hold other influential positions, either in business, the government or the military. It is revealing that most leaders of the Ammatoa Kajang community have not played an active role in the plantation conflict. Besides their role as community leaders, they also have their own interests and in the case discussed in this chapter, it was usually not in their interest to turn against a plantation company or to oppose government authority. Given their position and embeddedness in networks of power, most adat leaders prefer to accommodate and co-opt to government authority rather than oppose it. Overall, traditional noble rulers whose position is still strong have had little reason to deploy adat to claim land rights, while those traditional noblemen that actually did engage as claimants in the conflict (the Bulukumba Toa group) lost their elite position long ago. They deployed a position they no longer had by referring to a former regional kingdom that already lost its political influence.

This chapter finally looked at the role of the district government, particularly the Bulukumba District Head, in the era of decentralization and regional elections. The analysis showed that a 'government close to the people' creates both limitations and opportunities for land claimants. The decentralized district government first appeared seriously committed to resolve the conflict as the Bulukumba District Head was receptive to the claims submitted to him and followed up on them with several investigations. By doing so, he preserved an image of flexible authority, while maintaining a bargaining position between the various claimant groups and the plantation company. However, he later claimed to have no authority to deal with the conflict, which caused suspicion among activists and land claimants about alleged corruption. Because the Bulukumba District Head first conceded to claims, only to reject them at a later point, the conflict appeared stuck in a theater of ongoing negotiations without resolution.

The district government that took office in 2016 appears more opportune for the land claimants, as several claimants are informally connected to an influential official, the Bulukumba Vice District Head. Such a connection appears to advance the bargaining position of claimants. The current position of the Bulukumba Toa adat community and their AGRA allies exemplify this. Nevertheless, the unfulfilled promises of the previous Bulukumba District Head tell us that in the cycles of contention, the current momentum is not in any way a guarantee to realize land rights in the future.

7 WHO GETS ADAT FOREST RIGHTS? SEEKING RECOGNITION IN KAJANG AND WEST SINJAI

7.1 INTRODUCTION

The most celebrated achievement of the indigenous movement in Indonesia in recent years has been its success in Constitutional Court ruling no. 35/2012. This decision provided a new incentive for communities throughout the archipelago to seek legal recognition of their customary land rights. However, although civil society groups and media hailed the decision as a 'historical victory' for it changed the ownership status of adat forests[185], the court in fact also rejected several demands of those who filed the case. AMAN, the main claimant, had also contested the validity of the 1999 BFL for not granting adat communities the right of self-determination. Under international law, this is an intrinsic right of indigenous peoples (Pitty, 2001). Had the court conceded, then indeed the consequences of the ruling would have been extensive. It would have implied that not the state, but communities themselves could decide on their indigenous status. This proved a step too far for the court. The control to decide on who qualifies as adat community and can apply for adat forest rights remains in the hands of regional governments.[186] Only those groups that can prove to their governments that they are still traditional and distinct from the rest of society can obtain the status of adat law community.[187]

Conditioning the recognition of land rights to the decisions of government officials is a common way for states to reserve control over the allocation of land (Ribot and Peluso, 2001: 163). In Indonesia, achieving recognition of adat community rights is a complex process, not only because of the strict legal requirements, but also given the various economic and political interests at stake. After adat forest was introduced as a legal category in the 1999 BFL, only few regional regulations were enacted that acknowledge the existence of adat communities and their forest rights.[188] These regulations were the oucome of negotiations between activists representing a community and a particular district government. Constitutional Court ruling no. 35/2012 did not alter the process of recognition. Realizing the collective adat forest right still requires a serious effort and is unlikely to succeed if district government officials see no benefit in it. Nevertheless, since the court ruling, forest users all over Indonesia have applied for adat forest rights.

---

[185] See Chapter 2, Subsection 5.3.

[186] For an overview of the legal framework that regulates the recognition of adat law communities, see Chapter 2, Subsection 5.4.

[187] In Chapter 2 I explained that adat community and adat law community are different concepts. Adat community (*masyarakat adat*) is the term mostly used by the indigenous movement. Adat law community (*masyarakat hukum adat*) is the legal concept used in Indonesian legislation.

[188] Examples are a 2001 District Regulation recognizing the right of avail (*hak ulayat*) of the Baduy community in Lebak district, Banten province, and a 2012 District Regulation that inaugurates and protects adat communities in Malinau district, North-Kalimantan province.

In this chapter I will compare the attempts to secure adat forest rights by two South Sulawesian communities.[189] The first case involves the previously discussed Ammatoa Kajang community from sub-district Kajang, Bulukumba district. In November 2015, the Ammatoa Kajang community was first to obtain legal recognition at the district level since Constitutional Court ruling no. 35/2012. A year later, it was also among the first recipients of adat forest rights granted by the central government in December 2016. The second case involves the Turungan Soppeng community from sub-district West Sinjai in Sinjai district, just north of Kajang. Since the mid- 1990s Sinjai has seen a number of serious land conflicts between local land users and the District Department of Forestry and Plantations. Recently, local land users have invoked the adat community claim to claim their customary land rights. As of yet, these claims have not yet been very effective.

From the legal framework, it can be assumed that the more traditional and cohesive a group is, the higher its chances are of being recognized as adat community (Bakker, 2008). Yet, merely being traditional and culturally distinct may not be sufficient to obtain recognition. In this chapter I will demonstrate that claims to adat forest rights are settled not simply on the basis of law, but also on the basis of the relative bargaining positions and the character of linkages between communities, their mediators and local authorities. The latter ultimately make formal decisions on who is indigenous and who is not. The outcome of such decisions is not only contingent on the formal conditions of indigeneity, but also on the personal or political benefits that local power-holders obtain as a result from such recognition. When local land users are in conflict with state actors, their claims to adat forest rights are likely to be denied by the state.

In addition to assessing why certain communities succeeded in obtaining adat forest rights, while others have not, this chapter will furthermore explain who actually benefited from recognition when it did materialize.

7.2 THE LEGAL RECOGNITION OF THE AMMATOA KAJANG COMMUNITY

7.2.1 The relationship between the Ammatoa Kajang community and the district government

According to the BRWA (*Badan Registrasi Wilayah Adat*), there have been 49 adat territories recognized by regional governments throughout Indonesia.[190] With twelve of these territories situated in South Sulawesi, the province counts the most recognized indigenous territories of all Indonesian provinces.[191] However, more than 80 communities from South Sulawesi are still struggling to acquire such recognition. The South Sulawesi branch of AMAN lists 95 groups as member communities (*anggota*).[192] So far only one of these communities, the Ammatoa Kajang community from Bulukumba, has

[189] Extensive parts of this chapter have been published as a journal article, see Muur, 2018.
[190] http://brwa.or.id/stats_pengakuan, last accessed 21 June 2018.
[191] These communities are spread across the province and are located in various districts, including Bulukumba, Enrekang and Tana Toraja.
[192] http://amansulsel.or.id/anggota-aman-sulsel/, last accessed 21 June 2018.

managed to obtain recognition of its adat forest at the national level.[193] This achievement involved the cooperation of community leaders, NGO's and government officials.

Many of those involved believed that the successful recognition in Kajang was a 'best practice showcase' that could lead the way to the recognition of other communities.[194] However, as I will argue in this section, there were special circumstances in place in Bulukumba that are not often found elsewhere and these greatly facilitated the process of regional recognition. First, as I have shown in Chapter 5 and Chapter 6, the Ammatoa Kajang community fits the 'tribal slot' remarkably well. The strict *Tomanurung* inspired cult still has a large following in Kajang and the traditional socio-political order based on noble ranks continues to be a dominant factor in political life. A continuing adherence to the traditional *pasang*, the importance of adat leaders and adat institutions, and the preservation of a sacred communal forest made them one of Indonesia's most obvious candidates to qualify as adat law community in accordance with Article 67 of the 1999 BFL.

At the same time, the Ammatoa Kajang community has always actively engaged with state institutions. For many decades, the community's adat institutions functioned in cooperation with modern government institutions and in this way, the community has been able to preserve its distinct character. Community leaders have managed to combine adat positions with modern government offices and maintain good relations with the district government of Bulukumba. How these relations helped secure the community's legal recognition as adat law community shall be discussed below.

I first visited the inner adat territory (*rembang seppang*) of the Ammatoa Kajang in July 2013, accompanied by AGRA activists. I had come to know of the community during my research on the Bulukumba plantation conflict. In 2014, I stayed a considerable period with a local Ammatoa Kajang family, who lived very close to the entrance gate of the inner territory. The head of the household, pak Jumarlin, came from a prominent family of the original Amma Toa lineage. He was known to possess great knowledge of local adat. Jumarlin worked as a forest ranger for the District Forestry and Plantation Department (henceforth DFPD) of Bulukumba. His older brother was Kahar Muslim, the adat leader who had helped the occupants that hid from the police in the sacred forest in 2003.[195] During my first period of fieldwork in 2014, Muslim was serving his third term as a member of the Bulukumba District Parliament (*DPR-D Bulukumba*). In 2015, he ran as one out of four candidates for Bulukumba District Head in the elections.[196]

---

[193] With 'national level' recognition I mean the enactment of a decree (*keputusan menteri*) by the Minister of Environment and Forestry that recognizes an adat forest.

[194] For example, Sardi Razak, Head of AMAN South Sulawesi mentioned that the recognition process should become an example for other district governments, see: http://www.mongabay.co.id/2015/11/18/dua-tahun-molor-perda-masyarakat-adat-ammatoa-kajang-akhirnya-disahkan/, last accessed 21 June 2018.

[195] See Chapter 6, Subsection 2.1.

[196] Although it is formally only allowed to have a seat in a district parliament for two terms, Kahar managed to get elected for a third term by moving to another political party. During an interview, he explained that the people in Kajang have chosen him for a third time due to his strong support for the community rather than his membership of a particular party.

While staying in Kajang, I soon observed how community leaders combined traditional leadership positions with modern government administration. Prior to becoming a regional parliament member, Kahar Muslim had served two terms as the Village Head of Tana Toa, where the largest part of the inner adat territory *rembang seppang* is located. It is custom that as Tana Toa Village Head, he automatically would obtain the traditional adat position of *Galla Lombo*, a function that locals interpret as a 'Minister of Foreign Affairs'.

In this way, the Ammatoa Kajang community manages to keep up with developments in the outside world and simultaneously maintain a degree of autonomy. For decades, this has been a strategic way to preserve the traditional Ammatoa Kajang socio-political structure. In 1978, at the height of the New Order, Indonesian scholar Usop wrote that in Kajang, 'local adat leaders automatically become the local government' (Usop, 1978: 26). Conflicts between traditional authority and modern government positions so common elsewhere in Indonesia, including in many regions in South Sulawesi, appear to have been a relative non-issue in Kajang. One of the *pasang* even explicitly prescribes that government authority should be accepted.[197] This rule is a result of the long history of Kajang's subjection to external political authority. Kajang was subordinated to the Kingdom of Gowa (until 1667), the Kingdom of Bone (until 1870) and to direct colonial rule under the Dutch (1870 – 1942) (Goedhart, 1920). Usop wrote that the people of Kajang were 'very obedient to the government' (*sangat patuh pada pemerintah*)) and always willing to accept 'guidance' (*petunjuk*) from higher authorities (Usop, 1978: 25).[198]

The community's recognition of government authority also works the other way around. Usop, referring to the situation in the 1970s, explained that the introduction of formal government administration had decreased the political significance of adat, but the South Sulawesi government still respected the Amma Toa as a 'special informal leader' (*tokoh pemimpin informal yang khas*) (Usop, 1978: 25). Both the Bulukumba District Head and the South Sulawesi Governor usually paid a visit to the Amma Toa at the end of their term to be blessed in an adat ritual. Such mutual recognition is still in place today, for instance with regard to the appointment of the Kajang Sub-District Head. It is an unwritten rule that the Bulukumba District Head has to appoint a member of the *Karaeng Labiria* family to this position. This reflects a continuing tradition that dates back to colonial times, when the *Karaeng Labiria*, as head of the *adatgemeenschap* Kajang, was both an adat leader and an indigenous official in the colonial administration (Goedhart, 1920: 4).

The Ammatoa Kajang community also owes its respectful reputation to its prominent role in the fight against the Darul Islam rebellion in the 1950s, when the Amma

---

[197] One of the *pasang* reads: *'Anrai'rai'i pammerentah anrai rai tokki, kala'kalau Í pammerentah kala 'kalau'tokki'* (if the government goes west, we have to go west, if the government goes east, we have to go east).

[198] I realize that Usop remarks were made in the context of the New Order period. Nevertheless, during my fieldwork in 2014, community leaders often emphasized that acceptance of government authority was a customary rule in Kajang.

Toa installed a civilian army to expel the troops of Kahar Muzakar from Bulukumba. This army, 'armed only with swords, spears and magic', managed to seriously weaken the Darul Islam rebels by killing many Darul Islam guerrilla fighters (Gibson, 1994: 73). A year later, Kahar Muzakar launched a well-organized counter attack on Kajang from the north. In May 1995, a 'bloody three-day encounter' in Sinjai cost the lives of more than 500 Ammatoa Kajang community members.[199] Kahar Muzakar did not kill the Amma Toa, but held him in custody for more than five years, until he was brought back to Kajang in 1961 (Gibson, 1994: 73).[200]

The supreme illustration of the good relation between adat leaders and the district government in more recent times is their longstanding cooperation in forest management. As noted in Chapter 5, land - especially the sacred forest - plays an essential role in the belief system of Kajang. There are strict rules with regard to the preservation and utilization of the forest. However, in 1994 the Ministry of Forestry claimed control over the 314-hectare forest and started to administer it as 'production forest' (*hutan produksi terbatas* or *HPT*),[201] meaning that the Ministry could issue concessions to third parties to exploit the forest. This however never happened and de facto authority over the forest has consistently remained with the Ammatoa Kajang leaders, due to their good relation with the Bulukumba DFPD.

Since the 1990s, an arrangement of co-management between the DFPD and the community has been in place. The management of the forest remained in the hands of the community, and was exercised in accordance with the *pasang.* Should a member of the community violate these norms, then he or she had to face a panel of adat judges in which the Amma Toa has the ultimate authority to decide on the sanction. In such cases, the DFPD kept distance and refrained from enforcing state law.

The co-management of the forest has worked well. According to the Bulukumba DFPD Head (*kepala dinas kehutanan dan perkebunan*), the Ammatoa Kajang forest was the most well-preserved forest in all of Bulukumba.[202] An important reason for its success was the appointment of community members as forest police (*polhut*) under the DFPD. One of such persons was my host in Kajang, Jumarlin. Whenever there was an adat trial involving the sacred forest, he would attend the hearings in the house of his adat leader, the Amma Toa. Subsequently he would report the outcome of the trial to his government boss, the DFDP Head. State institutions would only become involved if a case concerned non-community members or matters not governed by adat law. During my period of fieldwork in Kajang, there were two cases concerning illegal logging inside the sacred forest. One case was settled by the adat court, as it involved an adat leader who infringed the *pasang* by secretly taking wood from the forest. The other case involved a disputant who argued to have paid taxes over a plot of land located in the sacred forest. He claimed that his tax receipts proved that he owned the plot. Since tax is a state matter, the

[199] Citation from Dutch language newspaper *De Locomotief: Semarangsch handels- en advertentie- blad*, 20 May 1955.
[200] For an overview of the Darul Islam rebellion in South Sulawesi, see Chapter 5, Subsection 3.1.
[201] The sacred forest was designated as Forest Area through Ministerial Decree no. 504/kpts-II/1997 of the Minister of Forestry (*Keputusan Menteri Kehutanan Nomor: 504/kpts-II/1997)*. .
[202] Interview with the Bulukumba DFPD Head in Bulukumba city, 17 March 2014.

Bulukumba District Court dealt with the case. Several adat leaders functioned as witnesses in the courtroom.

To summarize, community relations with the state, particularly with the district government, are characterized by mutual respect and loyalty. By accepting the government as the ultimate authority, but also by engaging with it and by having installed a system of overlapping government functions, the Ammatoa Kajang community participates in the modern political and legal realm, while maintaining their traditional institutions.

Ammatoa Kajang adat leaders waiting to testify in a case of illegal logging at the Bulukumba District Court, April 2014.

7.2.2 The enactment of an 'adat law community' district regulation

So far, I have addressed that the Ammatoa Kajang community in many ways remains exceptionally traditional, while simultaneously maintaining good relations with state actors, most notably the Bulukumba DFPD. Although there was a conflict between the Ministry of Forestry and the community about the legal status of the sacred forest, this conflict existed predominantly on paper. In practice, the forest remained in the hands of the community with consent of the Bulukumba DFPD. In the previous chapter, we have also seen that many followers of the Amma Toa were involved as land claimants in the agrarian conflict with PT. Lonsum. I explained that while invoking the Ammatoa Kajang traditions is often used to strengthen land claims, especially by activists, most of the noble, landowning adat leaders refrained from being involved in the conflict. Nevertheless, in

activist circles the story that the Ammatoa Kajang community was a marginalized tribe dispossessed by a multinational company took on a life of its own.

These aspects combined made the Ammatoa Kajang community a perfect 'case' for the indigenous movement to put their hands on. The presence of an external threat to their livelihood – in the form of the plantation company – provided a reason to believe that the recognition of their community rights was urgent. In the public perception, the community had been the victim of the dispossessory practices of an evil capitalist plantation company, which threatened their traditional culture and livelihoods. Moreover, the longstanding good relations with the district government would come in handy to put the enactment of a district regulation in motion. Hence, not only would the recognition of the Ammatoa Kajang community constitute a relatively easy road to success, it would also prove the cause of the indigenous movement a whole. No doubts existed as to whether the community would be able to qualify as adat law community under Indonesian law. It was clear that the people of Kajang formed a real adat community well before the revival of adat that took place after the fall of the New Order in 1998.

Already in 2003, in response to the violent escalation of the plantation occupation, AMAN had conducted mapping activities of the traditional adat territory (Fisher et al, forthcoming: 3). In 2009 a first draft of a district regulation was made but without a follow up. In 2013, Constitutional Court ruling no. 35/2012 provided a final push. Several months after the decision, district government officials, NGO's and community leaders formed a taskforce to pick up the drafting process for a district regulation that would legally recognize the Ammatoa Kajang as adat law community and its forest as adat forest. This time, the support from civil society organizations was very strong. AMAN played an important role in the taskforce. Its South Sulawesi branch was mostly in charge of organizing meetings and seminars, while legal experts from AMAN's main office in Jakarta were assigned to help with the drafting process. The costs of the participatory law-making process were also supported by a large development project from the Canadian International Development Agency (CIDA) and implemented by the Center for International Forest Research (CIFOR) (Fisher and van der Muur, forthcoming).[203] Regional NGO Balang Institute also joined. Balang Institute supports farming communities in South Sulawesi through community participation projects.

From the Bulukumba district government side, the DFPD, the Bureau of Legal Affairs, and the Department of Culture and Tourism were involved in the taskforce. As a representative of both the Bulukumba district government and the Ammatoa Kajang community, the Kajang Sub-District Head/*Karaeng Labiria* also joined the team. Balang Institute was assigned the task of doing field research on the Ammatoa Kajang community. The central aim of the field research was to collect data on the different types of traditional domains of the community and also to map their adat territory, the results of which were going to be included in the draft.

The team of researchers aimed to identify the areas of land that the Ammatoa Kajang community uses for worshipping rituals. Adat leaders were consulted about the

[203] CIFOR is an international research organization focused on issues related to forest and landscape management. The organization's main office is in Bogor, West-Java.

verification of this territory (*wilayah adat*), in particular the Amma Toa. In total, eleven areas were designated as sacred adat sites. The research team moreover asked the adat leaders about the hierarchical structure of their customary socio-political organization. After the research was finalized, the team began to work on the draft. The sources of research data served as the guidelines for most of the content of the regulation.

Several seminars and participatory drafting sessions were held in the district capital of Bulukumba from late 2013 onwards. From March 2014, I was allowed to attend these sessions as an observer.[204] Although there was a lot of good will on board, there were also some disagreements between the different parties about the actual scope of the regulation, particularly about the size and borders of the Ammatoa Kajang adat territory. According to the data collected by Balang, the adat territory had a size of more than 20,000 hectares, comprising all of sub-district Kajang and even extending into parts of sub-districts Bulukumpa, Herlang and Ujung Loe (see map of research locations on page 6). The territory also overlapped with a large part of the concession of PT. Lonsum, as well as with thousands of individually owned plots of farming land. AMAN stressed that this entire territory was to be recognized as adat territory.

The government officials (including Kajang Sub-District Head/adat leader *Karaeng Labiria*) attending the drafting sessions in turn were opposed to formally recognize the entire area of 20,000 hectares as adat territory. In their minds, only the relatively small 314-hectare sacred forest in the *rembang seppang* was eligible to be recognized as adat territory. They believed that declaring the entire 20,000-hectare area as adat territory would surely lead to conflicts with other holder of rights, notably PT. Lonsum. Eventually a compromise was reached. In the final draft, the whole area designated as adat territory was included, but an additional legal provision was added (Article 27), stipulating that the declaration of the adat territory would not infringe on the rights of existing right holders. In other words, PT. Lonsum and individual landowners would not have to fear to be stripped from their land rights.[205]

In November 2015, the Bulukumba district government passed District Regulation no. 9/2015 on the Inauguration, Legal Recognition and Legal Protection of the Ammatoa Kajang Adat Law Community (*Peraturan Daerah Kabupaten Bulukumba no. 9/2015 tentang Pengukuhan, Pengakuan Hak dan Perlindungan Hak Masyarakat Hukum Adat Ammatoa Kajang*). It was the first case of adat forest recognition in Indonesia since Constitutional Court ruling no. 35/2012. The District Regulation was followed up with a visit of the Minister of Environment and Forestry to the Ammatoa Kajang adat territory. In late December 2016 finally, the recognition of the Ammatoa Kajang adat forest also

[204] For a more elaborate discussion on the drafting process, see Muur and Bedner, 2016 and Fisher et al, 2017.

[205] In the final draft, Article 10 covers the adat territory of the Ammatoa Kajang. It provides that there is a distinction between the inner territory (*rembang seppang*) and an outer territory (*rembang luara*). The difference is that in the latter, only a part of the population follows the *pasang* strictly. Article 10 (4) states that parts of the outer area are located in sub-districts Kajang, Bulukumpa, Ujung Loe and Herlang as specified on an attached map. Article 13 defines the adat forest as 'the communally owned land inside the Ammatoa Kajang adat territory, of which the status of authority and utilization may not be changed'.

materialized at the national level, when the Minister of Environment and Forestry issued the Ministerial Decree that released the adat forest from the state forest.[206] The scope of the Ministerial Decree was limited to the 314-hectare forest in the *rembang seppang*: only this territory was declared adat forest. It did not pertain to the rest of the 20,000-hectare adat territory recognized by the Bulukumba District Regulation.[207]

The transfer of adat forest rights from the state to the community was turned into a celebrative event at the Presidential Palace. Together with eight other communities from Sulawesi, Sumatra and Java, a delegation of the Ammatoa Kajang community met with the President.[208] It was the Kajang Sub-District Head/*Karaeng Labiria* who, dressed in traditional black attire, received the Ministerial Decree from President Joko Widodo. The President announced afterwards that the transfer was only the beginning of a broader government policy of adat forest recognition and furthermore declared that with this initial transfer, land was given to 5,700 families. However, as we will see below, the Ministerial Decree in fact did not confer land to anyone in Kajang.

7.2.3 After legal recognition

The legal recognition of the Ammatoa Kajang community was considered an important on-the-ground victory of the indigenous movement. The 'sweet end of the year gift', as various news report called it, also made the Joko Widodo administration appear caring for the cause of adat communities. But the focus on realizing recognition somewhat distracted attention from the question of what would actually happen after the District Regulation and Ministerial Decree were passed. For many of those who had been involved in the taskforce, this did not seem a lingering concern. Therefore, the core assumption that drives the indigenous movement remained largely unquestioned and unchallenged, namely the assumption that legal recognition of adat communities and their communal lands results in increased tenure security of local land users.

NGO's often write that the 'communal land tenure system' in Kajang is a defining character of the community. An example is a recent research publication on adat forests by Indonesian NGO HuMa. The report characterizes the people of Kajang as 'having a unique relationship with their land and natural resource management through their land tenure system that is based on collective ownership, which reflects the normative system of the community' (HuMa: 2014: 24).[209] However, a recent land use study points out that except for the sacred forest, all land in Kajang is either individually owned or held under rotational arrangements by families called *gilirang* (Fisher and van der Muur,

[206] Ministerial Decree of the Minister of Environment and Forestry no. SK6746 (*Keputusan Menteri Lingkunan Hidup dan Kehutanan nomor SK.6746)*.

[207] Even if it had wanted to, the MEF could not change the status of this land, given that the bulk of this land was located outside of the Forest Area and hence, outside of the Ministry's jurisdiction.

[208] Members of this delegation were the Ammatoa Toa's daughter who is the Head of Benteng Hamlet (Tana Toa village), the Kajang Sub-District Head/*Karaeng Labiria,* and Mansur Embas, the Kajang nobleman who strongly opposed that land claimants used the name of the Ammatoa Kajang community to claim land inside PT. Lonsum's plantation (See Chapter 6, Subsection 3.1).

[209] I translated the cited text from Bahasa Indonesia to English.

forthcoming). This means that out of the 20,000-hectare area the District Regulation recognizes as adat territory, only a 314-hectare sacred forest is communal land.

Agricultural land in Kajang comprises the great majority of land in Kajang but none of this is subject to communal land tenure. Already in 1978, Usop wrote about the privatization of land holdings, stating that most families had approximately one hectare of land for rice and corn farming and that the only people with more land were the adat and government leaders (Usop, 1978: 38). In recent decades, crop booms have further commoditized land in Kajang, which has resulted in serious land scarcity. Thousands of Kajang farmers have in recent years migrated to the province of Southeast Sulawesi to look for available land (Fisher and van der Muur, forthcoming).

Did the legal recognition of adat forest, as the President claimed, indeed provide land to thousands of families? In Kajang this was certainly not the case. The 314-hectare sacred forest recognized by the Ministerial Decree had always remained under the control of the community. The change of status of this forest - from state forest to adat forest - merely constituted a formal transfer and did not involve any physical transfer of land from the government to the community.

Hence, neither the District Regulation nor the Ministerial Decree addressed the issue of land scarcity in Kajang. Legal recognition notwitstanding, Kajang farmers have continued to migrate to other parts of Indonesia to search for land. Since legal recognition did not affect the validity of the concession, they have also continued to address their land claims to PT. Lonsum. One potential future benefit of the recognition for local land users is that the 20,000-hectare adat territory recognized by the District Regulation might provide land claimants with a bargaining tool to demand that the company's concession will not be extended in 2022. However, as we have seen in Chapter 6, what has been just as important as legal entitlement for the bargaining position of local land claimants is their informal connection to regional powerholders.[210]

If the recognition was not beneficial to the average Kajang farmer, the question is who did benefit? Although it may be too soon to fully answer this question, it will most likely be the civil society organizations involved, a number of district government officials, and several adat leaders. The NGO's pleased their funders by showing that their participatory approach works and translates into results at the local level. The district government officials were glad that the legal recognition drew much positive attention from outside and gave the departments involved the reputation of being strongly committed to forest preservation and of serving the interests of the local population. The attention for the Ammatoa Kajang community has helped promote Bulukumba as a tourist destination in South Sulawesi. The adat territory sees visitors on a daily basis and large tour buses regularly make a stop in front of the gate of the *rembang seppang*. Fully aware of these benefits, district government officials actively promote the Ammatoa Kajang community as one of Bulukumba's flagship attractions.

The strong position of adat leaders in Kajang, particularly of those who are also government officials, seems to have only strengthened after the District Regulation was

[210] See Chapter 6, Subsection 4.2.

passed. Now that the sacred forest is excluded from the state forest, the formerly well working co-management between adat leaders and the Bulukumba DFPD no longer is in place. The management of the forest is now solely in the hands of the adat community and the forest police has no authority to monitor adat forest management. This potentially opens the door for adat leaders to take advantage of their authority. In 2015, one prominent adat leader allegedly opened up two hectares of land inside the sacred forest to cultivate clove trees.[211] Now that the previously existing safeguard of DFPD supervision is no longer in place, no one but the Amma Toa and judges of the adat court can hold such violators accountable.

In the end, that legal recognition does not address the concerns of the average Kajang farmer is not very surprising, given that these people were never consulted during the participatory lawmaking process to begin with. The attempt to secure legal recognition of the Ammatoa Kajang community was above all an initiative of civil society organizations. They consulted adat leaders as representatives of the whole community, expecting that they would have most knowledge of local adat. The concerns of non-leaders did not seem to be a point of consideration. For the taskforce, realizing a district regulation on adat forest seemed an objective in itself, rather than a means to improve local livelioods. In the process, the voices of ordinary community members went largely unheard.

7.3 Forest conflicts and adat community claims in West Sinjai

7.3.1 Background of forest conflicts in Sinjai

Around the same time that the Ammatoa Kajang community obtained legal recognition of its adat forest, farmers from adjacent district Sinjai applied for the same rights, but were significantly less successful. Sinjai directly borders Bulukumba to the north and lies at less than an hour-drive from Kajang. Despite the geographical proximity, the circumstances under which adat forest rights were claimed in Sinjai were very different from those in Bulukumba. In contrast to the longstanding relationship of mutual respect between the district government and Kajang adat leaders, there have since long been serious conflicts in Sinjai about land ownership between local land users and district government authorities.

It is in the context of these conflicts that local land users, with the encouragement of AMAN, have tried to position themselves as adat communities in order to apply for adat forest rights. However, whereas in Bulukumba there was a general consensus about the existence of an adat community, such consensus was lacking in Sinjai. Through the present case, I will demonstrate that applying for adat forest rights in a conflict situation is far less likely to result in a favourable outcome for local land users. We will see that the defining legal conditions of adat law community in this case became a mechanism of

[211] A local newspaper reported this, but I have not been able to verify this information.

exclusion. When recognition is not in the interests of local and regional state actors, recognition is likely to be a mission impossible.

Since the mid-1990s, Sinjai has seen a number of land conflicts between local farmers and the Sinjai DFPD. In the western part of the district, thousands of farmers live and farm on land designated as Forest Area, where they farm rice, coffee and cloves (see map of research locations on page 6). In Sinjai, the designation process of the Forest Area began in 1979.[212] Like in most areas in Indonesia, this process was carried out without the consultation of the local population (Safitri: 2010, 100; Djalins, 2011, 134). Local farmers contend that the Forest Areas in Sinjai extend over farming land that was recognized as adat land during the colonial era.[213]

Furthermore, a 2009 survey by the DFPD indicates that most land designated as Forest Area in Sinjai is actually not covered with forest. According to this survey, two-thirds of the Forest Areas are non-forested.[214] The non-forested Forest Areas have become the target area of annual reforestation activities (*reboisasi*) funded by the central government. Local land users believe that the reforestation projects were carried out to force the local farming population off their land. When the reforestation activities began in 2005, DFPD officials prohibited farmers to farm in the Forest Areas.[215] Activist organizations claim that the Sinjai district government's underlying motivation to push farmers off their land was to facilitate the exploration of a gold mine by a company named PT. Galena Sumber Energi.[216]

Between 2009 and 2015 more than fifteen local farmers have been arrested by the Sinjai forestry police and faced criminal charges for illegal logging in state forest. Most farmers claimed that their villages, forests and agricultural lands existed long before the Forest Areas were designated. The Sinjai Distict Court has consistently rejected such claims, ruling that only an ownership certificate issued by the NLA is valid proof of land rights. All farmers charged with illegal logging received jail sentences of at least one year.

In 2013, AMAN opened a regional secretariat (*pengurus daerah*) in Sinjai. The secretariat is run by a number of local student activists who previously operated on their own. Although becoming part of AMAN did not provide them with a working budget or a personal salary, it did give them the opportunity to join a wider NGO network and receive support from AMAN's South Sulawesi office in Makassar. AMAN first became involved in Sinjai after eleven farmers from sub-district Sinjai Borong received jail sentences for illegal logging. Since then, several communities have been registered as member

[212] Data from *Statistik balai pemantapan kawasan hutan wilayah VII Makassar tahun 2009*.
[213] Interview with local land user, Barambang village, sub-district Sinjai Borong, 13 December 2015.
[214] Sinjai's Forest Areas cover 18,894 hectares, of which 11,794 hectares protection forest (*hutan lindung*) and 7,100 hectares limited production forest (*hutan produksi terbatas*). In total, the Forest Areas cover about 23 percent of Sinjai's land mass and are located in six of the nine sub-districts. The Forest Areas were designated between the early 1980s until the early 1990s through several ministerial decrees.
[215] Stated in a report by Sinjai based NGO Gertak named *Referensi Perjuangan Rakyat: Kronologi Kasus Barambang-Katute.* Accessible at: http://pembebasan-pusat.blogspot.nl/2013/03/referensi-perjuangan-rakyat-kronologi.html, last accessed 21 june 2018.
[216] idem

communities with AMAN in order to strengthen the claim to their farming lands located inside the Forest Area.

7.3.2 Is there an adat community in West Sinjai?

When another local farmer was arrested for illegal logging in the Forest Area in 2014, local activists opted for a new legal defense strategy, in the hope of a turning tide in the courtroom. In this case, a local land user named Bahtiar Bin Sabbang from the village of Turungan Baji, sub-district West Sinjai, was accused of cutting down 40 trees in Tangka Forest, a 900-hectare protection forest (*hutan lindung*) in the south of Turungan Baji village. Bahtiar contended that he was the customary owner of the land and claimed to have planted the trees himself about a decade earlier. He had cut them down to make way for his valuable clove tree, which needed more space. Following his arrest, Bahtiar spent four months in detention. Upon his release he went to the district capital in sub-district North Sinjai to look for help. Through his son, who studied at a local university, Bahtiar was introduced to the student activists alligned with AMAN.

The student activists were eager to help and raised the idea of registering the farming community of Turungan Baji as a member community with AMAN. This would create the possibility of providing Bahtiar with legal aid from AMAN, as two criminal law attorneys worked for AMAN's provincial office in Makassar. AMAN's protocol prescribed that the lawyers were only authorized to defend adat community members. Wahyu Mustamin, the head of AMAN's secretariat in Sinjai, therefore opted to register Bahtiar and his village as a member community of AMAN and Bahtiar and his son agreed to this idea.

Wahyu informed Bahtiar about the legal conditions to qualify as adat law community, which requires a number of characteristics – adat laws, adat institutions and a communal adat territory - to be in place. When Bahtiar responded that these existed in the village Wahyu and his friends decided to visit Turungan Baji to check. In an interview, Wahyu recalled: *'When I went to Bahtiar's village, I saw that many features of the adat community were no longer there, but several things were still maintained, such as rituals still being performed, a holy rock and old graves. However, the adat houses were already gone because they had been burned by the Darul Islam rebellion decades ago'.*

West Sinjai is located in the relatively isolated highlands at the foot of Mount Bawakaraeng. Together with Kajang, this Konjo speaking area was - until several decades ago - considered one of the last remaining strongholds of the patuntung societies (Rössler, 1990; Harvey, 1975: 37, 40). Rössler explains that traditionally there were many similarities between the patuntung of West Sinjai and those of Kajang (1990: 297, 300, 302). He also asserts that the patuntung culture possibly originated in West Sinjai (1990: 320). However, as the quote from Wahyu above indicates, much appears to have changed in West Sinjai in recent decades. Like in most rural areas of southern South Sulawesi, the Darul Islam rebellion and the introduction of modern government administration left a

permanent mark on the socio-political organization of rural communities.[217] We will see below that although chunks of the once dominant patuntung culture continue to be relevant in Turungan Baji, these are often frowned upon by local religious leaders and village government officials.

I first met Bahtiar when I visited his house in Soppeng hamlet, Turungan Baji village in October 2015, accompanied by Wahyu Mustamin and several other activists from the district capital.[218] Like most of the people in Turungan Baji, Bahtiar comes from an ordinary farming family. Besides his farming garden located in the state forest, Bahtiar also owns a small ricefield. His wife keeps a small shop in the living room of the house, where she sells pens, candies and instant noodles.

According to Bahtiar, it was not hard to prove that an adat community existed in Turungan Baji. He stressed that the community still abided by community-based rules, that there still was an adat forest and that whenever there was conflict in the village, the solution was sought in accordance with adat. With the help of the AMAN student activists, he had mapped the socio-political structure of the adat community. He explained that there were nine adat leaders (*pemangku adat*), including the *Gella*, *Tomo Toa* and the *Guru*. Bahtiar said that although most adat leaders did not hold formal government positions they were still respected, given their important role in local events like wedding ceremonies. Bahtiar later showed me the adat forest, which according to community-based rules had to be preserved to keep the nearby river from draining. This forest is also the location of a large rock, which the community considers to be a sacred *gaukang*.

In the following months, I made a number of additional visits to Turungan Baji, where I would stay at Bahtiar's house. I was interested to speak to other villagers about the use of the adat community claiming strategy. However, I quickly noticed that people were not very eager to talk about this issue. The responses I received closely resembled the experience that an AMAN activist from Makassar shared with me earlier. He told me that initially, particularly the older villagers in Sinjai were very hesitant to join AMAN. During an inquiry to map the adat territories in sub-district Sinjai Borong, he noticed that most villagers were scared to even talk about adat. He explained to me that since the Darul Islam rebellion, adat had become somewhat of a taboo in many villages. The Darul Islam guerillas had banned everything adat related and burned almost all adat houses. The AMAN activists nonetheless tried to convince the farmers that positioning themselves as adat community could actually be beneficial to their struggle.[219] Eventually a number of farmers agreed. With very little social and economic capital at their disposal, any form of outside support was welcome to small-scale farmers like Bahtiar. Facing powerful adversaries, his chances to leave the courtroom as a free man were small to begin with. From this perspective, it is understandable that Bahtiar succumbed to the adat community strategy, especially since he had few other options.

---

[217] See also Chapter 5 and Chapter 6.

[218] By then, Bahtiar was already sentenced to prison by the Sinjai District Court, but had not served his jail sentence yet.

[219] Personal communication with Arman Dore in Tana Toa village, sub-district Kajang (Bulukumba district), 18 October 2015.

In Turungan Baji village, I found that apart from Bahtiar and his direct circle of relatives and friends, few people were willing to openly speak to me about adat. For example, I visited the house of an old female priest who still kept a sacred community object, *kalompoang*, in her house. Although she was very hospitable and willing to show me the *kalompoang*, she was reluctant to tell me anything about it. Bahtiar later informed me that both of her parents had been killed by Darul Islam rebels because of their participation in 'pagan traditions'. I also met one of the adat leaders named *Tomo Toa*. During our conversation, he repeatedly stressed that he hardly knew anything about his adat position, as it merely pertained to being a ceremonial guide during marriage and funeral ceremonies. He was appointed *Tomo Toa* after his predecessor, one of his relatives, passed away. I realized that whatever was left of the patuntung culture in Turungan Baji, it certainly was not to be shared with outsiders.

I encountered one villager who denied the existence of an adat community in Turungan Baji altogether. This was the Soppeng Hamlet Head (*kepala dusun*). He happened to be Bahtiar's direct neighbor and was known as a devout and conservative Muslim. In accordance to the Turungan Soppeng adat community structure mapped by Bahtiar and the student activists, the Soppeng Hamlet Head was also the *Gella*, allegedly one of the most important adat leader positions. People are obliged to come to the *Gella* to ask for permission to remove trees from the adat forest. However, when I asked the Soppeng Hamlet Head about this issue, he denied both being adat leader and the existence of an adat community in Turungan Baji. He furthermore explained that as the Soppeng Hamlet Head, he had nothing to do with forest issues, as these were matters solely under the authority of the Sinjai DFPD. He stressed that if there had ever been a title of *Gella*, it had been abolished long ago. As long as he could remember, the area claimed by Bahtiar as customary land was designated as Forest Area.

Disagreements in Turungan Baji regarding the role of adat in the village seemed aplenty. There were those who were encouraged by AMAN to revive the adat community to claim customary land, such as Bahtiar and his supporters. Then there were people, like the female priest, for whom adat still had significance but who rather did not speak of it. Finally, there were people like the Soppeng Hamlet Head, who believed that adat was something that belonged to an ancient past and had no place in today's modern and pious society. These internal frictions had not gone unnoticed by the student activists from the Sinjai district capital. They knew that they were going to have a hard time proving the existence of the adat community in front of the panel of judges. They nevertheless decided to follow through, not in the least because they felt that this was the only way for them to secure the help of the lawyers from Makassar. Wahyu Mustamin therefore registered the community with AMAN under the name 'Turungan Soppeng'. Shortly after, the AMAN head office in Jakarta approved the application. Now the two lawyers could help to defend Bahtiar in court.

Bahtiar Bin Sabbang in the 'adat forest' of Turungan Baji village, October 2015.

7.3.3 Searching for adat community recognition in court

In May 2015 Bahtiar's criminal trial at the Sinjai District Court began. The hearings predominantly revolved around the questions of whether the Forest Area in West Sinjai had been designated in a valid way, and whether there was adat forest in Turungan Baji. As noted in the transcript of the hearings, the public prosecutor had appointed a number of witnesses to testify against Bahtiar, which included the Soppeng Hamlet Head and several officials of the Sinjai DFPD. The witnesses appointed by the defendant were mostly farmers from Turungan Baji who supported Bahtiar's claim. When the judges asked the witnesses about the existence of adat forest in Turungan Baji, the Soppeng Hamlet Head answered that he did not know, while an official of the DFPD stated that nowhere in Sinjai was there any adat forest. One of the supporters of Bahtiar countered this view, explaining that in Turungan Baji village, adat rules on forest management still existed. He told the judges that the *Gella*/Soppeng Hamlet Head was the adat authority wih regard to forest matters, notwistanding that moments earlier, the Soppeng Hamlet Head had testified against Bahtiar.

Bahtiar also received support from a commissioner of Komnas HAM - the Indonesian National Human Rights Commission. AMAN asked her to testify in the trial because of her long working experience with adat communities. Her status as a human rights commissioner was expected to strengthen the defense of Bahtiar. In court, she confirmed the exixstence of adat communities in Sinjai and noted that she had recommended the Sinjai district government to make an inventory on these communities so that a district regulation recognizing their existence could be enacted.

The judges were not convinced by the claims about adat community rights in Turungan Baji. They stated that even though the people of Turungan Baji village still followed adat traditions and norms, it was clear that there was no adat forest. The judges further held that the authority to recognize the existence of adat communities was in the hands of the government, not the judiciary. Without a regional regulation, the judges were not able to recognize their existence. The court found Bahtiar guilty and sentenced him to one-year imprisonment and a fine of 50 million rupiah (approximately USD 3,500).[220] Yet, Bahtiar appealed this verdict at the Makassar High Court. In the memorandum of appeal, the AMAN attorneys contested the verdict of the Sinjai District Court with the following argument:

'*Does the fact that there is not a district regulation which recognizes the adat communities in Sinjai mean that they do not exist in Turungan Baji? Is the negligence of the government of Sinjai the fault of the adat community or Bahtiar Bin Sabang as a member of that community? What about the Ammatoa Kajang community in Bulukumba district, could we also dare to say that they are not an adat community because there is no district regulation yet that recognizes them? Coincidence has it that our organization is part of a draft team of the District Regulation that will protect the Ammatoa Kajang community, which will be included in the district legislation program (PROLEGDA) in 2015. We think that the judges in appeal will share our thought that a district regulation is not the only way to recognize the existence of adat communities in a region, because the 1945 Constitution already protects and recognizes adat communities, as long as they still exist*.'[221]

The adat community argument was again of little avail in court. The judges of the Makassar High Court agreed with the public prosecutor who denied the existence of an adat community in Turungan Baji. Information provided by the witnesses during the hearings pointed out that although adat rituals were indeed still carried out in the village, these rituals were not part of adat law (*hukum adat*), one of the requirements to be recognized as adat law community.[222] The adat activities performed in Turungan Baji only consisted of customs (*adat istiadat*) and were not unique to Sinjai but common throughout South Sulawesi. Hence, the Makassar High Court reinforced the first court ruling.[223] Shortly after the conviction, Bahtiar was called to report to the police to serve his sentence, but refused to turn himself in. For several months, he hid in the forest of Turungan Baji and only occasionally came to the village. In April 2016 eventually, Bahtiar was arrested by the police in the early morning and brought to prison.

7.3.4 The absence of connections with district officials in Sinjai

[220] Sinjai District Court ruling no. 89/PID.SUS/2014/PN.SNJ.
[221] Citation from Memory of Appeal (*Memori Banding*) by lawyers Nursari and Fadly, translated from Bahasa Indonesia.
[222] See Chapter 2, Subsection 5.4
[223] Makassar High Court ruling no. 182/PID.SUS/2015/PT.MKS. Bahtiar wanted to apply for cassation at the Supreme Court, but his lawyers were too late with requesting appeal, as an application for cassation may only be requested within two weeks after the ruling of a court.

Student activists have advocated for years for the enactment of a district regulation recognizing adat communities in Sinjai. These efforts intensified after Bahtiar was sent to prison. The activists initiated online advocacy campaigns on facebook and AMAN's website. However, such initiatives had very little impact on the ground.

Ultimately, what obstructed their objectives mostly was the fact that both the student activists and the communities they represent lacked strong connections to influential local and regional officials. Initiatives to lobby and persuade government officials to push for the enactment of a district regulation had no effect. In December 2015, shortly after the District Regulation recognizing the Ammatoa Kajang community was passed in adjacent Bulukumba, student activists organized a focus group discussion in the district capital of Sinjai on the rights of adat communities. Although they invited numerous district parliament members to join the meeting, none of them showed up. The only support came from a former district parliament member who lived in Turungan Baji, but his support was not sufficient to make an impact.

The situation in Sinjai thus contrasted strongly with Bulukumba, where the Ammatoa Kajang community could count on the enthusiastic support of a variety of district government departments, including the DFPD. The participatory lawmaking taskforce was moreover complemented by a coalition of various NGO's, whereas in Sinjai, the student activists received little external support other than from AMAN. Wahyu Mustamin often praised the Bulukumba DFPD Head, and believed that the situation would be different had she been in charge in Sinjai. In Sinjai however, the DFPD happened to be the strongest adversary against a district regulation recognizing adat communities.

According to several officials working at the DFPD, if one adat community were to be officialy recognized by the district government, it would not be the Turungan Soppeng community from West-Sinjai, but the Karampuang community from adjacent sub-district Bullopoddo. The Karampuang community still has several adat houses, functioning adat leaders and a sacred forest territory. Each year, the Karampuang community holds a regionally well-known worshipping ritual that is attended by hundreds of spectators, including many district officials such as the Sinjai District Head and regional military officials. During an interview, the Sinjai DFPD Head explained his opposition to the recognition of adat community claimants other than the Karampuang community:

'When the Forest Areas were designated here in Sinjai, fewer than 100,000 people lived here. It was still full of trees. Now, the people have multiplied and they all need land, that's why they claim to be adat communities and claim to own land in the Forest Area. We just have to follow the law. There are many people that claim to be an adat community here, but actually they are not. They are just claiming this so that they can get access to land.' [224]

The adverse position of the DFPD formed a serious obstruction to the realization of a district regulation on the recognition of adat communities. Student activists from Sinjai assert there was an underlying reason for the conflicts between the department and local farmers. According to them, the DFPD's adverse stance toward local land users was first and foremost related to the personal benefits that district forestry officials could

[224] Interview with Sinjai DFPD Head in Sinjai city, 14 December 2015.

obtain from annual reforestation funds. The central government allocated these funds to replant deforested state forests with new trees and were transferred to the districts every year.[225] The student activists reasoned that DFPD officials used the cases of illegal logging to 'prove' to the central government that large funds were needed to reforest the Forest Areas in the district. In 2014, the Sinjai DFPD Head was accused of corrupting parts of the annual reforestation funds and became an official suspect in a corruption allegation case.[226]

Bahtiar insists that his arrest was politically motivated and refers to his arrest as '*kriminalisasi*'. Bahtiar was one of the most vocal farmers from Turungan Baji and very critical of the DFPD. In 2006, a demonstration organized by Bahtiar and others had successfully prevented the DFPD from plating pine trees in Turungan Baji. Following the demonstration, the Sinjai district parliament had asked the DFPD to temporarily cancel the program. In this regard, Bahtiar had long been a thorn in the flesh of the DFPD.

7.3.5 The Kajang and West Sinjai cases in comparative perspective

The two adat forest claims discussed above were made under very different circumstances. Comparing them helps us to understand why certain claims have been successful while others have led to a dead end. A first aspect to compare is the extent to which both groups could actually qualify as adat law community. Obviously, the continuous existence of a traditional lifestyle prescribed by adat law – followed by a significant part of the population in Kajang - made the Ammatoa Kajang community a better candidate to fit the 'tribal slot' than the community of Turungan Baji, where the importance of adat was less univocally embraced. However, the argument that the Ammatoa Kajang community was recognized simply because they were more traditional and communitarian does not tell the whole story.

As explained in Chapter 6, the actual articulation of indigenous identity is a contextual positioning depending on many socio-historical factors (Li, 2000). In Kajang, maintaining traditions coincided with adapting to the modern state. Combining adat positions with government offices helped to maintain the traditional socio-political order. Events like the fight against the Darul Islam rebellion in the 1950s strengthened the collective identity of the group, as well as the relationship with the government. In West Sinjai on the other hand, there was no organized resistance against the Darul Islam rebellion. The traumatic events that took place had a lasting impact on the role of adat in Turungan Baji. As a result, Bahtiar faced difficulties to prove that there was still a real adat community in the village.

Despite today's differences between the two areas discussed, anthropologists have classified rural groups in West Sinjai as original patuntung communities that once bore many similarities with the Ammatoa Kajang community. In the village of Turungan Baji,

[225] Since 2016, the district forestry departments have been abolished and were recentralized at the provincial level.

[226] See: http://makassar.tribunnews.com/2014/08/28/kejari-sinjai-mulai-dalami-kasus-reboisasi-2012, last accessed 26 June 2018.

adat was separated from the political sphere and now appears to be of relevance only in the sphere of community rituals and ceremonies. Until the arrest of Bahtiar, adat had never been used to articulate the indigenous identity of the rural community in a political way. While the villagers all agree that adat is still of importance, they are divided about whether there is an actual adat community in Turungan Baji. The lack of consensus about the existence of adat community characteristics proved an easy mechanism for the courts and district government to reject claims to adat forest rights.

A second aspect to compare is the level of support by external actors. In both cases, there was significant support from AMAN. In the case of the Ammatoa Kajang community, there were also other organizations involved to facilitate the realization of the District Regulation. However, the support of these organizations only began after it had become clear that several district government departments were willing to participate in the drafting process. This gave the participatory lawmaking process a legitimacy boost from the outset. In West Sinjai on the other hand, although many villagers and student activist supported the claims of Bahtiar, none of them were connected to the district government or district parliament.

This leads to a final aspect to compare: the relation of both communities with local and district officials. In Sinjai there was a conflict between local land users and regional state actors, whereas in Kajang there was not. The Ammatoa Kajang case revolved mainly around formalizing a small community forest that the district government already de-facto recognized. The conflict over land in West Sinjai not only involved contestation over land ownership, but also over land use. Bahtiar wanted to cultivate the land, while DFPD officials, driven by personal interests, wished to maintain it as state forest. In Kajang on the other hand, there was consensus between the Ammatoa Kajang community and the DFPD that the sacred forest was to be preserved. The potential for tourism also contributed here. The personification of the good relationship between the district government and the community was the *Karaeng Labiria*/Kajang Sub-District Head, who, as both an adat leader and district government official, played an important role in the enactment process of the District regulation.

In Sinjai meanwhile, neither farmers like Bahtiar, nor the student activists representing him disposed of useful connections that could influence the decision-making process of recognition. There were no adat leaders who were simultaneously government officials, even though Bahtiar had tried to convince the Sinjai District Court that this was the case, in order to strengthen his claim. However, local government representatives were opposed to adat community claims. At the village level, it was the Soppeng Hamlet Head that denied the existence of the adat community. At the district level, the adat forest claim conflicted directly with the personal interests of DFPD officials, making the realization of recognition virtually impossible.

7.4 Conclusion

Since Constitutional Court ruling no. 35/2012, Indonesian law provides options for adat communities to become the legal owners of their forest. The cases provided in this chapter

have shown that decisions to grant communities adat forest rights are not only contingent on legal criteria, but also on the mutual good will and nature of relationships between communities, their activist representatives and local and regional state authorities.

In the cases discussed, the paradoxical outcome of making tradition and cultural distinctiveness a perquisite for certain rights is that the group best connected to the district government could most easily qualify for such rights. The Turungan Soppeng community had, for socio-historical reasons, not articulated its indigenous identity univocally and lacked sufficient social capital. In Kajang on the other hand, special conditions were in place. The Ammatoa Kajang community has become what Li (2000, 166) calls an 'exemplary case' as NGO's, academics and government agencies have long considered the community a prime example of pure indigeneity. Colonial ethnographers picked Kajang as the locus of study to show that indigenous belief systems uninfluenced by Islam still existed. Such evidence served as an implicit justification of colonial policies that strengthened traditional rule in South Sulawesi. During the New Order, numerous researchers spent time in Kajang for 'cultural study' purposes. Another attention-wave struck Kajang after the outburst of violence in the plantation conflict in 2003.

Together with a handful of other communities spread across the country, the Ammatoa Kajang community is one of the iconic groups so often mentioned in the reports of NGO's, multilateral development banks and other promoters of the indigeneity discourse. Rarely do such reports note that the socio-political organization of the Ammatoa Kajang community is rather exceptional, given their strong connections with and adaptation to the modern government. Moreover, that collective articulation of indigenous identity did take place in Kajang does not necessarily imply that the community is harmonious and egalitarian. In the previous chapter I have shown that while everyone agrees on the existence of the Ammatoa Kajang adat community, there is contention between adat leaders and common community members about who can invoke indigeneity and for which purpose.

If we look at the 'tribal slot' from the perspective of marginality, the Turungan Soppeng community might actually make a better candidate. The West Sinjai case is an example of a land conflict between a politically and socially marginalized farmer and a powerful district government. The problem here was not that the indigenous movement overlooked the issues in West Sinjai. On the contrary, AMAN was seriously committed to help Bahtiar with his legal defence. What was problematic however was that the activists involved pushed for the adoption of a discourse that was bound to lead to a dead end. In West Sinjai, the suppression of adat since the Darul Islam period had a remaining impact, which obstructed the univocal articulation of indigenous indentity. Under these circumstances, the government and the judiciary rejected the claims of Bahtiar.

This chapter has also looked at the implication of succesful legal recognition. I have explained that the legal recognition of the Ammatoa Kajang community was hailed a major on-the-ground victory of the indigenous movement. The existence of the Ammatoa Kajang community not only proved that unique and culturally distinct adat communities still exist, but also, that formal recognition of their collective rights was realizable.

However, legal recognition did little to improve the land tenure situation of local land users, one of the goals of the indigenous movement. First, not a single Kajang farmer obtained any land. Second, while the indigenous movement strives for the recognition of adat community rights because of a strong distrust in the state's land management capacities, the perverse effect of the legal recognition of the Ammatoa Kajang community is that it in fact strengthened the position of local and regional government actors. The adat leaders, some of whom are local and regional government officials, are now in charge of the preservation of the adat forest, and can potentially abuse their power without any form of upward accountability. A previously existing well-functioning co-management system between the district government and the community was abolished as a result of the recognition.

Indigeneity as a basis for rights has only benefited a selected few in South Sulawesi. In Kajang, NGO's only consulted adat leaders to speak on behalf of the community, whereas In Sinjai, government and judicial institutions have thus far rejected all adat claims. The current discourse has therefore yet to translate into substantial solutions for problems experienced by local land users at the local level.

8 CONCLUSIONS

8.1 INTRODUCTION

Two decades have passed since Indonesia turned from an authoritarian into a democratic state. This process has established and promoted civil liberties, but simultaneously, many predatory government practices common under the authoritarian New Order regime continued (Hadiz, 2007; Schulte-Nordholt and van Klinken 2011; Bakker 2009). It is in this context that this study has looked at land conflicts, the changing nature of claims to land rights by local land users, and the role of the indigenous movement herein. It examined how and why this movement emerged, how its discourse has translated into law, and how these legal reforms have actually helped local land users to secure land rights in South Sulawesi.

Key players in the indigenous movement are the NGO activists and local land users who use the 'adat community' frame to claim rural land rights. At the outset of the *Reformasi* era, Indonesia observers noticed the rise of the indigenous movement with both surprise and excitement. The 'indigenous turn' was also reason for concern among scholars, particularly in relation to the increased space it provided for local identity politics. Some worried that advocacy for indigenous rights would legitimize traditional power structures that are highly hierarchical and patronizing in nature. Li for example expressed the concern that 'for all the failure of the Indonesian state to deliver the promises of liberal citizenship, I worry too about a differentiated legal system in which recognition of customary law would subject people to local despotisms and the whims of "traditional" leaders who could monopolize or sell collective resources, or pass unreasonable judgments, substituting one tyranny for another' (Li, 2001: 648).

Since Li expressed these concerns in 2001, Indonesia has made steps to establish a legal framework on indigenous land rights. During the 1990s and early 2000s, local land users often invoked adat land claims to resist intrusive state policies pertaining to land rights and natural resource management, even though Indonesian law did not yet provide a concrete basis for such counter claims. Over the years however, the state has given into some demands of the indigenous movement, albeit partially and in a gradual way. As a result, the legal system that Li feared has partly come into place. Although the Law on Indigenous Peoples is yet to see the light of day, the scope of indigenous rights widened through an alteration of the 1999 BFL by the Constitutional Court in May 2013. Several ministerial regulations followed and helped to create a legal framework that regulates the procedure for the recognition of adat communities and their land. In short, since the revival of adat following the fall of the New Order, the status of indigeneity in Indonesia has slowly developed from being a tool of resistance into becoming a basis of collective land rights.

The most pertinent question this study tried to answer is to what extent local land users have actually secured adat land rights. I have shown that by imposing strict conditions on legal recognition, the state continues to have a large degree of control in

land governance. At least in part, these strict conditions ensued as a result of the narrow frame adopted by the indigenous movement itself. This frame is built on the notion that customary rights are exclusively held by traditional and communitarian adat communities. The conditions in the law reflect this frame and hence, greatly limit the scope of who can qualify for such rights. When government agencies do recognize collective adat land rights, there are no guarantees to prevent that only traditional elites will benefit.

An important conclusion is that the local appropriation of the indigeneity discourse has hardly empowered local land users involved in land conflicts. In this concluding chapter, I will summarize the main findings that underpin this argument. I start with an explanation of why many land conflicts in Indonesia continued. Next, I will explain why the indigenous movement found the narrow frame of adat communities useful to support farmers involved in such conflicts. This is followed by an evaluation of the changing scope of adat community rights under Indonesian law. I will then look at the way adat community rights are claimed at the local level and how these claiming strategies impact local struggles over land. Finally, I will briefly look at the prospects of customary land rights in Indonesia for the future.

8.2 THE CONTINUITY OF LAND CONFLICTS: GOVERNMENT INTERVENTIONS AND THE ROLE OF LAW

In essence, the claims to recognize the rights of adat communities are a call to reduce the role of the state in land governance. The underlying assumption of the indigenous movement is that the 'predatory state' is incapable of realizing rural justice for its citizens. Through the BAL, the state promised to secure land rights of the population on the premises of citizenship. Individual land rights were to be realized by an active government that registers and creates such rights. However, these aspirations were never realized. The government never fully carried out the planned land reform program. Under the New Order, the implementation of the BAL was arbitrary and the state often interpreted the rules in ways that served the interests of the regime. The majority of people in rural areas did not manage to register their land rights. Unregistered community-based land rights were highly insecure when such communities were faced with claims from companies supported by the government.

The demise of the New Order created a new sense of empowerment among rural populations. Local officials such as sub-district and village heads sometimes sympathized with local movements, whereas previously they were loyal to the state. Local land users could address their grievances more freely. However, although the shift towards regional autonomy in the early 2000s conferred more powers to regional governments it tended to reinforce the power of local elites, rather than empowering the unheard voices of ordinary citizens (Hadiz, 2003; Schulte-Nordholt, 2007). Therefore, democratization and decentralization did not lead to significantly more inclusion of 'common people' in decision-making processes on land governance and natural resource management.

This study has looked at the broader trajectory of land conflicts in Indonesia and has also examined a number of land conflicts in an in-depth way, including a longstanding,

ongoing agrarian conflict in Bulukmba that has been lingering on for almost 40 years. The root cause of most conflicts between local land users and state and corporate actors is well-known: the designation by the state of large tracts of land as state land and state forest without considering the customary rights of local land users. The in-depth study of land conflicts of this research has provided new insights as to why certain land conflicts have dragged on for so long.

A previous study of the Bulukumba plantation conflict attributed the continuation of the conflict in the early 2000s mainly to the role of local activists, who stirred up the rural masses and obstructed the reach of a settlement (Tyson, 2010). However, my findings from long periods of fieldwork in Bulukumba and a precise reconsruction of the events since the late 1970s suggest otherwise. In Chapter 3 and Chapter 6, I showed that despite numerous government attempts to settle the conflict, the state never took the grievances of the numerous groups of claimants seriously into account. Various government agencies were only prepared to consider the legal aspects of the conflict, interpreted in a narrow, pro-company way. This static approach to resolve conflicts was ineffective. Due to mutually non-aligning decisions of various legal institutions - for example about the appropriate size of land adjudicated by the Supreme Court - the conflict became more layered and impossible to resolve if state institutions were not to look beyond the legal aspects of the conflict.

In the era of regional democracy, elected officials used the conflict to prove their political performativity. In Chapter 6 I explained how an elected district head initially presented himself as a capable conflict mediator who was willing to look into the claims of local land users with an open mind. Eventually however, after being confronted by counter claims from the company, he withdrew his involvement and asked the land claimants to instead take their claims to a court.

In the forest conflicts in Sinjai, discussed in Chapter 7, state institutions approached the claims of local land users in an equally narrow way. In the eyes of district government officials and judges of the Sinjai District Court, the boundaries of the Forest Areas were legitimate for they were legal, despite that the government never consulted villagers about the borders of these areas. Like in the Bululukmba plantation conflict after the fall of Suharto, law was primarily a means of control of powerholders, rather than a protective tool of the rural poor. It is against this backdrop that the continuation of land conflicts has convinced activists and local land users that the state should abstain from interfering in land governance and natural resource management. This distrust has been a fertile soil for the growth of the indigenous movement.

8.3 THE POWER AND LIMITS OF THE ADAT COMMUNITY DISCOURSE

8.3.1 The legitimacy of adat

In the introduction of this book I referred to studies that attribute the expansion of indigenous rights to neoliberal government policies in developing countries. This literature notes that democratization and decentralization offered a basis for a new

discourse on citizenship. The neoliberal rationale that communities were better off to govern themselves were supported by civil society organizations, as these were greatly disappointed by the land rights policies of centralist states during the preceding decades. The shift towards neoliberalism alone however does not fully explain the particular character of the indigeneity discourse in Indonesia. It does not completely clarify the puzzling fact that in Indonesia, civil society's advocacy for legal recognition of customary land rights is almost exclusively framed in terms of the rights of traditional, egalitarian adat communities, while more inclusive repertoires have thus far remained largely absent. Why is it that the resistance against state policies on land and natural resources took the form of adat community claims? In search of an answer to this question, this study has taken an in-depth look at the emergence of the indigenous movement in Indonesia.

A key insight of this study is that rise of the indigenous movement and the dissemination of adat land claims can be explained by the legitimacy of the adat discourse in Indonesia, as well as the lack of legitimacy of other discourses. The indigenous movement has adopted the adat community concept as a collective action frame, as it resonates with the ideology of the Indonesian state. Agrarian reform and redistribution of land remain controversial and sensitive ideas in Indonesia, as calls for agrarian reform are still are still being associated with the banned PKI. The adat community frame on the other hand is grounded in a more accepted discourse of authentic and harmonious rural societies. Ideas of adat have continued to be symbolically important in national ideas of Indonesian culture, as well as in the law. Legislation enacted under Sukarno and Suharto aimed to create a unified legal system on the basis of citizenship, but laws also made symbolic reference to adat.

In addition, the equation of adat communities with indigenous peoples has prompted external support from transnational organizations that support the rights of indigenous peoples. Multilateral development banks support the idea of dismantling the developmentalist state while granting communities the autonomy to collectively govern their lands and natural resources. Furthermore, by imagining adat communities as practitioners of sustainable community-based resource management, the indigenous movement addressed a connection between social justice and environmental degradation. Doing so helped to secure support of donors and aid organizations with an environmental agenda.

8.3.2 Limitations of the discourse: the niche of continuity and collectivity

During the late New Order period, adat community claims were sometimes an effective expression of local resistance for land users. In 1998 for example, local communities from Krui (Lampung) managed to reclaim control of their farming gardens designated as Forest Area (Djalins, 2011). Since *Reformasi*, the legal scope of adat community rights has slowly expanded, most notably through the 1999 BFL, the amended 1945 Constitution, and Constitutional Court ruling no. 35/2012 which identified such communities as the legal owners of adat forests.

Ultimately however, the ability of the indigenous movement to realize recognition of collective land rights has been limited by its own discourse. While the movement aims to defend and protect the rights of marginalized people in rural areas, it does not consider marginality a defining feature of adat communities. The most important characteristics attributed to adat communities are adherence to traditional rules and norms, a traditional socio-political organization and control over a collective territory that goes back many generations. In other words, the indigenous movement situates adat communities in a niche of continuity and collectivity (see also Benda-Beckmann, forthcoming).

AMAN claims that there are 70 million members of adat communities in Indonesia and the organization presents itself as fighting for the cause of the rural masses. However, the niche of continuity and collectivity is so narrow that most of these 70 million Indonesians will face difficulties in actually matching the idealtypical image of an adat community. Because the continuity of traditions is a defining feature of the adat law community concept under Indonesian law, the state has easily dismissed the claims of those it considered not sufficiently 'traditional'. Equally problematic is that those who did happen to fit the niche of continuity and collectivity - and hence obtained legal recognition - were not necessarily the most marginal and vulnerable groups. Both points will be further explained below.

8.4 LEGAL REFORMS AND THE CONTROL OF THE STATE

The recognition of adat community rights has to be realized through decisions of government agencies. This is a complicated matter because, as explained above, it is the distrust towards the state that has led to the demands for adat community rights in the first place. In many conflicts that involve adat community claims, government agencies are the main adversary of local land users. Since the outset of *Reformasi*, the central government has been reluctant to expand the scope of adat community rights, because this would imply a loss of control over land claimed as indigenous territory. Newly adopted legislation on adat law community rights was very limited in its scope. However, by turning to the judiciary, the indigenous movement effectively pushed for further reform. Following Constitutional Court ruling no. 35/2012, government agencies could not evade adopting implementing legislation to the ruling. Chapter 2 discussed the current legal framework on the procedures of adat community recognition, which is fragmented over a number of ministerial regulations.

Is the widening scope of adat community rights in Indonesia an empowering tool for local land users, as Rachman and Siscawati (2016) have argued, or is it merely a form of managed multiculturalism imposed by the state, as Hale (2002, 2004) has asserted in the context of Latin American countries? According to him, allowing limited space for indigenous rights constitutes 'a strategy of governance' rather than a form or relinquishing state authority (2002: 507). In order to assess this, this study has looked at the legal framework on indigenous rights that has come in place in Indonesia. An important conclusion is that the widened scope of adat community rights has not decreased the authority of the government. On the contrary, the law appoints regional

governments the authority to determine who qualifies as adat law community. Indigenous rights are conditional rights given that only communities that match a number of legal criteria can obtain them.

As discussed above, the current legal framework is based on the notion that adat law communities are those who have managed to keep their traditions. The elucidation of Article 67 of the 1999 BFL states that adat law communities are groups that *still* have a system of customary law and *still* use their communal territory for their daily subsistence. This interpretation of the concept deviates from how Van Vollenhoven originally used it. Van Vollenhoven coined the term adat law community in an attempt to protect local communities from intrusive and exploitative policies of the colonial government. Ancient tradition was not the defining feature of such communities. Instead, he stressed that these communities were subjected to constant change. Keebet von Benda-Beckmann recently addressed how Van Vollenhoven would have responded to the current legal definition of adat law community: 'He would have been especially critical of the static interpretation of the character of local communities and their law. Not only would he qualify this to be incorrect, because in his perspective all legal orders can and do change. He would have pointed at the problematic policy implications of such interpretation, forcing communities to stress continuity and downplay change' (Benda-Beckmann: forthcoming). This research has shown that the focus on continuity and collectivity hampers the realization of land rights. In order to qualify for adat land rights, communities are expected to prove to their district governments that they have managed to keep their unique traditions. But this expectation is based on an unrealistic representation of social reality. Rural societies in Indonesia have changed significantly since Indonesian independence, not in the least as a result of state policies that tried to harmonize government administration and erase traditional institutions, as shown in Chapter 5.

Chapter 7 looked at how a local land user suspected of illegal logging used the adat community claim as a legal defense in court. With the support of AMAN, the farmer tried to convince the judges that his village still had traditional leadership functions and a communal forest territory. The court rejected these claims by noting that traditions in the village were not unique and sufficiently distinct from other areas in South Sulawesi. This example shows how the state disqualifies claims when people do not fit the narrow niche. The indigeneity discourse and its legal translation make the recognition of land rights dependent on the extent to which local land users can prove they still are traditional. This greatly distracts the attention from the real issue at hand, which is the state's disregard of unregistered though locally acknowledged land rights.

By making the realization of customary land rights contingent on the decisions of government agencies, the state 'remains the ultimate mediator, adjudicator, and power holder' (Ribot and Peluso, 2001: 163). Despite the widening scope of adat community rights, the state has not risked losing its firm, dominant position in land governance. It has given just enough space to temporarily please activists, but not to bring about significant change. More inclusive legislation that allows for the recognition of customary land rights of groups other than adat law communities has not yet been implemented. By sticking to

the adat law community legislation, the state continues to determine who qualifies for land rights.

8.5 ADAT COMMUNITY POLITICS AT THE REGIONAL AND LOCAL LEVEL

8.5.1 Adat land claims in South Sulawesi

It was headline news when nine adat communities received their adat forest decrees from President Joko Widodo in a ceremony at the Presidential Palace. One news report labeled this event as a 'sweet end of the year gift' (*kado manis akhir tahun*) of the government.[227] This reveals the implicit supposition that adat community rights are not genuine rights, but require the willingness of the government to be provided. This willingness should commence at the regional level. The enactment of a regional (district or provincial) regulation or a decree by a governor or district head is a mandatory step before national level recognition can materialize. This requires local land claimants and their NGO supporters to engage with regional government officials and regional parliament members, who need to be convinced to adopt legislation on the recognition of adat community rights. It usually involves a long process of lobbying and requires claimants to invest in relations with their regional governments.

In South Sulawesi, national groups like AMAN are very active and so are regional and locally based activist organizations. So far, regional governments in South Sulawesi have granted twelve communities a measure of formal recognition and hence the province has the highest number of recognized adat communities of all Indonesian provinces. However, my ethnographic study in the districts of Bulukumba and Sinjai showed that the outcomes of adat rights claims have been paradoxical. I will now further explain this.

8.5.2 The opposing forces of adat at the local level in South Sulawesi

Local communities are usually more layered than the indigenous movement portrays them. Henley and Davidson have argued that the failure to tackle the issue of customary inequality is the 'Achilles' heel' of the indigenous movement in Indonesia (Henley and Davidson, 2007: 27). We have seen that in South Sulawesi, adat is not only deployed as an emancipatory force vis-à-vis the state and corporations, but often also as a vehicle to legitimize the authority of the traditional nobility. Chapter 5 has given a historical account of traditional rule in South Sulawesi, explaining that for centuries, a traditional belief system helped to consolidate the power of a landed aristocracy. Even iconic adat communities hailed for their egalitarian lifestyle, like the Ammatoa Kajang community, in fact abide by a strict socio-political hierarchy that distinguishes noblemen from commoners. Despite resistance from modern Islamic movements and attempts of the

[227] See: http://www.mongabay.co.id/2016/12/29/kado-manis-akhir-tahun-kali-pertama-pemerintah-tetapkan-hutan-adat/, last accessed 26 June 2018.

Indonesian government to modernize local authority, the nobility continues to hold a privileged position in South Sulawesi today, not in the least because of their prominent position in the local and regional state.

How do the opposing forces of adat impact struggles over adat community rights? My findings demonstrate that while adat is an important asset of local elites to consolidate their position, it has not been in their interest to invoke adat as a form of resistance against the state. In the Bulukumba plantation conflict, the average land claimant is an ordinary farmer that has little to no land. The only land claimants of noble descent were those who lost their position as government officials long ago. Many other noblemen were on the other hand local elites holding traditional adat offices, while having formal or informal ties to the state. In Kajang, some of them acted as patrons of small farmers. Some had sided with PT. Lonsum during the New Order, when many local aristocrats were loyal to the regime. An early grassroots movement in Bulukumba not only targeted its actions against the company, but also against local noble elites. It was not until national NGO's became involved that indigeneity - in the form of adat community claims - became part of a collective framing strategy.

The deployment of adat to claim land rights can instigate contention at the local level. In the Bulukumba plantation conflict, this contention did not revolve around whether indigeneity was articulated or not. The Ammatoa Kajang community is an exemplary adat community and has become an icon of the indigenous movement. Contentious was who could legitimately deploy adat for a political purpose. Local activists and land claimants used the cultural image of the Ammatoa Kajang community to strengthen their land claims, but many adat leaders were against politicizing adat in this way. Most of these simultaneously held positions as local or regional government officials. For them, adat was important as a symbol of the traditional socio-political order. They disagreed with invoking adat in protests and rallies, as it would cause turmoil, could damage the reputation of the community, and eventually could threaten their own position.

These observations are illustrative of how the different meanings of adat can clash at the local level. They also show that communities are internally divided and marked by different interests. They are made up of different social strata, varying from poor local land users to elites tied to the state for whom maintaining order is more important than challenging state policies. Thus, to imagine adat communities as being marginalized in their entirety risks misrepresentation, as it negates internal power relations, as well as the interwovenness of adat and government authority.

8.5.3 The recognition of adat communities and connections to the state

The Ammatoa Kajang community was among the first groups to obtain adat forest rights at the national level. A photograph of the *Karaeng Labiria* receiving the Ministerial Decree from President Widodo went viral on social media, as it symbolized the important victory of the indigenous movement. However, what few seemed to realize was that the *Karaeng Labiria* as the Kajang Sub-District Head was in fact a representative of the district

government. That it was a government official that received the Ministerial Decree exemplifies that connections to power holders have just been as important as laws and regulations in shaping the outcomes of attempts to realize adat community rights.

The articulation of indigenous identity is not fixed, but contingent on many socio-historical factors. In Chapter 7 I have compared the attempts to secure adat forest rights by two communities that historically shared a similar traditional belief system. This comparison revealed the paradoxical result of making indigeneity a prerequisite for rights: the group that qualified best for recognition was the one with good connections to its district government. The Ammatoa Kajang community fitted the niche of continuity and collectivity better than the Turungan Soppeng community from West Sinjai. However, the Ammatoa Kajang community has not remained traditional by isolating itself, but by attaching government positions to traditional adat offices. In West Sinjai meanwhile, the significance of adat had decreased ever since the Darul Islam rebellion. In Turungan Baji village, adat is only relevant in the sphere of customary rituals and no longer plays a role in the appointment of local officials.

Hence, although it is presented in the law as a process of verifying a number of observable community characteristics, decisions on recognition are highly political. They are contingent on the good will between communities and their governments, as well as the personal benefits that government officials can acquire from making such decisions. While indigenous status is presented as a right of communities that meet a number of formal criteria, it is rather a privilege within reach only by communities that have cultivated relationships with regional and local authorities. The dependency on connections to realize rights is illustrative of the informal and mediated character of citizenship in post-colonial states like Indonesia. Well-connected groups can secure land rights, while marginalized and politically non-dominant ones face rejection of their claims.

8.5.4 After the 'victory'

This study has also looked into what happened when recognition of adat community rights did materialize. Did legal recognition indeed help the indigenous movement with achieving its main objective, securing land rights for local land users? Since national level recognition of adat forests has only materialized for the first time in December 2016, more research needs to be conducted on this issue. However, my study on the recognition of the Ammatoa Kajang community provides insights on an iconic case widely hailed by government officials and NGO's as a model for the rest of Indonesia. The Ministerial Decree only recognizes the small sacred forest as adat territory. As a result, a previously well working co-management system of forest preservation between the community and the district government was abolished. Forest management is now solely in the hands of the community. This new situation makes it easier for adat leaders to disregard forest preservation rules if doing so serves their interests, given the lack of upward accountability that is in place.

Apart from the release of the sacred forest from the state forest, legal recognition has had no further impact on local land relations, as it did not involve any physical transfer of land to the community. Most land in the adat territory is individually owned or rotates among family members; only the sacred forest is owned and managed collectively in accordance to the customary *pasang* norms. That this small forest is now recognized as adat forest means little to the average Kajang farmer in need of land. Unlike the Ministerial Decree, the preceding District Regulation did designate PT. Lonsum's rubber plantation as part of the community's adat territory, but this did not affect the rights of the company to exploit the land. In the future, legal recognition might provide land claimants with a stronger bargaining position to demand that the HGU will not be extended, but the political constellation on the ground will very likely be of greater importance for the outcome of such demands than the legal status of the land.

All taken together, recognition did little to improve the lives of the average community member. For the NGO's, government officials, and adat leaders involved in the process, the enactment of the District Regulation hardly seemed motivated by the desire to address real-life problems of the vulnerable and poor members of the community. Instead, legal recognition was above all a means of the indigenous movement to legitimize its existence to the outside world, even if such recognition bore little relevance to the actual situation on the ground.

8.6 LOOKING AHEAD: TOWARDS A NEW INTERPRETATION?

The indigenous movement in Indonesia tries to address a serious problem – the widespread continuous land conflicts - and deserves credit for that. The current discourse propagated by this movement as well as the legal framework based on it nevertheless fall short of resolving the problems of land conflicts in Indonesia. The biggest problem of the indigenous movement is that there is no correlation between tradition and marginality. The adat community claim can be an important bargaining tool for local land users involved in conflict. Yet, the transition from indigeneity as a means of resistance to indigeneity as a rights discourse can only succeed if the rights that are advocated for become of an inclusive nature.

It is urgent that the indigenous movement starts reflecting on the limits of its own terminology, not in the least because these limits will ultimately turn against the movement. If advocacy for collective land rights through a narrow lens in the long run does not yield significant results for its beneficiaries, its local support base is eventually bound to weaken. A Law on the Rights of Indigenous Peoples is unlikely to deliver if it does not offer a new perspective on the niche of continuity and collectivity and if the realization of rights continues to depend on the decisions of government agencies. The way forward should constitute adopting a wider interpretation of who can qualify for customary land rights. Not only traditional communities, but also migrants and communities that have changed should be included into the discourse. If we envision an Indonesia where citizens hold equal rights both before the law and in practice, the current

discourse and praxis of adat community rights will not be tenable. A new interpretation is urgent.

BIBLIOGRAPHY

Abidin, A. Z. 1971. "Notes on the Lontara' as historical sources." *Indonesia* 12: 159-172.

Acciaioli, G. 2001. “Grounds of conflict, idioms of harmony: custom, religion, and nationalism in avoidance at the Lindu Plain, Central Sulawesi.” *Indonesia* 72: 81-114.

Allott, A. N. 1984. “What is to be done with African customary law?.” *Journal of African Law* 28 (1-2): 56-71.

Afiff, S., and C. Lowe. 2007. "Claiming indigenous community: Political discourse and natural resource rights in Indonesia." *Alternatives* 32 (1): 73-97.

Akib, Y. 1990. “Kamase Masea di Tana Toa Kecamatan Kajang kab. Dati II Bulukumba.” Thesis. Universitas Sultan Hasanuddin, Makassar.

Alden Wily, L. 2012a. “Looking Back to See Forward: the Legal Niceties of Land Theft in Land Rushes.” *The Journal of Peasant Studies* 39 (3-4): 751-775.

Alden Wily, L. 2012b. “From State to People's Law: Assessing Learning-By-Doing as a Basis of New Land Law.” In *Fair Land Governance: How to legalise land rights for rural development,* edited by J. M. Otto, and A. Hoekema, 85-110. Leiden: Leiden University Press.

Alden Wily, L., and S. Mbaya. 2001. *Land, people, and forests in eastern and southern Africa at the beginning of the 21st century: the impact of land relations on the role of communities in forest future.* Nairobi: IUCN.

Alfred, T., and J. Corntassel. 2005. “Being Indigenous: Resurgence Against Contemporary Colonialism.” *Government and Opposition* 4: 597-614.

Ammarell, G. 2002. “Bugis Migration and Modes of Adaptation to Local Situations.” *Ethnology* 41(1): 51-67.

Andaya, L. Y. 1984. "Kingship-adat rivalry and the role of Islam in South Sulawesi." *Journal of Southeast Asian Studies* 15 (1): 22-42.

Anders, G. 2015. “Law at its limits: interdisciplinarity between law and anthropology.” *The Journal of Legal Pluralism and Unofficial Law* 47 (3): 411-422.

Anderson, B. R. G. 1983. “Old state, new society: Indonesia's New Order in comparative historical perspective.” *The Journal of Asian Studies* 42 (3): 477-496.

Arizona, Y., and E. Cahyadi. 2013. “The Revival of Indigenous Peoples: Contestation over Special Legislation on *Masyarakat Adat*.” In *Adat and Indigeneity in Indonesia, edited by* B. Hauser-Schäublin, 43-62. Göttingen: Universitätsverlag Göttingen.

Aspinall, E. 2004, "Indonesia: Civil society and democratic breakthrough", in *Civil society and Political Change in Asia: Expanding and Contracting Democratic Space*, edited by M. Alagappa, 61-96. Stanford: Stanford University Press.

Assies, W. 2000. "Introduction." In *The Challenge of Diversity: Indigenous Peoples and Reform of the State in Lating America*, edited by A. Hoekema, W. Assies, and G. van der Haar, 3-22. Amsterdam: Thela Publishers.

Avonius, L. 2009. "Indonesian Adat Communities: Promises and Challenges of Democracy and Globalisation." In *The Politics of the Periphery in Indonesia*, edited by M. Sakai, G. Banks, and J. H. Walker, 219-240. Singapore: NUS Press.

Bachriadi, D. 2012. "Fighting for Land." *Inside Indonesia*, 23 January 2012. http://www.insideindonesia.org/fighting-for-land

Bachriadi, D., A. Lucas, and C. Warren. 2013. "The Agrarian Movement, Civil Society, and Political Constellations." In *Land for the people: The state and agrarian conflict in Indonesia*, edited by A. Lucas, and C. Warren, 308-371. Athens: Ohio University Press.

Bakker, L. 2008. "Can we get hak ulayat? Land and community in Pasir and Nunukan." Paper Presented at the UC Berkeley-UCLA Joint Conference on Southeast Asia, "Ten Years After: Reformasi and New Social Movements in Indonesia, 1998-2008", Berkeley, April 25-26, 2008.
Bakker, L. 2009. "Who owns the land? Looking for law and power in East Kalimantan." PhD diss., Radboud Universiteit Nijmegen.

Bakker, L., and Moniaga, S. 2010. "The space between: Land claims and the law in Indonesia." *Asian Journal of Social Science*, 38 (2): 187-203.

Ball. J. P. 1982. *Indonesian legal history, 1602-1848*. Chatswood: Oughtershaw Press.
Barber, C. V., and K. Talbott. 2003. "The chainsaw and the gun: The role of the military in deforesting Indonesia." *Journal of Sustainable Forestry* 16 (3-4): 131-160.

Barnard, A. 2006. "Kalahari revisionism, Vienna and the 'indigenous peoples' debate." *Social Anthropology* 14 (1): 1-16.

Barr, C. M. 1998. "Bob Hasan, the rise of APKINDO, and the shifting dynamics of control in Indonesia's timber sector." *Indonesia* 65: 1-36.

Baumann, G. 1996. *Contesting culture: Discourses of identity in multi-ethnic London*. Cambridge: Cambridge University Press.

Bavinck, M., L. Pellegrini, and M. Mostert. 2004. *Conflicts over Natural Resources in the Global South: Conceptual Approaches*. London: CRC Press/Balkema.

Bedner, A. 2001. *Administrative courts in Indonesia: a socio-legal study*. Leiden: Martinus Nijhoff Publishers.

Bedner, A. 2016. “Indonesian land law: integration at last? And for whom?” In *Land & Development in Indonesia: Searching for the people’s sovereignty,* edited by J. F. McCarthy, and K. Robinson, 63-90. Singapore: ISEAS Publishing.

Bedner, A., and S. van Huis. 2010. “The Return of the native in Indonesian Law: Indigenous Communities in Indonesian Legislation.” *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 164: 165–193.

Bedner, A., and J. A. C. Vel. 2010. “An analytical framework for empirical research on Access to Justice.” *Law, Social Justice and Global Development Journal* 15: 1-29.

Benda-Beckmann, K. von. Forthcoming. “Anachronism, Agency, and the Contextualization of Adat: Van Vollenhoven’s analyses in light of struggles over resources.” *Asia-Pacific Journal of Anthropology*.

Benda-Beckmann, F. von, and K. von Benda-Beckmann. 2008. “The Social Life of Living Law in Indonesia.” In *Living Law: Reconsidering Eugen Ehrlich*, edited by M. Hertogh, 177-198. Oxford: Hart Publishing.

Benda-Beckmann, F. von, and K. von Benda-Beckmann. 2011. “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* 167 (2-3): 167-195.

Benda-Beckmann, F. von, and K. von Benda-Beckmann. 2013. *Political and legal transformations of an Indonesian polity: the Nagari from colonisation to decentralisation*. Cambridge: Cambridge University Press.

Benford, R. D., and D. A. Snow. 2000. “Framing processes and social movements: An overview and assessment.” *Annual Review of Sociology* 26 (1): 611-639.

Benton, L. 2002. *Law and colonial cultures: Legal regimes in world history, 1400-1900*. Cambridge: Cambridge University Press.

Berenschot, W., and G. van Klinken. 2018. “Informality and citizenship: the everyday state in Indonesia.” *Citizenship Studies* 22 (2): 95-111.

Berenschot, W., H. Schulte Nordholt, and L. Bakker. 2016. *Citizenship and Democratization in Southeast Asia.* Leiden: Brill.

Borras Jr, S. M., and J. C. Franco. 2012. "Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis." *Journal of Agrarian Change* 12 (1): 34-59.

Borras Jr, S. M., R. Hall, I. Scoones, B. White, and W. Wolford. 2011. “Towards a better understanding of global land grabbing: an editorial introduction.” *The Journal of Peasant Studies* 38 (2): 209-216.

Bouquet, E. 2009. “State-led land reform and local institutional change: land titles, land markets and tenure security in Mexican communities.” *World Development* 37 (8): 1390-1399.

Bourchier, D. 2007. “The romance of adat in the Indonesian political imagination and the current revival.” In *The revival of tradition in Indonesian politics*, edited by J. S. Davidson, and D. Henley, 113-129. New York: Routledge.

Bourchier, D. 2014. *Illiberal democracy in Indonesia: The ideology of the family state*. London and New York: Routledge.

Bowen, J. 2000. “Should we have a universal concept of ’indigenous peoples’ rights? Ethnicity and essentialism in the twenty-first century.” *Anthropology Today* 16 (4): 12–16.

Brockhaus, M., K. Obidzinski, A. Dermawan, Y. Laumonier, and C. Luttrell. 2012. “An overview of forest and land allocation policies in Indonesia: Is the current framework sufficient to meet the needs of REDD+?.” *Forest Policy and Economics* 18: 30-37.

Buehler, M. 2016. *The Politics of Shari'a Law: Islamist Activists and the State in Democratizing Indonesia*. Cambridge: Cambridge University Press.

Buehler, M., and P. Tan. 2007. “Party-candidate relationships in Indonesian local politics: A case study of the 2005 regional elections in Gowa, South Sulawesi Province.” *Indonesia* 84: 41-69.

Burns, P. 2004. *The Leiden Legacy: Concepts of Law in Indonesia*. Leiden: KITLV Press.

Butt, S. 2014. “Traditional Land Rights Before the Indonesian Constitutional Court.” *Law, Environment and Development Journal* 10 (1): 57–75.

Butt, S., and T. Lindsey. 2008. “Economic reform when the constitution matters: Indonesia's Constitutional Court and Article 33.” *Bulletin of Indonesian Economic Studies* 44 (2): 239-262.

Cense, A. A. 1931. “De patoentoengs in het bergland van Kadjang.” Unpublished manuscript.

Chabot, H. T. 1996. *Kingship, Status and Gender in South Celebes*. Leiden: KITLV Press.

Collins, E. F. 2001. “Multinational Capital, New Order "Development," and Democratization in South Sumatra.” *Indonesia* 71: 111-133.

Cotula, L. 2012. “Securing Land Rights in Africa – Trends in National and International Law.” In *Fair Land Governance: How to Legalise Land Rights for Rural Development*, edited by J. M. Otto, and A. Hoekema, 57-84. Leiden: Leiden University Press.

Cribb, R. 1990. "The politics of pollution control in Indonesia." *Asian Survey* 30 (12): 1123-1135.

Cribb, R. 2003. “Environmentalism in Indonesian politics.” In *Towards integrated environmental law in Indonesia*, edited by A. Bedner, and N. Niessen, 37-44. Leiden: CNWS Publications.

Cummings, W. 2002. *Making blood white: Historical transformations in early modern Makassar*. Honolulu: University of Hawaii Press.

De Jong, C. G. F. 2011. "Nieuwe Hoofden, Nieuwe Goden: Geschiedenis van de Tolaki en de Tomoronene, twee volkeren in Zuidoost-Celebes (Indonesië), tot ca. 1950." Unpublished manuscript.

De Jong, E. B., L. Knippenberg, and L. Bakker. 2017. "New frontiers: an enriched perspective on extraction frontiers in Indonesia." *Critical Asian Studies*, 49 (3): 330-348.

Dijk, K. van. 2005. "The study of Islam and adat in Java." In *The Java That Never Was: Academic Theories and Political Practices*, edited by H. Antlov, and J. Hellman, 133-156. Münster: Lit Verslag Münster.

Djalins, U. 2011. "Adat argument and Discursive Power: Land Tenure Struggles in Krui, Indonesia." In *Beyond Sacred Forest,* edited by M. R. Dove, P. E. Sajise, and A. A. Doolittle, 124-149. Durham: Duke University Press.

Djalins, U. 2015. "Becoming Indonesian citizens: Subjects, citizens, and land ownership in the Netherlands Indies, 1930–37."*Journal of Southeast Asian Studies* 46 (2): 227-245.

Fasseur, C. 2007. "Colonial dilemma: Van Vollenhoven and the struggle between adat law and Western law in Indonesia." In *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*, edited by J. S. Davidson, and D. Henley, 50-67. New York: Routledge.

Fay, D. and D. James, eds. 2008. *The Rights and Wrongs of Land Restitution: 'Restoring what was ours'*. London: Routledge.

Fay, C. and H. S. Denduangrudee. 2016. "Emerging options for the recognition and protection of indigenous community rights in Indonesia." In *Land & Development in Indonesia*, edited by J. F. McCarthy, and K. Robinson, 91-113. Singapore: ISEAS.

Felstiner, W. L., R. L. Abel, and A. Sarat. 1980. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming..." *Law and society review* 47 (4): 631-654.

Fisher, M. R., T. Workman, A. Mulyana, M. Moeliono, E. L. Yuliani, C. J. P. Colfer, and U. E. F. B. Adam. Forthcoming. "Striving for PAR excellence in land use planning: Multi-stakeholder collaboration on customary forest recognition in Bulukumba, South Sulawesi." *Land Use Policy.*

Fisher, M. R., and W. van der Muur. Forthcoming. "Misleading Icons: A Landscape Approach to Understanding Indigenous Rights Recognition in Indonesia." *Asia-Pacific Journal of Anthropology*.

Fitzpatrick, D. 1997. "Dispute and Plularism in Modern Indonesian Land Law." *Yale Journal of International Law* 22 (1): 171–212.

Fitzpatrick, D. 2007. “Land, custom, and the state in post-Suharto Indonesia.” In *The Revival of Tradition in Indonesian Politics. The deployment of adat from colonialism to indigenism,* edited by J. S. Davidson, and D. Henley, 130-148. London and New York: Routledge.

Friedericy, H. J. 1961. *De laatste etappe*. Amsterdam: Em. Querido’s Uitgeverstmaatschappij. N.V.
Gamson, W. A. 1992. *Talking politics*. Cambridge: Cambridge University Press.

Galizia, M. 1996. “Village institutions after the law n° 5/1979 on village administration. The case of Rejang-Lebong in South-Western Sumatra.” *Archipel* 51 (1): 135-160.

Gibson, T. 1994. “Ritual and revolution: Contesting the state in Central Indonesia.” *Social Analysis: The International Journal of Social and Cultural Practice* 35: 61-83.

Gibson, T. 2000. “Islam and the Spirit Cults in New Order Indonesia: Global Flows vs. Local Knowledge.” *Indonesia* 69: 41-70.

Goedhart, O. M. 1920. “Nota over de Inlandsche Rechtsgemeenschappen in de Onderafdeelingen Bonthain en Boeloekoemba.” Unpublished manuscript.

Gordon, J. 1998. “NGOs, the environment, and political pluralism in New Order Indonesia.” *Explorations in Southeast Asia Studies* 2: 1-27.

Gunawan, I. K. 2004. *The Politics of the Indonesian Rainforest: A Rise of Forest Conflicts in East Kalimantan During Indonesia's Early Stage of Democratisation*. Göttingen: Cuvillier Verlag.

Hadiz, V. R. 2000. “Retrieving the past for the future? Indonesia and the New Order legacy.” *Asian Journal of Social Science* 28 (2): 11-33.

Hadiz, V. R. 2007. “The localization of power in Southeast Asia.” *Democratization* 14 (5): 873-892.

Hale, C. R. 2002. “Does Multiculturalism Menace? Governance, Cultural rights and the Politics of Identity in Guatamala.” *Journal of Latin American Studies* 34: 485-525.

Hale, C. R. 2004. “Rethinking indigenous politics in the era of the “indio permitido”.” *NACLA Report on the Americas* 38 (2): 16-21.

Hanstad, T., R. L. Prosterman, and R. Mitchell. 2009. “Poverty, law and Land Tenure reform.” In One Billion Rising: Law, Land and the Alleviation of Global Poverty, edited by L. Prosterman, R. Mitchell, and T. Hanstad, 18-56. Leiden: Leiden University Press.

Harvey, B. S. 1975. 'Tradition, Islam, and rebellion: South Sulawesi 1950-1965.' Phd diss., Cornell University.

Henley. D., and J. S. Davidson. 2007. “Introduction: Radical conservatism – the protean politics of adat.” In *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*, edited by J. S. Davidson, and D. Henley, D, 1-49. New York: Routledge.

Herben, B. 1987. “De ethische politiek in het werk van H.J. Friedericy.” *Indische letteren* 2 (1): 31-45.

Heslinga, J. H. 1928. *De Rechten op Grond en Water op Java en Madoera*. Weltevreden: N.V. Boekhandel Visser & Co.

Holder, C. L., and J. J. Corntassel. 2002. “Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights.” *Human Rights Quarterly* 24 (1): 125-151.

Holston, J. 2008. *Insurgent citizenship: Disjunctions of democracy and modernity in Brazil*. Princeton: Princeton University Press.

Hooker, M. B. 1978. *Adat Law in Modern Indonesia.* Oxford: Oxford University Press.
Huis, S. C. van. 2015. *Islamic courts and women's divorce rights in Indonesia: the cases of Cianjur and Bulukumba*. Leiden: Leiden University Press.

Huizer, G. 1972. *Peasant Mobilisation and Land Reform in Indonesia.* Institute of Social Studies The Hague Working Paper.

HuMa, 2014. *Menyegerakan Penetapan Wilayah/Hutan Adat*. Research report. https://huma.or.id/wp-content/uploads/2014/10/leaflet_IND.pdf

Jenkins, D. 1983. ‘The Evolution of Indonesian Army Doctrinal Thinking: The Concept of" Dwifungsi"." *Southeast Asian Journal of Social Science* 11 (2): 15-30.

Johnson, C., and T. Forsyth. 2002. “In the Eyes of the State: Negotiating a “Rights-based approach” to Forest Conservation in Thailand.” *World Development* 30 (9): 1591–1605.

Kaag, M., and A. Zoomers, eds. 2014. *The Global Land Rush: Beyond the Hype*. London: Zed Books.

Kato, T. 1989. "Different fields, similar locusts: Adat communities and the village law of 1979 in Indonesia." *Indonesia* 47: 89-114.

Katu, A. M. 1980. “Hubungan pasang dengan Amma Towa di Kajang.” Thesis. Institut Agama Islam Negeri Al-Jami’ah Alauddin, Makassar.

Klaveren, K. L. van. 1918. “Reisherinneringen van een bestuursambtenaar in Zuid-Celebes.” *De aarde en haar volken* 257-272.

Klinken, G. van. 2003. “Decentralisation, violence, and democracy: The Colonial roots of ethnic conflict in Indonesia.” In *Indonesia’s post-Soeharto democracy movement,* edited by S. A. Prasetyo S. A. Priyono and O. Tornquist, 81-96 Jakarta: Demos.

Klinken, G. van. 2007a. “Return of the sultans: the communitarian turn in local politics.” In *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*, edited by J. S. Davidson, and D. Henley, 149-169. New York: Routledge.

Klinken, G. van. 2007b. *Communal violence and democratization in Indonesia: Small town wars*. London and New York: Routledge.

Komnas HAM, Tim Kerja. 2006. *Proses Mediasi Lahan Tanah Adat Bulukumba Provinsi Sulawesi Selatan.* Jakarta: Komnas HAM.

Kontras. 2003. "Salam Dari Cisadane." Unpublished manuscript

Kooreman, P. J. 1883. "De feitelijke toestand in het gouvernementsgebied van Celebes en Onderhoorigheden." *De Indische Gids* 5.

Korn, V. E. 1958. "Nieuw Agrarisch Recht voor Nederlands Nieuw-Guinea." *Bijdragen tot de Taal-, Land-en Volkenkunde* 1 (2): 133-169.

Kroef, J. van der. 1960. "Agrarian Reform and the Indonesian Communist Party." *Far Eastern Survey* 29 (1): 5-13.

Kuper. A. 2003. "The return of the native." *Current anthropology* 43 (3): 389-402.

Kusters, K., H. De Foresta, A. Ekadinata, and M. Van Noordwijk. 2007. "Towards solutions for state vs. local community conflicts over forestland: the impact of formal recognition of user rights in Krui, Sumatra, Indonesia." *Human Ecology* 35 (4): 427-438.

Lev, D. S. 1965. "The lady and the banyan tree: Civil-law change in Indonesia." *The American Journal of Comparative Law* 14 (2): 282-307.

Lev, D. S. 1985. "Colonial law and the genesis of the Indonesian state." *Indonesia* 40: 57-74.

Li, T. M. 2000. "Articulating Indigenous Identity in Indonesia: Resource Politics and the Tribal Slot." *Comparative Studies in Society and History* 42 (1): 149–179.

Li, T. M. 2001. "Masyarakat Adat, Difference, and the Limits of Recognition in Indonesia's Forest Area." *Modern Asian Studies* 35 (03): 645-676.

Li, T. M. 2007. "Adat in Central Sulawesi: contemporary deployments". In *The Revival of Tradition in Indonesian Politics*, edited by J. S. Davidson, and D. Henley, 337-370. New York: Routledge.

Li, T. M. 2010. "Indigeneity, Capitalism, and the Management of Dispossession." *Current Anthropology* 52 (3): 385-414.

Lucas, A., and C. Warren. 2013. *Land for the People: The State and Agrarian Conflict in Indonesia*. Athens: Ohio University Press.

Lucas, A., and C. Warren. 2003. "The State, the People, and Their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia." *Indonesia* 76: 87-126.

Lucas, A. 1992. "Land disputes in Indonesia: some current perspectives." *Indonesia* 53: 79-92.

Luebke, C. von. 2009. "The political economy of local governance: findings from an Indonesian field study." *Bulletin of Indonesian Economic Studies* 45 (2): 201-230.

Lund, C. 2006. "Twilight institutions: public authority and local politics in Africa." *Development and change* 37 (4): 685-705.

Lund, C. 2008. *Local politics and the dynamics of property in Africa*. Cambridge: Cambridge University Press.

Lund, C. 2011. *Land Rights and Citizenship in Africa*. Nordiska Afrikainstitutet.

Lund, C., and N. F. Rachman. 2016. "Occupied! Property, Citizenship and Peasant Movements in Rural Java." *Development and Change* 47 (6): 1316-1337.

Lureng, A. G. 1980. 'Pasang ri Kajang'. Thesis. Universitas Hasanuddin, Makassar.

Maarif, S. 2012. "Dimensions of religious practice: The Ammatoans of Sulawesi, Indonesia." PhD diss., Arizona State University.

McCarthy, J. F., and K. Robinson. 2016. "Land, economic development, social justice and environmental management in Indonesia: the search for the people's sovereignty." In *Land & Development in Indonesia: Searching for the people's sovereignty,* edited by J. F. McCarthy, and K. Robinson, 1-34. Singapore: ISEAS Publishing.

Moniaga, S. 1993. "Toward community-based forestry and recognition of adat property rights in the Outer Islands of Indonesia." In *Legal frameworks for forest management in Asia: Case studies of community/state relations,* edited by J. Fox, 131-50. Occasional Papers of the Program on Environment, paper no. 16. East-West Center.

Moniaga, S. 2007. "From Bumiputera to Masyarakat Adat: a Long and Confusing Journey." In *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*, edited by J. S. Davidson, and D. Henley, 275-294. New York: Routledge.

Moore, S. F. 1978. *Law as a Process: An Anthropological Approach*. London, Henley and Boston: Routledge and Kegan Paul.

Muur, W. van der. 2010. "Valuing the Environment: The relationship between environmental activism and the Indonesian middle class." Master thesis, University of Amsterdam.

Muur, W. van der. 2018. "Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia." *Citizenship Studies* 22 (2): 160-174.

Muur, W. van der, and A. Bedner. 2016. "Traditional Rule as 'Modern Governance': Recognising the Ammatoa Kajang Adat Law Community." *Jurnal Mimbar Hukum* 28 (1): 149-161.

Nurdin, I. 2017. "Adat Revival and Local Capacity in Indonesia: The Case of Nagari." *Sosiohumaniora* 19 (2): 106-112.

Otto, J. M. 2010. “Introduction.” In *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, edited by J. M. Otto, 19-50. Leiden: Leiden University Press.

Otto, J. M. 2013. “Honderd jaar adatrecht: voer voor geleerden, bureauheren, activisten en rechters.” In *Vijftig juridische opstellen voor een Leidse nachtwacht*, edited by N. M. Blokker, S. C. G. van den Bogaert, M. L. P. Koffeman, T. Loenen, and P. Olcer, 251-250. Den Haag: Boom Juridische Uitgevers.

Otto, J. M., and S. Pompe. 1989. “The legal Oriental connection.” In *Leiden Oriental Connections,* edited by W. Otterspeer, 230-249. Leiden: Brill/Universitaire Pers Leiden.

Overbeek, W., M. Kröger, and J. F. Gerber. 2012. “An overview of industrial tree plantation conflicts in the global South: conflicts, trends, and resistance struggles.” *EJOLT Reports* 3.

Palmer, C. 2001. *The extent and causes of illegal logging: An analysis of a major cause of tropical deforestation in Indonesia*. CSERGE Working Paper.

Palmier, L. H. 1954. “Modern Islam in Indonesia: The Muhammadiyah after Independence.” *Pacific Affairs* 27 (3): 255-263.

Parlindungan, A. P. 1983. *Aneka Hukum Agraria*. Bandung: Alumni.
Pelras, C. 1985. “Religion, tradition and the dynamics of Islamization in South-Sulawesi.” *Archipel* 29 (1): 107-135.

Pelras, C. 2000. “Patron-client ties among the Bugis and Makassarese of South Sulawesi.” *Bijdragen tot de Taal-, Land-en Volkenkunde*, 156 (3): 393-432.

Peluso, N. L., and C. Lund. 2011. “New Frontiers of Land Control: Introduction.” *Journal of Peasant Studies* 38 (4): 667-681.

Peluso, N, L, and P. Vandergeest. 2001. “Genealogies of the political forest and customary rights in Indonesia, Malaysia, and Thailand.” *The Journal of Asian Studies* 60 (3): 761-812.

Peluso, N. L., S. Afiff, and N. F. Rachman. 2008. "Claiming the grounds for reform: agrarian and environmental movements in Indonesia." *Journal of Agrarian Change* 8(2.3): 377-407.

Persoon, G. 1998. “Isolated Groups or Indigenous Peoples: Indonesia and the International Discourse.” *Bijdragen Tot de Taal-, Land- En Volkenkunde* 154 (2): 281–304.

Pitty, R. 2001. “Indigenous peoples, self-determination and international law.” *The International Journal of Human Rights* 5 (4): 44-71.

Plant, R., and S. Hvalkof. 2001. *Land titling and indigenous people.* Inter-American Development Bank.

Prill-Brett, J. 2007. “Contested domains: the Indigenous Peoples Rights Act (IPRA) and legal pluralism in the northern Philippines.” *The Journal of Legal Pluralism and Unofficial Law* 39 (55): 11-36.

Rachman, N. F. 2011. “The Resurgence of Land Reform Policy and Agrarian Movements in Indonesia.” PhD diss., University of California, Berkeley.

Rachman, N. F., and M Siscawati. 2016. “Forestry law, masyarakat adat and struggles for inclusive citizenship in Indonesia.” In *Routledge Handbook of Asian Law*, edited by C. Antons, 224-249. New York: Routledge.

Reerink, G. 2012. *Tenure Security for Indonesia’s Urban Poor. A Social-legal Study on Land, Decentralization and the Rule of Law in Bandung*. Leiden: Leiden University Press.

Redford, K. H. 1991. “The ecologically noble savage.” *Cultural Survival Quarterly* 15 (1): 46-48.
Ribot, J. C., and N. L. Peluso. 2003. “A theory of access.” *Rural sociology* 68 (2): 153-181.

Rifai, A. 2002. “Socio-legal aspects of land disputes in relation to oil palm plantation activities: the case of South Sumatra.” PhD Diss., Monash University, Faculty of Law.

Riggs, F. W. 1964. *Administration in developing countries: The theory of prismatic society*. Boston: Houghton Mifflin.

Robinson, K. 2016. “Communal Peace and Conflict in Indonesia: Navigating Inter-religious Boundaries.” *The Asia Pacific Journal of Anthropology.* 17 (5): 475-479.

Robison, R. 1978. “Toward a class analysis of the Indonesian military bureaucratic state.” *Indonesia* 25: 17-39.

Robison, R. 1981. “Culture, politics, and economy in the political history of the New Order.” *Indonesia* 31: 1-29.

Rosser, A., K. Roesad, and D. Edwin. 2005. “Indonesia: the politics of inclusion.” *Journal of Contemporary Asia* 35 (1): 53-77.

Rössler, M. 1990. “Striving for Modesty: Fundamentals of the religion and social organization of the Makassarese Patuntung.” *Bijdragen tot de Taal-, Land-en Volkenkunde* 2 (3): 289-324.

Rössler, M. 2000. "From divine descent to administration: Sacred heirlooms and political change in highland Goa." In *Authority and enterprise among the peoples of South Sulawesi*, edited by R. Tol, R, K. van Dijk, and G. Acciaioli, 161-182. Leiden: KITLV Press.

Rössler, M., and B. Röttger-Rössler. 1996. “Introduction.” In *Kingship, Status and Gender in South Celebes*, H. T. Chabot, 67-78. Leiden: KITLV Press.

Röttger-Rössler, B. 2000. "Shared responsibility: some aspects of gender and authority in Makassar society." In *Authority and enterprise among the peoples of South Sulawesi*, edited by R. Tol, R, K. van Dijk, and G. Acciaioli, 143-160. Leiden: KITLV Press.

s' Jacob, E. H. 1945. *Landsdomein en adatrecht*. Utrecht: Kemink en Zoon.
Safitri, M. 2010. "Forest Tenure In Indonesia: The socio-legal challenges of securing communities' rights." Phd diss., Leiden University.

Safitri, M. 2017. "Dividing the Land: Legal Gaps in the Recognition of Customary Land in Indonesian Forest Areas." *Kasarinlan: Philippine Journal of Third World Studies* 30 (2,1): 31-48.
Sakai, M. 2002 "Land dispute resolution in the political reform at the time of decentralization in Indonesia." *Antropologi Indonesia* 68: 40-56.

Sangaji, A. 2007. "The masyarakat adat movement in Indonesia: A critical insider's view." In *The Revival of Tradition in Indonesian Politics*, edited by J. S. Davidson, and D. Henley, 319-336. New York: Routledge.

Saugestad, S. 2001. *The Inconvenient Indigenous: Remote Area Development in Botswana*. Uppsala: Nordiska Afrikainstitutet.

Schmink, M. 1982. "Land Conflicts in Amazonia." *American Ethnologist* 9 (2): 341-357.

Schulte Nordholt, H. 2003. "Renegotiating boundaries: Access, agency and identity in post-Soeharto Indonesia." *Bijdragen tot de Taal-, Land-en Volkenkunde* 159 (4): 550-589.

Schulte Nordholt, H., and G. van Klinken. 2011. *Renegotiating boundaries: local politics in post-Suharto Indonesia*. Leiden: Brill.

Schwartz. J. 1947. "Nota inzake de organisatie van bestuur in de onderafdeeling Boeloekoemba." Unpublished manuscript.

Shah, A. 2007. "The dark side of indigeneity?: Indigenous people, rights and development in India." *History Compass* 5 (6): 1806-1832.

Sikor, T., and C. Lund. 2009. "Access and property: a question of power and authority." *Development and change* 40 (1): 1-22.

Simarmata, R. 2012. *Indonesian law and reality in the Delta: a socio-legal inquiry into laws, local bureaucrats and natural resources management in the Mahakam Delta, East Kalimantan*. Leiden: Leiden University Press.

Slaats, H., E. Rajagukguk, N. Elmiyah, and A. Safik. 2009. "Land Law in Indonesia." In *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*, edited by J. M. Ubink, A. Hoekema, and W. Assies, 493-526. Leiden: Leiden University Press.

Smith, J., K. Obidzinski, S. Subarudi, and I. Suramenggala. 2003. “Illegal logging, collusive corruption and fragmented governments in Kalimantan, Indonesia.” *International Forestry Review* 5 (3): 293-302.

SNUB. 2003. “Kronologis: Kasus Penembakan Petani dan Masyarakat Adat Kajang Bulukumba Propinsi Sulawesi Selatan Oleh Aparat Polda Sulawesi Selatan dan Polres Bulukumba 21 juli 2003.” Unpublished manuscript.

Sonius, H. W. J. 1981. “Introduction by H. W. J. Sonius.” In *Van Vollenhoven on Adat Law*, edited by J. F. Holleman, XXIX-LXVI. Leiden: Martinus-Nijhoff.

Sylvain, R. 2014. “Essentialism and the indigenous politics of recognition in Southern Africa.” *American Anthropologist* 116 (2): 251-264.

Tarrow, S. 1992. “Mentalities, political cultures, and collective action frames.” *Frontiers in social movement theory*: 174-202.

Tarrow, S. 2013. *Contentious politics*. Blackwell Publishing Ltd.

Tilly, C. 1978. *From Mobilization to Revolution*. Reading: Addison-Wesley Publishing Co.

Tsing, A. L. 2009. "Adat/indigenous: Indigeneity in motion." In *Words in motion: Toward a global Lexicon*, edited by C. Gluck, and A. L. Tsing, 40-64. Durham: Duke University Press.

Tyson, A. D. 2010. *Decentralization and adat revivalism in Indonesia: The politics of becoming indigenous*. London and New York: Routledge.

Ubink, J. M. 2008. *In the land of the chiefs: customary law, land conflicts, and the role of the state in peri-urban Ghana*. Leiden: Leiden University Press.

Ubink, J. M., and J. F. Quan. 2008. “How to Combine Tradition and Modernity? Regulating Customary Land Management in Ghana.” *Land Use Policy* 25 (2): 198-213.

Urano, M. 2010. *The limits of tradition: peasants and land conflicts in Indonesia*. Balwyn: Trans Pacific Press.

Usop, K. M. 1978. *Pasang ri Kajang: Kajian sistem nilai di "benteng hitam" Amma Toa*. Thesis. Pusat Latihan Penelitian Ilmu-Ilmu Sosial, Universitas Hasanuddin, Makassar.

Utrecht, U. 1969. “Land Reform in Indonesia.” *Bulletin of Indonesian Economic Studies* 5 (3): 71-88.

Vollenhoven, C. van. 1918. *Het adatrecht van Nederlandsch-Indië. Eerste Deel.* Leiden: Brill.

Vollenhoven, C. van. 1933. *Het adatrecht van Nederlandsch- Indië. Derde Deel.* Leiden: Brill.

Warren, C. 1998. “Symbols and displacement.” in *Environmental Movements in Asia*, edited by A. Kalland, and G. Persoon, 179-204. Richmond: Curzon Press.

Warren, C., and J. F. McCarthy. 2009. *Community, environment and local governance in Indonesia: Locating the commonweal*. London and New York: Routledge.

Wertheim, W. 1969. “From Aliran towards class struggle in the countryside of Java.” *Asia Pacific viewpoint* 10 (2): 1-17.

White, N. J. 2012. “Surviving Sukarno: British Business in Post-Colonial Indonesia, 1950–1967.” *Modern Asian Studies* 46 (5): 1277-1315.

Williams, R. 1976. *Keywords. A Vocabulary of Culture and Society*. London: Fontana.

Wollenberg, E., M. Moeliono, G. Limberg, R. Iwan, S, Rhee, and M. Sudana. 2006. “Between state and society: local governance of forests in Malinau, Indonesia.” *Forest Policy and Economics* 8 (4): 421-433.

Yashar, D. J. 1998. “Contesting Citizenship: Indigenous Movements and Democracy in Latin America.” *Comparative Politics* 31 (1): 23-42.

Yuval-Davis, N. 1999. “The multi-layered citizen.” *International Feminist Journal of Politics*, 1 (1): 119-136.

SUMMARY

LAND RIGHTS AND THE FORCES OF ADAT IN DEMOCRATIZING INDONESIA CONTINUOUS CONFLICT BETWEEN PLANTATIONS, FAMERS, AND FORESTS IN SOUTH SULAWESI

Land conflicts between citizens on one side and the government or plantation companies on the other are widespread in Indonesia. This study looks at such conflicts and focuses on how local land users invoke indigeneity to claim land rights. Its purpose is to analyze whether since the fall of the Suharto regime such claims have been recognized by the government or the judiciary, to what extent this recognition has contributed to resolving land conflicts, and whether it has strengthened legal certainty of land users.

The dissertation combines literature research with legal analysis and fieldwork at various locations in Indonesia, in particular the districts of Bulukumba and Sinjai in South Sulawesi province. The study approaches the subject from different theoretical and conceptual perspectives. The first is the social movement literature, which offers important concepts to analyze the specific nature of claims based on indigeneity, particularly the *collective action frame* concept. Also relevant is the literature on citizenship in the context of postcolonial settings. This literature emphasizes that such settings are characterized by a pluriformity of state and non-state institutions and that citizens are to a large extent dependent on informal relations to actually realize rights that exist on paper.

Chapter 2 gives an overview of the historical developments of land law in Indonesia. The colonial period was marked by dualism: the Dutch colonial government subjected the Western population to Western law and the indigenous people to their own unwritten rules and customs, the so-called adat law. After Indonesian independence, the Indonesian government ended this dualism, which it associated with colonialism and divide and rule politics. For the sake of legal certainty and national unification, the government made attempts to unify the law. New legislation no longer distinguished between different population groups but only made a distinction on the basis of citizens and non-citizens. The Basic Agrarian Law of 1960 (Law nr. 5/1960) was the first major step towards the unification of land law. This law introduced a system of individual land rights while adat rights were subordinated to national law and were only recognized in a symbolic way. Since the 1990s, however, there has been renewed attention in Indonesia to adat law and adat communities (see below).

The root cause of today's conflicts between local land users and state and corporate actors is the state's designation of large tracts of land as state land and state forest without considering the rights of local land users. Two laws have been at the basis of this claim by the state. The first is the above mentioned Basic Agrarian Law of 1960. The second law is the Basic Forestry Law of 1967 (Law no. 5/1967), which designated virtually all forests in Indonesia as state forests.

The formalization of land rights has created major problems for most of the rural population in Indonesia. Rights under customary arrangements are seldom recognized by the state and the judiciary generally does not consider tax payments as valid proof of land ownership. Obtaining a land ownership certificate is complex and above all expensive. Overlapping land claims from competing government agencies, particularly from the National Land Agency and the Ministry of Forestry (now Ministry of Environment and Forestry), have further complicated the situation. As of yet there is no coordinating body that regulates these different systems of land administration.

The marginal legal position of farmers during the New Order period (1966-1998) was also due to strong repression by the army, which often provided support to state-owned and private companies to secure their plantations and forest concessions. Expropriation of land occurred on a large scale and opposition against dispossession was suppressed by the security apparatus. The judiciary rarely ruled in favor of farmers in cases where they opposed the government.

Chapter 3 provides a case study of an ongoing land conflict in Bulukumba district (South Sulawesi) between a group of local land users and a rubber plantation company named PT. Lonsum. In 1982, a group of 172 farmers from sub-district Kajang sued the plantation company before the Bulukumba District Court, claiming that the company had unlawfully taken 350 hectares of customary land. The case eventually went up to the Indonesian Supreme Court (*Mahkamah Agung*), which ruled in favor of the farmers in 1990. However, at the request of the company and the Bulukumba district government the Supreme Court subsequently postponed the execution of the ruling. The case study shows that under the New Order, even winning a legal case at the highest Indonesian court could not guarantee that the farmers would get their land back. This caused a strong feeling of injustice among the rural population.

An important turning point was the fall of the Suharto regime in May 1998 and the subsequent *Reformasi* period, in which an unprecedented transformation took place towards a decentralized democracy. Under severe pressure of civil society, the government implemented legal and institutional changes. In the domain of land rights, a new forestry law was enacted (Law no. 41/1999). However, despite the new legislation, government claims on agricultural and forest areas remained largely unchanged.

The change of power nevertheless created new civil liberties. Political reforms and the withdrawal of the army from civil affairs led to a new situation where the balance of power had not yet been clearly defined. In many rural areas, organized groups of farmers mobilized and engaged in collective actions to claim back their land taken by the state or plantation companies. Chapter 3 shows how such groups tested the boundaries of how far they could go with their collective actions. In many cases however, they only had limited success. Although some temporarily managed to secure physical control over plots of land, collective actions rarely led to formally recognized land rights and land tenure security often remained weak.

In Bulukumba, the execution of the Supreme Court ruling had finally been carried out in 1999 and the group of 172 litigants received the land adjudicated by the court. Soon after, additional claims followed from local farmers who did not belong to the group of

the original litigants (*penggugat asli*) but also lost their land during the New Order period. Local activists began to frequently organize demonstrations and protest actions. Several influential local activists managed to mobilize thousands of land claimants in the early 2000s.

The movement was eventually crushed after a large-scale occupation of the rubber plantation in July 2003. A violent clash between the police and occupants left several farmers dead. Many occupants were arrested and the protest movement dissolved. In the aftermath of the tragic events, the South Sulawesi provincial government launched a mediation process but it stubbornly clang to the 1990 Supreme Court ruling as the only legitimate claim to any land. Moreover, conflicting decisions of various legal institutions and government agencies made the conflict more difficult to resolve. All of this indicates how after the New Order, law remained a means of control of powerholders, rather than an empowering tool for the rural poor. In a place like Bulukumba, the strong sense of injustice therefore prevails until now and the conflict is yet to be settled.

Chapter 4 moves from Bulukumba to the national level and discusses the rise of the Indonesian indigenous movement, which promotes and advocates for the recognition of adat community rights. Beginning in the 1990s, this movement slowly developed into a powerful force, especially after the fall of the New Order. This revival of adat was a reaction to the oppressive policies of the New Order and must be seen within the political context of the *Reformasi* period, when a renewed focus on regionalization and ethnic identity ensued.

The chapter discusses a number of additional historical, political and legal factors behind the rise of the indigenous movement and the specific character of the collective action frames it adopts. Influenced by both the global indigenous peoples discourse that emerged in the 1980s and 1990s, as well as the colonial legal history of Indonesia, the movement adopted the term adat community (*masyarakat adat*). At its core is a non-governmental network organization named AMAN, which was established in 1999. In a broader sense, the adat community concept was coined as an alternative to other, less accepted forms of criticism towards the state by leftist circles. This has to do with the elimination of the communist movement in the 1960s, which continues to have an impact in Indonesia.

Civil society organizations frame adat communities as the Indonesian version of indigenous peoples. AMAN defines them as communities with a traditional legal system and a communal territory that has been passed on for generations. Their implicit assumption is that adat communities live in harmony with the environment and govern their collective natural resources responsibly. Throughout Indonesia, rural collectives have claimed land rights on the basis of their alleged status as adat community. Such groups have often received support from activists and NGOs. Organizations such as AMAN have acquired an influential position in the NGO domain, not in the least because of the substantial funding of donors and development banks. This support is partly the result of the evoked image of adat communities as protectors of the environment.

The indigenous movement in Indonesia has achieved a number of successes in recent years, mostly through their advocacy for legal recognition of adat communities.

Indonesian law uses a slightly different term, adat law community (*masyarakat hukum adat*), but the definition of the term, as stipulated in the 1999 Forestry Law, is largely similar to the concept adat community as used by AMAN. Adat law communities gained explicit recognition in the amended constitution of 2002. The most important achievement of recent years however is the renowned judgment no. 35/2012 of the Constitutional Court, which ruled in 2013 that forests owned by adat law communities are not state forests. The ruling thus amended Article 67 of the 1999 Forestry Law. It sparked much excitement from civil society, as it brought about new opportunities for legal recognition of adat communities.

In the years after the ruling, the government enacted a number of ministerial regulations that further outlined the procedures for legal recognition of adat land rights (chapter 2). However, the two main formal requirements for recognition remained unchanged. First, only traditional adat communities are eligible to obtain such rights. Second, regional governments (at the district and provincial level) need to recognize such communities first through a regional regulation or decision of governor or district head, before the Minister of Environment and Forestry can release adat forests from the state forest .

Chapter 5 and 6 explore the appropriation of the adat community discourse at the local level, how it is adopted by rural communities or individuals, and which actors and contextual factors play a role here. They show that framing adat communities as egalitarian and harmonious collectives is not always warranted by local realities.

Chapter 5 provides a historical overview of local power relations and transitions of political authority in South Sulawesi. It shows that for centuries, the adat based on a traditional belief system legitimized the absolute power of the local aristocracy. Even the most egalitarian communities, such as the Ammatoa Kajang community from Bulukumba, abided by a strict social hierarchy. Generally, the level of a person's noble blood determined his or her position in society. In the twentieth century, state formation processes and the rise of modern Islamic movements weakened the position of the old aristocracy. However, many noblemen have remained influential, holding high positions in the regional state apparatus.

Chapter 6 once again looks at the trajectory of the Bulukumba plantation conflict, now focusing on the use of adat community claims in the period between 2006 and 2017. This started in the aftermath of the violence of July 2003, when the conflict temporarily became the center of attention of NGOs and human rights organizations. It was the National Human Rights Commission (Komnas-HAM) which began to frame the land claims of local farmers in terms of adat community rights. Commissioners contended that the land taken by PT. Lonsum belonged to the Ammatoa Kajang community. This community hails from sub-district Kajang where many of the land claimants live. The community has a spiritual leader named Amma Toa and adheres to traditional rules that prescribe a modest lifestyle. In recent years, activists and land claimants have used the name of the Amma Toa and the traditional community to claim land taken by PT. Lonsum.

However, chapter 6 shows that at the same time local noblemen (mostly political elites) in Kajang use adat to legitimize their powerful position. These elites do not see adat

as a means of resistance for marginalized groups, but rather as a means of justifying and maintaining traditional power relations between aristocrats and ordinary villagers. An important conclusion therefore is that the image of adat communities as evoked by NGOs and activists does not always correspond well with the actual socio-political organization of village communities. This discrepancy has become a source of tension between adat leaders and activists. In Bulukumba, adat leaders of the Ammatoa Kajang community opposed activists who claimed that the Ammatoa Kajang community was as a whole involved in the conflict with the plantation company. Many of these traditional leaders were local government officials. They criticized the invoking of adat in protests and rallies, for this caused turmoil, could damage the reputation of the community, and could eventually threaten their own position.

Chapter 6 furthermore explains that the recently made adat land claims have not yet led to success for farmers whose land was taken by PT. Lonsum. In 2011, the Bulukumba District Head initially acted as a mediator between the land claimants and the plantation company. However, later he announced that he did not have the authority to deal with the conflict and suggested the land claimants to go to court.

Chapter 7 analyzes the extent to which communities have been able to realize adat forest rights since Constitutional Court ruling no. 35/2012. Indonesian law appoints regional authorities - the provincial and district governments - to formally recognize adat communities and their adat forest. Subsequently, the Minister of Environment and Forestry can change the status of the forest from state forest to adat forest by means of a ministerial decree. Since the ruling of the Constitutional Court on the separation of adat forest from the state forest, only few adat forests have been recognized by the government. Chapter 7 compares the attempts of two communities to secure adat forest rights by analyzing what factors determined the outcome of such claims.

The first case focuses on Bulukumba district and again involves the Ammatoa Kajang community from sub-district Kajang. In 2015, the district government of Bulukumba recognized the Ammatoa Kajang as an adat law community through a district regulation. In 2016, this community was also one of the nine first adat communities whose adat forest was formally recognized by the Minister of Environment and Forestry. This study provides evidence that the successful formal recognition of the Ammatoa Kajang community materialized under special circumstances that are not easily found elsewhere in Indonesia. First, the Ammatoa Kajang community meets all the requirements that the narrow legal definition ascribes to an adat law community. Secondly, the Ammatoa Kajang community is not involved in a conflict over the territory claimed as adat forest, as the district government has de facto recognized the adat forest for decades. Thirdly, a number of important adat leaders in Kajang also hold influential local government offices such as village head and sub-district head and thus they were able to influence the process of recognition.

These special circumstances moved the district government to recognizing the Ammatoa Kajang community. An additional reason is that the traditional adat territory has the potential to become a tourist destination. For the NGOs involved in the process, formal recognition constituted a successfully completed project that emphasized the

importance of their advocacy. It is worth noting that the claim to adat community rights recognition in this case did not so much come from the community itself, but mainly was the initiative of a number of civil society organizations.

The case study also considered the actual implications of legal recognition. Apart from the release of the adat forest from the state forest, legal recognition had no further impact on local land relations as it did not involve any physical transfer of land to the community. Although the district regulation designated PT. Lonsum's plantation inside the community's adat territory, it also stated that the existing rights of third parties would remain valid. Hence, legal recognition did not benefit the many Kajang farmers in need of more agricultural land.

The second case is that of the Turungan Soppeng community from sub-district West-Sinjai in Sinjai district, north of Bulukumba. In Sinjai there have long been conflicts between local farmers and the District Forestry and Plantations Department. This has resulted in several criminal convictions of local farmers who received jail sentences for illegal logging in state forest areas. One local land user from Turungan Baji village, supported by the regional branch of AMAN, tried to claim adat community rights as a defense strategy in court in 2014. However, villagers affiliated with the government, such as the hamlet head, denied the existence of an adat community in Turungan Baji. The district government in Sinjai followed suit and was not prepared to honor the claims of the farmer. This case suggests that adat community claims have little chance of success in situations of conflict with government agencies or plantation companies.

In addition, it appears that the narrow definition of adat community used in practice has complicated obtaining legal recognition. There are few communities in Indonesia that can actually meet the strict requirements of the definition. In Sinjai, the district court did not recognize the claims of the self-proclaimed adat community because its local rituals were not sufficiently unique to be distinct from the rest of the South Sulawesi.

Chapter 8 provides the conclusions of this research. The indigenous movement in Indonesia champions the cause of marginalized rural communities that are involved in land conflicts. The movement frames such groups as traditional collectives that have retained their autonomous legal structure and communal territory. This framing has the function of reinforcing the legitimacy of land claims of local communities. However, this study has pointed out that the most traditional adat communities in Indonesia are not necessarily the most marginalized and that the most vulnerable people may be overlooked by development programs and NGO projects that promote indigenous peoples' rights. In the case studies of this research, government actors could dismiss claims from local land users with the argument that they were not sufficiently unique and traditional. Chapter 8 concludes that in the cases studied, the equation of marginalized people and traditional communities did not contribute to resolving the land conflicts. The government has the discretion to exclude groups that do not meet the narrow definition of adat community. In this way, the state maintains its powerful position in land and natural resource governance.

If more communities are to qualify for formal recognition as adat community, a broader interpretation of the concept is needed. The author argues in the conclusion for a discourse on land rights that does not make collectivity and continuity a prerequisite for rights and that is more flexible and inclusive than the current framework of recognition of customary land rights.

SAMENVATTING (DUTCH SUMMARY)

LANDRECHTEN EN DE KRACHTEN VAN ADAT IN DEMOCRATISEREND INDONESIË: VOORTDURENDE CONFLICTEN TUSSEN PLANTAGES, BOEREN EN BOSSEN IN ZUID SULAWESI

Landconflicten tussen lokale grondgebruikers en de overheid of plantageondernemingen zijn wijdverspreid in Indonesië. Deze studie richt zich op langdurige landconflicten, waarin burgers claimen dat ze als traditionele adatgemeenschap recht hebben op grond die is geconfisceerd door overheidsinstanties of plantagebedrijven. De hoofdvraag van het onderzoek is onder welke omstandigheden, zulke claims sinds de val van het Soeharto regime zijn erkend door de overheid of rechterlijke macht, in hoeverre deze erkenning een bijdrage heeft geleverd aan het oplossen van landconflicten, en in hoeverre zij de rechtszekerheid van lokale grondgebruikers heeft versterkt.

Het proefschrift combineert literatuuronderzoek met bevindingen op basis van juridische analyses en empirisch veldwerk op verschillende locaties in Indonesië, in het bijzonder in de districten Bulukumba en Sinjai (Zuid Sulawesi). Het proefschrift benadert het onderwerp vanuit verschillende theoretische en conceptuele invalshoeken. Ten eerste biedt de *social movement* literatuur belangrijke concepten voor het analyseren van het type claims dat gemaakt wordt, met name het *collective action frame* concept. Ook relevant is de literatuur over burgerschap (*citizenship*) in de context van postkoloniale natiestaten. Deze literatuur benadrukt de pluriformiteit van statelijke en niet-statelijke instituties, en laat zien dat burgers voor het daadwerkelijk realiseren van hun rechten in grote mate afhankelijk zijn van hun informele relaties.

Hoofdstuk 2 geeft een overzicht van de historische ontwikkeling van het grondenrecht in Indonesië. De koloniale periode werd gekenmerkt door dualisme: de westerse bevolking was onderworpen aan westers recht en de inheemse bevolkingsgroepen aan hun eigen ongeschreven regels en gebruiken, het zogeheten adatrecht. Na de Indonesische onafhankelijkheid brak de Indonesische overheid met dit dualisme, dat werd geassocieerd met kolonialisme en verdeel en heers-politiek. Ter wille van rechtszekerheid en nationale eenwording werden pogingen gedaan het recht te unificeren. Nieuwe wetgeving maakte geen onderscheid meer tussen verschillende bevolkingsgroepen maar enkel tussen Indonesische staatsburgers en anderen. De Agrarische Basiswet van 1960 was de eerste grote stap richting de unificatie van het grondenrecht. Deze wet erkende het adatrecht slechts in symbolische zin en maakte het waar het nog bestond ondergeschikt aan het nationale recht. Sinds de jaren negentig is er echter sprake van een herwaardering van het adatrecht en van lokale adatgemeenschappen (zie hieronder).

Ten grondslag aan veel van de huidige landconflicten in Indonesië ligt de claim van de overheid op meer dan 70 procent van alle grond, in het bijzonder de gebieden buiten Java. Naast de Agrarische Basiswet vormt de Boswet van 1967 de basis voor deze claim; middels de laatstgenoemde wet werden alle bossen in Indonesië staatsgrond.

Een groot deel van de rurale bevolking in Indonesië kampt nog steeds met een gebrek aan rechtszekerheid ten aanzien van eigendom van landbouwgrond. Alleen landcertificaten worden door de staat gezien als legitiem bewijs van eigendom, maar het verkrijgen van een landcertificaat is complex en bovenal duur. Overlappende claims op grond van concurrerende overheidsactoren, in het bijzonder van het Nationale Land Agentschap en het Ministerie van Bosbeheer (tegenwoordig Ministerie van Milieu en Bosbeheer), hebben de situatie verder gecompliceerd. Er is tot op heden geen overkoepelend orgaan dat deze verschillende systemen van landadministratie coördineert.

Tijdens de Nieuwe Orde periode (1966-1998) ging de marginale juridische positie van de agrarische bevolking op het gebied van landrechten gepaard met onderdrukking door het leger- en politieapparaat, dat vaak steun verleende aan staatsbedrijven en private ondernemingen om concessies veilig te stellen. Onteigening van grond kwam op grote schaal voor en verzet hiertegen werd door het veiligheidsapparaat onderdrukt. De rechterlijke macht werd in deze tijd beschouwd als een verlengstuk van het regime en oordeelde slechts zelden in het voordeel van de rurale bevolking.

Centraal in Hoofdstuk 3 staat een casestudie van een langdurig landconflict tussen een groep lokale boeren en rubberplantageonderneming PT. Lonsum in Bulukumba (Zuid Sulawesi). Een verwaarloosd deel van de concessie van de plantageonderneming werd al jaren door lokale boeren gebruikt als landbouwgrond toen eind jaren zeventig PT. Lonsum deze grond wilde beplanten met rubber. Met steun van het leger en lokale ambtenaren dwong het bedrijf de boeren om hun grond te verlaten. Een groep van 172 boeren uit sub-district Kajang verzette zich hiertegen en besloot een vordering tegen PT. Lonsum in te dienen bij de districtsrechter. De zaak belandde uiteindelijk bij het Indonesische Hooggerechtshof (*Mahkamah Agung*), dat in 1990 in het voordeel van de boeren oordeelde. De executie van de uitspraak werd echter op verzoek van het plantagebedrijf en de districtsoverheid van Bulukumba uitgesteld. De casestudie toont dat toentertijd zelfs een uitspraak van het hoogste Indonesische gerechtshof in het voordeel van de boeren niet kon verzekeren dat zij hun grond terugkregen. Dit heeft onder de rurale bevolking van Indonesië geleid tot een sterk gevoel onrechtvaardig behandeld te worden door de overheid.

Een belangrijk keerpunt in Indonesië was de val van het Soeharto regime in mei 1998 en de daaropvolgende *Reformasi* periode, waarin een ongekende transformatie plaats vond naar een gedecentraliseerde democratie. Onder grote maatschappelijke druk werden juridische en institutionele veranderingen doorgevoerd, ook op het gebied van landrechten, zoals een nieuwe, vervangende Boswet in 1999. De claims van de overheid op grond bleven echter grotendeels ongewijzigd, ondanks de nieuwe wetgeving.

De met de hervorming geïntroduceerde nieuwe burgerlijke vrijheden, en de terugtreding van het leger uit het landsbestuur leidden echter tot een nieuwe situatie waarin de machtsverhoudingen nog niet duidelijk waren bepaald. In veel rurale gebieden organiseerden groepen boeren zich. Met collectieve acties zoals demonstraties en bezettingen claimden ze hun verloren gronden terug. Hoofdstuk 3 laat zien dat zulke groepen aftastten hoe ver zij konden gaan met hun collectieve acties. In veel gevallen

waren ze maar in beperkte mate succesvol. Hoewel ze soms tijdelijk de fysieke controle over stukken grond wisten te verkrijgen, leidde dit zelden tot formeel erkende rechten op die grond.

Onder leiding van enkele invloedrijke lokale activisten ontstond in Bulukumba een lokale boerenbeweging die erin slaagde in 1999 de executie van de inmiddels negen jaar oude rechterlijke uitspraak af te dwingen. 172 rechthebbenden kregen als gevolg hiervan hun grond terug. Al snel volgden meer claims van andere lokale boeren die niet bij de groep van rechthebbenden (*penggugat asli*) hoorden, maar van wie eveneens land was geconfisceerd tijdens de Nieuwe Orde periode. Lokale activisten wisten meer dan 1500 boeren op de been te brengen tijdens demonstraties en protestacties. De boerenbeweging in Bulukumba werd echter de kop ingedrukt na een grootschalige bezetting van de plantage van PT. Lonsum in juli 2003. Hierbij werden enkele demonstranten door de politie doodgeschoten. Vervolgens probeerden de provinciale en de districtsoverheid te bemiddelen in het conflict. Als uitgangspunt namen ze daarbij echter uitsluitend de rechterlijke uitspraak, waardoor ze geen verandering in de bestaande situatie brachten.

Bovendien werd het conflict door ineffectief en inconsistent handelen van de bemiddelende instanties steeds complexer. Uiteindelijk laat de Bulukumba case daarom in de eerste plaats zien dat ook na de val van Soeharto het statelijke recht vooral dient als grond om nieuwe claims op land af te wijzen. Dit heeft de legitimiteit van de overheid aangetast en het conflict is nog steeds niet tot een einde gekomen.

In hoofdstuk 4 wordt de opkomst van een nationale adatbeweging (*indigenous movement*) in Indonesië besproken. Sinds de val van Soeharto worden claims op landrechten namelijk steeds vaker gemaakt in de vorm van een beroep op collectieve adatgemeenschaps*r*echten. Vanaf het begin van de jaren negentig is een grote maatschappelijke beweging ontstaan die zich inzet voor de erkenning van adatgemeenschapsrechten. De wetenschappelijke literatuur over dit onderwerp stelt dat het hernieuwde belang van adat sinds de val van Soeharto begrepen moet worden in de context van de *Reformasi* periode. Decentralisatie en democratisering hebben geleid tot een hernieuwde focus op regionalisering en etnische diversiteit.

Er zijn echter een aantal andere historische, politieke en juridische verklaringen voor dit fenomeen aan te wijzen. Onder invloed van het mondiale inheemse volkeren discours dat in de jaren tachtig en negentig aan invloed won, en in de specifieke context van de koloniale geschiedenis van het adatrecht in Indonesië, is de term adatgemeenschap (*masyarakat adat*) een kernbegrip geworden binnen de landrechtenbeweging. De hoofdrolspeler is de non-gouvernementele netwerkorganisatie AMAN (*Aliansi Masyarakat Adat Nusantara*), die werd opgericht in 1999. In bredere zin lijkt het adatgemeenschapsdiscours een alternatief te zijn voor andere, minder geaccepteerde vormen van kritiek op de overheid afkomstig uit linkse kringen. De opkomst van de adatbeweging lijkt dan ook verband te houden met de vernietiging van de communistische beweging in de jaren zestig.

AMAN beschouwt adatgemeenschappen als de Indonesische versie van inheemse volkeren en hanteert een vrij nauwe definitie van de term. Kerneigenschappen van adatgemeenschappen zijn het hebben van een territorium dat de gemeenschap al

generaties lang collectief beheert en een nog bestaande rechtsstructuur. AMAN gaat er van uit dat adatgemeenschappen in harmonie leven met hun natuurlijke leefomgeving en dat ze op een duurzame manier omgaan met hun natuurlijke hulpbronnen.

Indonesische regelgeving heeft de definitie van AMAN grotendeels overgenomen, maar hanteert nog wel de oude term adat*rechts*gemeenschap (*masyarakat hukum adat*). Een voorbeeld is de vervangende Boswet van 1999. Adatrechtsgemeenschappen worden verder expliciet erkend in de geamendeerde Grondwet van 2002. Parallel aan deze ontwikkelingen zijn zelfbenoemde adatgemeenschappen in heel Indonesië landrechten gaan claimen, vaak met steun van activistische organisaties als AMAN. AMAN heeft met het adatgemeenschapsdiscours een invloedrijke positie binnen het Indonesische NGO-circuit verkregen, mede door aanzienlijke financiering van donoren en ontwikkelingsbanken die adatgemeenschappen vaak zijn gaan zien als beschermers van milieu en natuur.

De adatbeweging in Indonesië heeft in de afgelopen jaren een aantal successen behaald, met name op het gebied van juridische erkenning van de rechten van adatgemeenschappen. Opmerkelijk is de inmiddels befaamde uitspraak nr. 35/2012 van het Constitutionele Hof, die stelt dat adatbossen, dat wil zeggen bossen in het bezit van adatgemeenschappen, geen onderdeel zijn van het staatsbos. Het Hof wijzigde hiermee artikel 67 van de Boswet van 1999. Velen zagen deze uitspraak als een belangrijke mijlpaal in de strijd om de erkenning van adatrechten. In de jaren volgend op de uitspraak werd een aantal ministeriële verordeningen aangenomen die de juridische procedure voor de erkenning van adatlandrechten uitwerken (hoofdstuk 2). Echter, de twee belangrijkste formele eisen voor erkenning bleven ongewijzigd, namelijk dat alleen traditionele adatgemeenschappen in aanmerking komen voor zulke rechten en dat regionale overheden (op districts- en provincie niveau) de bevoegdheid hebben om zulke gemeenschappen te erkennen middels een regionale verordening of een besluit van gouverneur of districtshoofd.

Aan de hand van twee casestudies in Zuid Sulawesi laten hoofdstuk 5 en hoofdstuk 6 zien dat de *framing* van adatgemeenschappen als egalitaire en harmonieuze groepen op gespannen voet kan staan met de percepties van adat op lokaal niveau. Hoofdstuk 5 geeft allereerst een historisch overzicht van lokale machtsverhoudingen in Zuid Sulawesi en laat zien dat traditionele geloofsovertuigingen en de daarop gebaseerde adat eeuwenlang de sterke machtspositie van de aristocratie legitimeerden. Zelfs de meest egalitaire lokale gemeenschappen, zoals de Ammatoa Kajang in Bulukumba, kennen tot op heden een sociale hiërarchie gebaseerd op overerfde status. Staatsvormingsprocessen en verzet van moderne Islamitische bewegingen tegen de status quo hebben de positie van de oude aristocratie verzwakt, maar desondanks blijft deze zeer invloedrijk en heeft zij haar dominante positie in het regionale staatsapparaat weten te behouden.

Hoofdstuk 6 richt zich op het verloop van het plantageconflict in Bulukumba tussen 2006 en 2017. Sinds 2003 hebben verschillende lokale groepen geprobeerd geconfisceerde grond terug te krijgen met een beroep op hun adatstatus. Deze ontwikkeling hing samen met de hernieuwde aandacht voor het conflict van NGO's en mensenrechtenorganisaties in de nasleep van het geweld van juli 2003. De eerste

organisatie die begon met de landclaim te *framen* binnen het adatgemeenschapsdiscours was de Nationale Mensenrechten Commissie (Komnas-HAM), die stelde dat de door PT. Lonsum geconfisceerde grond toebehoorde aan de Ammatoa Kajang gemeenschap. Deze gemeenschap uit sub-district Kajang, leeft volgens sobere tradities gebaseerd op een lokaal geloof. Sindsdien speelt het adatgemeenschapsdiscours een belangrijke rol in claim-strategieën en wordt het ook door andere lokale agrarische protestbewegingen gebruikt.

Hoofdstuk 6 laat zien dat adat ook vandaag de dag nog door de aristocratie wordt gebruikt voor het verstevigen van haar positie. Voor hen is adat geen middel van verzet voor gemarginaliseerde groepen, maar een middel om de traditionele machtsverhoudingen in stand te houden. Een belangrijke conclusie is dus dat de manier waarop adatgemeenschappen worden gepresenteerd door NGO's en activisten lang niet altijd overeen komt met de daadwerkelijke socio-politieke organisatie van dorpsgemeenschappen. Deze discrepantie kan een bron zijn van spanningen tussen adatleiders en activisten. In Bulukumba verzetten traditionele adatleiders van de Ammatoa Kajang gemeenschap zich tegen de claim van activisten dat de Ammatoa Kajang gemeenschap in zijn geheel in conflict was met PT. Lonsum. Veel van deze traditionele leiders zijn lokale bestuurders die hun vingers niet willen branden aan het conflict, bang dat dit hun positie zou kunnen bedreigen.

De recente claims op basis van adat hebben nog niet tot succes geleid voor boeren die hun land moesten afstaan aan PT. Lonsum. Kort na zijn verkiezing stelde een districtshoofd in Bulukumba zich op als bemiddelaar tussen de onteigende boeren en het plantagebedrijf. Later stelde hij echter niet de bevoegdheid te hebben om te bemiddelen en verwees hij de boeren naar de rechtbank. Dit wekte argwaan onder de activisten en boeren en velen van hen zijn ervan overtuigd dat het districtshoofd zich heeft laten omkopen.

Hoofdstuk 7 analyseert in hoeverre gemeenschappen er sinds uitspraak nr. 35/2012 van het Constitutionele Hof in zijn geslaagd hun adatbossen erkend te krijgen door de overheid. Indonesische regelgeving wijst de provinciale en districtsoverheden aan om groepen formeel als adatgemeenschappen te erkennen. Vervolgens kan het Ministerie van Milieu en Bosbeheer middels een ministerieel besluit de status van het bos veranderen van staatsbos naar adatbos. Sinds de uitspraak van het Constitutionele Hof is dit slechts in enkele gevallen gebeurd. De meeste adatbosclaims worden gemaakt in conflictsituaties en dit bemoeilijkt het realiseren van formele erkenning.

Het hoofdstuk vergelijkt vervolgens twee van zulke cases. De eerste case betreft de in hoofdstuk 5 en 6 besproken Ammatoa Kajang gemeenschap uit Bulukumba. Eind 2015 heeft de districtsoverheid van Bulukumba deze gemeenschap erkend. In 2016 was de gemeenschap vervolgens een van de negen eerste adatgemeenschappen waarvan het adatbos door de Minister van Milieu en Bosbeheer werd erkend. Deze studie wijst uit dat formele erkenning van de Ammatoa Kajang gemeenschap mogelijk was binnen een specifieke context, waarvan het niet voor de hand ligt dat deze elders in Indonesië snel aanwezig zal zijn. Ten eerste voldoet de Ammatoa Kajang gemeenschap duidelijk aan alle criteria waar een adatrechtsgemeenschap volgens het Indonesisch recht aan moet

voldoen. Ten tweede is de Ammatoa Kajang gemeenschap niet verwikkeld in een conflict over het geclaimde bos, maar erkent de overheid al decennia informeel deze eigendom. Ten derde bekleden een aantal belangrijke adatleiders in Kajang ook invloedrijke lokale ambten, zoals die van dorpshoofd en sub-districtshoofd.

Gezien deze bijzondere omstandigheden stond de districtsoverheid welwillend tegenover formele erkenning. Wat tevens meespeelde is de potentie van de gemeenschap en haar traditionele dorp als trekpleister voor toeristen. Voor de NGO's die bij het proces betrokken waren betekende de formele erkenning een succesvol afgerond project. Opmerkelijk is dat de vraag om formele erkenning van adatgemeenschapsrechten in eerste instantie niet van de gemeenschap zelf afkomstig was, maar vooral het initiatief van een aantal NGO's.

De casestudy keek ook naar het effect van de formele erkenning van adatbos in sub-district Kajang. Het ministeriële besluit van de Minister van Milieu en Bosbeheer had slechts betrekking op een relatief klein, heilig gemeenschapsbos. Verder stelt de verordening dat bestaande rechten van derde partijen geldig blijven, wat betekent dat het deel van het adatbos dat samenvalt met plantagegrond van PT. Lonsum gewoon in gebruik bij de laatste blijft. Kortom, de formele erkenning door de districtsoverheid van Bulukumba en de Minister van Milieu en Bosbeheer biedt geen verbetering in de situatie van veel boeren in Kajang met een tekort aan landbouwgrond.

De tweede case is die van de Turungan Soppeng gemeenschap in het district Sinjai, dat grenst aan Bulukumba. In het dorp Turungan Baji werden boeren door AMAN aangemoedigd om adatbosrechten te claimen, als reactie op de strafrechtelijke vervolging van een dorpeling wegens het kappen van bomen in een staatsbos. Er heerste in het dorp echter verdeeldheid over het bestaan van een adatgemeenschap. Aan de overheid gelieerde bewoners ontkenden dat zo'n gemeenschap nog bestond. De districtsoverheid in Sinjai was dan ook niet bereid adatbosclaims te honoreren. Zulke claims maken weinig kans in conflictsituaties waar invloedrijke private of publieke actoren bij betrokken zijn. Sterke informele relaties met overheidsactoren zijn van cruciaal belang om erkenning van adatgemeenschapsrechten te realiseren, en deze ontbraken in Sinjai.

Daarnaast blijkt ook dat de criteria waaraan gemeenschappen moeten voldoen om formeel als adatrechtsgemeenschap te worden erkend in de praktijk voor problemen kunnen zorgen. Er zijn maar weinig gemeenschappen in Indonesië die kunnen voldoen aan deze criteria. In Sinjai werden de claims van een zelfbenoemde adatgemeenschap niet erkend door de rechter, omdat hun rituelen niet voldoende uniek waren om als erkenningsgrond te dienen.

In hoofdstuk 8 wordt de conclusie getrokken dat de gelijkstelling van gemarginaliseerde groepen met traditionele gemeenschappen problematisch is. De adatbeweging in Indonesië komt op voor gemarginaliseerde rurale gemeenschappen die verwikkeld zijn in landconflicten. De beweging roept een beeld op van adatgemeenschappen als traditionele groepen die hun tradities, inclusief hun autonome rechtsstructuur en collectief beheerde grond, hebben behouden. Deze *framing* heeft als functie de legitimiteit van landclaims van lokale grondgebruikers te versterken. In de casestudies van dit onderzoek heeft een dergelijke *framing* echter niet bijgedragen aan

het oplossen van landconflicten. De overheid heeft de discretionaire bevoegdheid om groepen uit te sluiten met het argument dat ze niet voldoen aan de criteria. Op deze manier behoudt de staat haar machtspositie in de regulering van grondrechten in Indonesië.

Willen meer gemeenschappen in aanmerking komen voor formele erkenning van hun gewoonterechtelijke gronden, dan is een bredere interpretatie van de begrippen adatgemeenschap en adatrechtsgemeenschap nodig. De auteur pleit in de conclusie voor flexibelere en inclusievere manieren van formele erkenning, bijvoorbeeld erkenning van grondeigendom na een bepaald aantal jaren de grond te hebben bezet of bewerkt.

RINKGASAN (SUMMARY BAHASA INDONESIA)

HAK ATAS TANAH DAN KEKUASAAN ADAT DALAM DEMOKRATISASI DI INDONESIA: KONFLIK PERKEBUNAN, PETANI, DAN HUTAN

Konflik pertanahan antara warga dan pemerintah, atau dengan perusahaan perkebunan merupakan masalah pelik di Indonesia. Penelitian ini menyoroti dinamika konflik ini, dan menjelaskan bagaimana para penggarap tanah menggunakan adat untuk melakukan klaim hak atas tanah. Tujuan utama dari penelitian ini adalah untuk menganalisis apakah – sejak berakhirnya rezim Suharto – klaim tersebut telah diakui oleh pemerintah dan pengadilan, dan sejauhmana pengakuan hak-hak masyarakat adat berkontribusi untuk menyelesaikan konflik pertanahan. Apakah klaim demikian telah memperkuat kepastian hukum bagi penggarap tanah?

Disertasi ini menggunakan pendekatan penelitian kajian pustaka yang didukung oleh temuan analisis hukum serta penelitian empiris di lapangan dari berbagai lokasi di Indonesia , terutama di Kabupaten Bulukumba dan Kabupaten Sinjai, Provinsi Sulawesi Selatan. Pendekatan penelitian ini menggunakan perspektif konseptual dan teori-teori yang berbeda. Literatur tentang gerakan sosial pertama-tama menawarkan konsep yang penting untuk menganalisis karakter spesifik dari klaim berdasarkan adat, khususnya melalui konsep kerangka aksi bersama (*collective action frame*). Hal yang juga relevan adalah literatur tentang kewarganegaraan (*citizenship*) dalam konteks situasi pasca kolonial. Literatur tersebut menekankan bahwa situasi tersebut dicirikan oleh kemajemukan lembaga negara dan lembaga non negara serta bahwa warga negara sebagian besar bergantung kepada relasi informal dalam mewujudkan secara nyata hak-hak yang tertulis di atas kertas.

Bab 2 memberikan sebuah ringkasan perkembangan sejarah hukum pertanahan di Indonesia. Masa kolonial ditandai dengan dualisme: Penguasa kolonial Belanda memperlakukan penduduk Barat kepada Hukum Barat dan penduduk pribumi kepada aturan tidak tertulis serta kebiasaan mereka sendiri, yang disebut hukum adat. Setelah kemerdekaan, pemerintah Indonesia mengakhiri dualisme tersebut, karena dualisme itu diasosiasikan dengan kolonialisme dan politik pecah belah. Demi kepastian dan kesatuan nasional, pemerintah melakukan langkah untuk menyatukan kerangka hukum. Undang-undang baru tidak lagi membedakan antara kelompok penduduk yang berbeda, tapi hanya membedakan antara warga negara dan bukan warga negara. Undang-Undang Pokok Agraria tahun 1960 adalah satu langkah pertama untuk melakukan unifikasi hukum pertanahan. Undang-undang ini hanya menyediakan hak atas tanah bagi perorangan warga negara dan hak-hak adat berada di bawah kendali hukum nasional. Undang-Undang Pokok Agraria hanya mengakui hukum adat secara simbolis. Namun, sejak tahun 1990an ada perhatian baru di Indonesia terhadap hukum adat dan masyarakat adat (dijelaskan lebih lanjut di Bab 4).

Akar penyebab dari banyaknya konflik yang terjadi antara penggarap tanah dengan negara dan pelaku usaha adalah penetapan negara terhadap bidang tanah yang

luas sebagai tanah negara dan hutan negara tanpa mempertimbangkan hak-hak adat dari penggarap tanah. Dua undang-undang telah menjadi dasar negara untuk melakukan pengklaiman. Pertama adalah Undang-Undang Pokok Agraria (UU No. 5/1960), yang dikarenakan oleh keresahan politik dan lemahnya peraturan pelaksana sehingga tidak pernah memenuhi tujuan-tujuan sosialnya. Kedua adalah Undang-Undang Pokok Kehutanan (UU No. 5/1967), yang hakekatnya menetapkan semua hutan di Indonesia sebagai hutan negara demi tujuan eksploitasi atau perlindungan lingkungan.

Formalisasi hak atas tanah masih menjadi masalah untuk hampir semua penduduk perdesaan di Indonesia. Hak-hak berdasarkan pengaturan adat biasanya tidak secara formal diakui oleh negara, dan pengadilan pada umumnya tidak mempertimbangkan bukti pajak sebagai penanda kepemilikan tanah. Mendapatkan selembar sertifikat hak milik atas tanah dalam satu sisi sangat rumit, selain itu juga mahal. Tumpang-tindih klaim atas tanah dari lembaga pemerintah yang bersaing, khususnya Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional dan Kementerian Kehutanan (sekarang Kementerian Lingkungan Hidup dan Kehutanan), membuat situasi menjadi jauh lebih rumit.

Posisi hukum yang rentan dari petani selama periode Orde Baru (1966-1998) berlangsung sejalan dengan kuatnya tekanan dari tentara, yang seringkali menyediakan dukungan kepada perusahaan milik negara dan swasta untuk mengamankan konsesi perkebunan dan kehutanan. Perampasan tanah terjadi dalam skala luas dan perlawanan terhadap perampasan tanah ditekan oleh aparat keamanan. Pengadilan jarang sekali memenangkan petani dalam kasus dimana mereka melawan pemerintah.

Bab 3 membahas sebuah studi kasus mengenai konflik yang sedang berlangsung di Kabupaten Bulukumba (Sulawesi Selatan) antara satu kelompok penggarap tanah dan suatu perusahaan perkebunan karet bernama PT. Lonsum. Pada tahun 1982, 172 petani di Kecamatan Kajang menggugat perusahaan perkebunan di Pengadilan Negeri Bulukumba, menyatakan bahwa perusahaan telah secara melanggar hukum mengambil 350 hektar tanah adat. Kasus ini akhirnya sampai ke Mahkamah Agung, yang memutuskan memenangkan petani pada tahun 1990. Namun, atas permintaan perusahaan dan pemerintah Kabupaten Bulukumba, Mahkamah Agung kemudian menunda eksekusi putusan. Kasus ini menunjukan bahwa pada zaman Orde Baru, bahkan memenangkan suatu kasus di pengadilan tertinggi di Indonesia tidak dapat menjamin bahwa petani akan mendapatkan kembali tanahnya. Akibatnya, rasa ketidakadilan yang kuat di antara penduduk perdesaan tetap muncul.

Salah satu titik balik yang penting dalam skala nasional adalah kejatuhan rezim Suharto pada bulan Mei 1998 yang diikuti dengan periode Reformasi, dimana perubahan yang belum pernah terjadi sebelumnya terjadi menuju demokrasi yang terdesentralisasi. Di bawah tekanan yang kuat dari masyarakat sipil, pemerintah menjalankan perubahan hukum dan kelembagaan. Dalam lingkup hak atas tanah, undang-undang kehutanan yang baru disahkan (UU No. 41/1999). Namun, klaim pemerintah terhadap kawasan hutan secara luas tidak berubah meskipun sudah ada undang-undang yang baru.

Pergantian kekuasaan tetap menciptakan kebebasan sipil yang baru. Reformasi politik dan penarikan tentara dari urusan-urusan sipil mengarah kepada situasi baru

dimana keseimbangan kekuasaan yang belum dapat didefinisikan dengan jelas. Di banyak daerah perdesaan, kelompok-kelompok petani yang terorganisir memobilisasi dan terlibat dalam aksi kolektif untuk mengklaim kembali tanah mereka yang diambil oleh perusahaan negara atau perkebunan. Bab 3 menunjukkan bahwa kelompok-kelompok semacam itu menguji batas seberapa jauh capaian dari aksi bersama yang mereka lakukan. Namun dalam banyak kasus, mereka hanya mencapai keberhasilan yang terbatas. Meskipun beberapa dari mereka sementara berhasil mengamankan kendali fisik atas bidang tanah, aksi kolektif jarang sampai kepada pengakuan hak atas tanah secara formal sehingga posisi mereka atas jaminan kepemilikan tanahnya masih lemah.

Di Bulukumba, beberapa aktivis lokal yang berpengaruh berhasil memobilisasi ribuan penggugat tanah di awal tahun 2000-an. Eksekusi putusan Mahkamah Agung akhirnya telah dilakukan pada tahun 1999 dan 172 orang yang berperkara menerima tanah mereka kembali. Segera setelah itu, klaim baru bermunculan dari petani lokal yang bukan termasuk dalam penggugat awal tetapi juga kehilangan tanah mereka selama periode Orde Baru. Kemudian aktivis lokal mulai sering mengadakan demonstrasi dan aksi protes.

Gerakan ini akhirnya pecah ketika kurang-lebih 1500 penggugat menduduki perkebunan karet pada bulan Juli 2003. Bentrokan sengit antara polisi dan penggugat tanah yang menyebabkan beberapa petani tewas. Meskipun banyak organisasi masyarakat sipil mengutuk perilaku polisi, banyak petani ditangkap dan gerakan protes dibubarkan. Sebagai akibat dari peristiwa tragis tersebut, pemerintah Provinsi Sulawesi Selatan melakukan proses mediasi antara perusahaan dan penggugat pada tahun 2004. Namun, tim mediasi mengacu pada putusan Mahkamah Agung tahun 1990 sebagai satu-satunya bukti sah dari penggugat dan klaim-klaim baru semua dianggap tidak sah. Selain itu, keputusan yang tidak selaras dari berbagai lembaga hukum dan lembaga pemerintah membuat konflik semakin berlapis dan karenanya lebih sulit untuk diselesaikan. Kondisi ini menggambarkan bagaimana hukum masih dalam kontrol penguasa, pasca rezim Suharto tumbang, ketimbang sebagai alat yang memberdayakan kaum miskin pedesaan. Di tempat seperti Bulukumba, ketidakadilan masih dirasakan oleh beberapa masyarakat sehingga konflik sengketa tanah yang sudah lama terjadi belum terselesaikan.

Bab 4 bergeser dari Bulukumba ke tingkat nasional dan membahas kebangkitan gerakan masyarakat adat Indonesia yang mempromosikan dan mengadvokasi pengakuan hak-hak masyarakat adat. Dimulai pada 1990-an, gerakan itu perlahan berkembang menjadi kekuatan politik, terutama setelah jatuhnya Orde Baru. Literatur yang ada sekarang telah menguraikan secara ekstensif kebangkitan adat sejak kejatuhan Suharto. Kebangkitan ini merupakan reaksi terhadap kebijakan orde baru yang menindas dan harus dilihat dalam konteks politik periode Reformasi. Selama periode ini fokus baru pada regionalisasi dan identitas etnis terjadi.

Bab 4 memberikan sejumlah tambahan faktor historis, politik dan hukum di balik kebangkitan gerakan masyarakat adat dan karakter khusus dari kerangka tindakan yang dianutnya. Dipengaruhi oleh gerakan transnasional *indigenous peoples* yang muncul pada tahun 1980-an dan 1990-an, serta sejarah hukum kolonial Indonesia, istilah 'masyarakat adat' menjadi konsep inti dari gerakan tersebut. Tokoh protagonis gerakan ini adalah

sebuah organisasi jaringan bernama Aliansi Masyarakat Adat Nusantara - atau AMAN - yang didirikan pada tahun 1999. Dalam arti yang lebih luas, konsep masyarakat adat diciptakan sebagai alternatif terhadap bentuk-bentuk kritik lain yang kurang diterima terhadap negara oleh lingkaran politik kiri. Ini adalah hasil dari penghapusan dan penghancuran PKI pada 1960-an, yang terus berdampak di Indonesia saat ini.

AMAN mendefinisikan masyarakat adat sebagai komunitas dengan sistem hukum adat dan wilayah komunal yang telah diwariskan dari generasi ke generasi. Asumsi implisit adalah bahwa masyarakat adat hidup selaras dengan lingkungan alam mereka dan mengelola sumber daya alam mereka secara bertanggung jawab. Di seluruh Indonesia, kelompok penduduk perdesaan telah mengklaim hak atas tanah berdasarkan status mereka sebagai masyarakat adat. Kelompok-kelompok semacam itu sering mendapat dukungan dari aktivis dan LSM. Organisasi seperti AMAN telah memperoleh posisi yang berpengaruh di kalangan LSM, tidak sedikit juga karena pendanaan yang besar dari donor dan bank pembangunan. Dukungan ini merupakan bagian dari hasil pembangunan gambaran bahwa masyarakat adat adalah pelindung alam.

Gerakan masyarakat adat di Indonesia telah mencapai sejumlah keberhasilan dalam beberapa tahun terakhir, terutama terkait dengan advokasi mereka untuk pengakuan hukum masyarakat adat. Kebanyakan perundang-undangan Indonesia menggunakan istilah yang sedikit berbeda, masyarakat hukum adat (*adat law community*), tetapi definisi istilah di dalam UU Kehutanan 1999 sangat mirip dengan masyarakat adat. Masyarakat hukum adat menerima pengakuan eksplisit dalam konstitusi yang diubah pada tahun 2002. Yang perlu diperhatikan saat ini adalah putusan terkenal No. 35/2012 dari Mahkamah Konstitusi, yang menyebutkan bahwa hutan adat - hutan yang dimiliki oleh masyarakat hukum adat - bukanlah hutan negara. Dengan ini, keputusan tersebut mengubah Pasal 67 UU Kehutanan 1999.

Keputusan itu disambut dengan gembira oleh masyarakat sipil, karena membawa peluang baru untuk pengakuan formal masyarakat adat. Beberapa tahun setelah keputusan tersebut, pemerintah memberlakukan sejumlah peraturan menteri yang lebih lanjut menguraikan prosedur pengakuan hukum atas hutan adat (Bab 2). Namun, dua persyaratan formal utama untuk pengakuan tetap tidak berubah. Pertama, hanya masyarakat adat tradisional yang memenuhi syarat untuk hak tersebut dan kedua, pemerintah daerah (di tingkat kabupaten dan provinsi) perlu mengakui masyarakat tersebut melalui peraturan daerah atau keputusan gubernur atau bupati.

Studi ini melihat penggunaan wacana masyarakat adat di tingkat lokal, bagaimana ia diadopsi oleh masyarakat pedesaan atau individu, serta aktor dan faktor kontekstual mana yang berperan di sini. Bab 5 dan Bab 6 menunjukkan bahwa merumuskan masyarakat adat sebagai kelompok yang egaliter dan harmonis dapat bertentangan dengan persepsi adat di tingkat lokal.

Bab 5 memberikan tinjauan historis tentang hubungan kekuasaan lokal dan transisi otoritas politik di Sulawesi Selatan. Ini menunjukkan bahwa selama berabad-abad, adat berdasarkan sistem kepercayaan tradisional melegitimasi kekuatan absolut dari aristokrasi lokal. Bahkan komunitas yang paling egaliter, seperti komunitas Ammatoa Kajang dari Bulukumba, mematuhi hirarki sosial yang ketat. Umumnya, tingkat

darah biru seseorang menentukan posisinya di masyarakat. Pada abad ke-20, proses pembentukan negara dan kebangkitan gerakan-gerakan Islam modern memperlemah posisi aristokrat lama. Namun, meskipun kaum bangsawan lokal telah kehilangan dominasi absolutnya dalam beberapa dekade terakhir, kaum bangsawan masih tetap sangat berpengaruh, terutama karena posisinya yang kuat di aparatur pemerintah daerah.

Bab 6 beralih kembali ke masa kini dan melihat lagi lintasan konflik perkebunan di Bulukumba, sekarang berfokus pada penggunaan klaim masyarakat adat pada periode antara 2006 dan 2017. Klaim masyarakat adat di Bulukumba menemukan jalannya selama masa setelah kekerasan Juli 2003 ketika konflik menjadi pusat perhatian LSM dan organisasi hak asasi manusia. Adalah Komisi Nasional Hak Asasi Manusia (Komnas-HAM) yang mulai merumuskan klaim tanah petani lokal dalam kategori hak masyarakat adat. Para komisioner menyatakan bahwa lahan yang diambil oleh PT. Lonsum adalah milik komunitas Ammatoa Kajang. Komunitas ini berasal dari Kecamatan Kajang di mana banyak penggugat tanah tinggal. Komunitas ini memiliki pemimpin moral bernama Amma Toa dan mematuhi aturan tradisional yang menganjurkan gaya hidup sederhana. Dalam beberapa tahun terakhir, menyebarkan tradisi komunitas telah menjadi strategi klaim penting dalam konflik dan juga telah diadopsi oleh organisasi protes agraria seperti AGRA.

Namun, Bab 6 menunjukkan bahwa bangsawan lokal (umumnya elit politik) di Kajang juga menggunakan adat untuk tujuan berbeda: untuk melegitimasi posisi kuat mereka. Banyak dari elit-elit ini tidak menganggap adat sebagai alat perlawanan kelompok-kelompok yang terpinggirkan, tetapi sebagai sarana melegitimasi dan mempertahankan hubungan kekuasaan tradisional antara bangsawan dan penduduk desa biasa. Oleh karena itu, kesimpulan penting adalah gambaran masyarakat adat yang dibangkitkan oleh LSM dan aktivis tidak selalu sesuai dengan organisasi sosio-politik masyarakat desa yang sebenarnya. Ketidaksesuaian ini telah menjadi sumber ketegangan antara para pemimpin adat dan aktivis. Di Bulukumba, pemimpin adat masyarakat Ammatoa Kajang menolak penyataan aktivis yang mengklaim bahwa masyarakat Ammatoa Kajang secara keseluruhan terlibat dalam konflik dengan perusahaan perkebunan. Banyak dari pemimpin tradisional ini adalah pejabat pemerintah lokal. Mereka tidak setuju menggunakan adat dalam protes dan unjuk rasa, karena akan menyebabkan kekacauan, dapat merusak reputasi masyarakat, dan akhirnya dapat mengancam posisi mereka sendiri.

Bab 6 selanjutnya menjelaskan bahwa klaim tanah adat belum memberikan keberhasilan bagi para petani yang tanahnya diambil oleh PT. Lonsum. Pada tahun 2011, Bupati Bulukumba awalnya bertindak sebagai mediator antara penggugat tanah dan perusahaan perkebunan. Namun, kemudian dia tiba-tiba mengumumkan bahwa dia tidak memiliki wewenang untuk menangani konflik dan menyarankan penggugat untuk pergi ke pengadilan. Hal ini memicu kecurigaan di kalangan aktivis dan petani, dan banyak yang yakin bahwa Bupati Bulukumba telah disuap oleh perusahaan.

Bab 7 menganalisis sejauh mana komunitas telah mampu mewujudkan hak atas hutan adat pasca putusan Mahkamah Konstitusi No. 35/2012. Hukum Indonesia

menentukan bahwa pemerintah daerah - pemerintah provinsi dan kabupaten - untuk secara resmi mengakui masyarakat adat dan hutan adat mereka. Selanjutnya, Kementerian Lingkungan Hidup dan Kehutanan dapat mengubah status hutan dari hutan negara menjadi hutan adat melalui sebuah keputusan menteri. Sejak putusan Mahkamah Konstitusi tentang pemisahan hutan adat dari hutan negara, pemerintah hanya mengakui beberapa hutan adat di tingkat nasional. Bab 7 membandingkan upaya dua komunitas untuk mengamankan hak hutan adat dan menganalisis faktor apa yang telah menentukan hasil dari klaim tersebut.

Kasus pertama juga melibatkan komunitas Ammatoa Kajang dari Kecamatan Kajang, Kabupaten Bulukumba. Pada tahun 2015, pemerintah Kabupaten Bulukumba mengakui komunitas Ammatoa Kajang sebagai masyarakat hukum adat melalui peraturan daerah. Pada tahun 2016, komunitas ini juga merupakan salah satu dari sembilan komunitas adat pertama yang hutan adatnya diakui secara resmi oleh Kementerian Lingkungan Hidup dan Kehutanan. Studi ini memberikan bukti bahwa pengakuan formal yang sukses dari komunitas Ammatoa Kajang terwujud dalam keadaan khusus yang tidak mudah ditemukan di tempat lain di Indonesia. Ada beberapa faktor yang sangat penting di sini. Pertama, komunitas Ammatoa Kajang memenuhi semua persyaratan bahwa definisi hukum sempit yang terkait dengan masyarakat hukum adat. Kedua, masyarakat Ammatoa Kajang tidak terlibat dalam konflik atas wilayah yang diklaim sebagai hutan adat, karena pemerintah kabupaten telah secara de facto mengakui hutan adat selama beberapa dekade. Ketiga, sejumlah pemimpin adat terkemuka di Kajang juga memiliki pengaruh terhadap kantor-kantor pemerintah di tingkat lokal seperti kepala desa dan camat.

Mengingat keadaan khusus tersebut, pemerintah kabupaten mau mengakui komunitas Ammatoa Kajang. Alasan tambahan adalah bahwa wilayah adat tradisional memiliki potensi untuk menjadi tujuan wisata. Bagi LSM yang terlibat dalam proses, pengakuan formal merupakan proyek yang berhasil diselesaikan yang menekankan pentingnya advokasi mereka. Perlu dicatat bahwa klaim pengakuan hak masyarakat adat dalam kasus ini tidak banyak berasal dari masyarakat itu sendiri, tetapi terutama inisiatif dari sejumlah organisasi masyarakat sipil.

Selain dari dilepaskannya hutan adat dari hutan negara, pengakuan hukum tidak memiliki dampak lebih lanjut pada hubungan penguasaan tanah setempat, karena tidak melibatkan pengalihan lahan secara fisik kepada masyarakat. Peraturan daerah kabupaten Bulukumba menetapkan perkebunan PT. Lonsum terletak di dalam wilayah masyarakat adat, tetapi peraturan tersebut juga menyatakan bahwa hak-hak dari pihak ketiga akan tetap berlaku.

Kasus kedua adalah komunitas Turungan Soppeng dari Kecamatan Sinjai Barat di Kabupaten Sinjai, sebelah utara Bulukumba. Di Sinjai telah lama terjadi konflik antara petani lokal dan dinas kehutanan kabupaten. Karena penebangan liar di kawasan hutan beberapa petani dihukum penjara. Seorang penggarap dari desa Turungan Baji, yang didukung oleh Pengurus Daerah AMAN, mencoba untuk menuntut hak masyarakat adat sebagai strategi pembelaan di pengadilan. Namun, ada pembelahan di desa tentang keberadaan masyarakat adat. Warga desa yang berafiliasi dengan pemerintah, seperti

kepala dusun, menolak keberadaan masyarakat adat di Turungan Baji. Pemerintah kabupaten di Sinjai juga membantah keberadaannya dan tidak siap untuk menerima klaim penggarap tanah. Kasus ini menunjukkan bahwa klaim masyarakat adat memiliki sedikit peluang dalam situasi konflik dengan lembaga pemerintah atau perusahaan perkebunan. Hubungan informal yang kuat dengan aparat pemerintah sangat penting untuk pengakuan hak masyarakat adat dan ini kurang dalam kasus ini.

Selain itu, juga tampak bahwa definisi sempit masyarakat adat yang digunakan dalam praktik telah menjadi masalah dalam mewujudkan pengakuan hukum. Tidak banyak komunitas di Indonesia yang benar-benar dapat memenuhi persyaratan ketat dari definisi tersebut. Di Sinjai, pengadilan negeri tidak mengakui klaim dari pernyataan sendiri sebagai masyarakat adat. Pengadilan menyatakan bahwa ritualnya tidak cukup unik sehingga mereka dapat dianggap sebagai komunitas yang berbeda dari semua komunitas yang ada di Sulawesi Selatan.

Bab 8 menyediakan kesimpulan dari penelitian ini. Gerakan masyarakat adat di Indonesia memperjuangkan komunitas perdesaan yang terpinggirkan yang terlibat dalam konflik pertanahan. Gerakan ini merumuskan kelompok-kelompok tersebut seperti kelompok tradisional yang masih mempertahankan struktur hukum otonom mereka. Perumusan ini memiliki fungsi memperkuat legitimasi klaim tanah bagi masyarakat lokal. Namun, dalam studi kasus dari penelitian ini, jenis perumusan ini tidak berkontribusi untuk menyelesaikan konflik lahan. Bab 8 menyimpulkan bahwa dalam kasus-kasus yang diteliti, menyamakan kelompok-kelompok terpinggirkan dengan masyarakat tradisional belum berkontribusi untuk menyelesaikan konflik pertanahan. Pemerintah memiliki keleluasaan untuk mengecualikan kelompok-kelompok yang tidak memenuhi definisi sempit masyarakat adat. Dengan cara ini, negara mempertahankan posisinya yang kuat dalam tata kelola lahan dan sumber daya alam.

Jika lebih banyak komunitas dipertimbangkan untuk secara resmi diakui sebagai masyarakat adat, penafsiran yang lebih luas dari konsep tersebut diperlukan. Penulis berpendapat dalam kesimpulan bahwa wacana yang lebih inklusif tentang hak atas tanah diperlukan yang tidak menjadikan kolektivitas dan kesinambungan sebagai prasyarat untuk mendapat hak atas tanah.

CURRICULUM VITAE

Willem Egbert van der Muur was born in Utrecht, the Netherlands on February 16, 1987. At the age of ten his family moved to Deventer where he completed secondary education (*gymnasium*) in 2005. Following his graduation, he travelled the world for seven months, four of which in Southeast Asia. This experience sparked his interest for the region, creating a particularly strong affinity with Indonesia where parts of his roots lie. In 2006 he moved to Amsterdam to study Sociology (BSc) at the University of Amsterdam. He graduated in 2009 with a thesis on the social functions of urban youth culture in Tanzania, after conducting fieldwork in Dar Es Salaam. In 2010 he obtained a Masters degree (MSc) in Contemporary Asian Studies, with a thesis on the relationship between the growing Indonesian middle class and environmental activism. In 2010 he decided to continue his studies in law. Following the completion of an LLM pre-master program, he was admitted to the Masters (LLM) Public International Law at the University of Amsterdam in 2011. While studying, he also worked as a trainee at the Netherlands Embassy in Bangkok, Thailand. During this traineeship he completed his law thesis, which focused on the ASEAN Economic Community 2015, an economic integration agreement between Southeast Asian states. In April 2013 Willem joined the Van Vollenhoven Institute for Law, Governance, and Society to work as a PhD researcher in the KITLV project 'From Clients to Citizens: emerging citizenship in democratizing Indonesia'. Besides his research, he also convened an international conference on adat law, and worked as a coordinator in the JSSP project, a development project aimed at strengthening the rule of law in Indonesia. He has furthermore worked as a consultant for the World Bank in Jakarta, providing expert advice on the bank's safeguard-policies regarding community land rights and rural livelihoods.