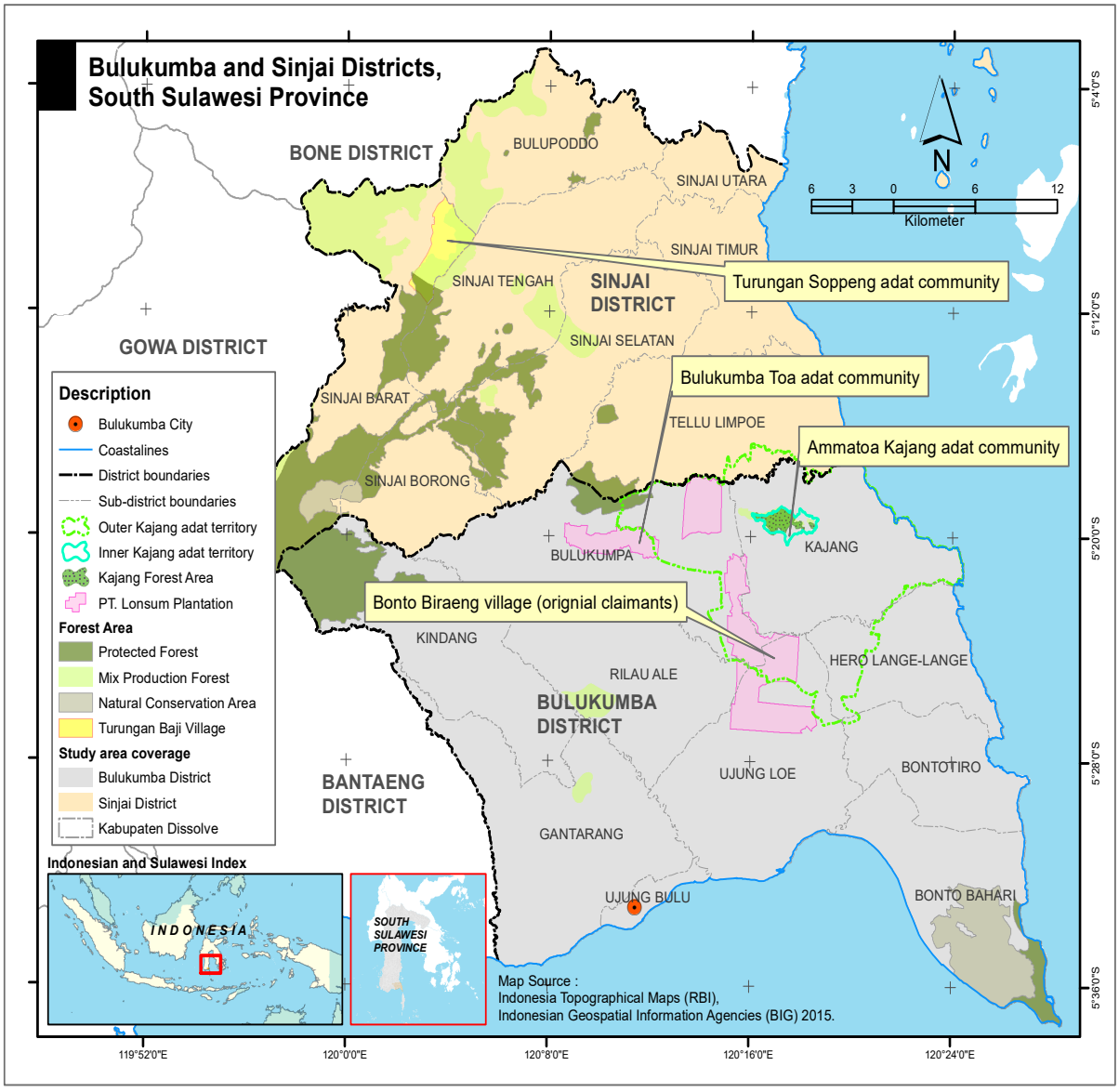
# Land rights and the forces of adat in democratizing Indonesia : continuous conflict between plantations, farmers, and forests in South Sulawesi

Muur, W.E. van der

## *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.