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

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Citation

Muur, W. E. van der. (2019, January 9). *Land rights and the forces of adat in democratizing Indonesia : continuous conflict between plantations, farmers, and forests in South Sulawesi*. Retrieved from <https://hdl.handle.net/1887/68271>

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Issue Date: 2019-01-09

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 forests¹⁸⁵, 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 outcome 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 Sulawesi 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 DFPD 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 Lingkungan 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 notwithstanding, 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 livelihoods. 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 District 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 aligned 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 *gaukung*.

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 with regard to forest matters, notwithstanding 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 existence 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 officially 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 planting 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 prerequisite 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 identity. Under these circumstances, the government and the judiciary rejected the claims of Bahtiar.

This chapter has also looked at the implication of successful 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.